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 September 28, 2013

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.)

175 Technology Drive, 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 the registrant's common stock as of the latest practicable date:

Common Stock, par value $0.001 per share
31,573,978 shares outstanding at October 31, 2013

NETLIST, INC. AND SUBSIDIARIES
QUARTERLY REPORT ON FORM 10-Q
FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 28, 2013

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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) September 28, 2013	(audited) December 29, 2012
ASSETS		
Current assets:		
Cash and cash equivalents	$ 7,029	$ 7,755
Restricted cash	1,000	—
Investments in marketable securities	—	415
Accounts receivable, net	2,110	3,434
Inventories	4,269	7,380
Prepaid expenses and other current assets	493	723
Total current assets	14,901	19,707
Property and equipment, net	1,449	2,560
Debt issuance costs	731	—
Other assets	124	130
Total assets	$ 17,205	$ 22,397
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 2,410	$ 3,367
Accrued payroll and related liabilities	767	784
Accrued expenses and other current liabilities	525	497
Accrued engineering charges	500	450
Current portion of long term debt	5	3,493
Total current liabilities	4,207	8,591
Long term debt, net of current portion and debt discount of $1,133	4,867	—
Other liabilities	103	94
Total liabilities	9,177	8,685
Commitments and contingencies		
Stockholders' equity:		
Common stock, $0.001 par value - 90,000 shares authorized; 31,574 (2013) and 30,348 (2012) shares issued and outstanding	31	30
Additional paid-in capital	103,892	100,403
Accumulated deficit	(95,895)	(86,721)
Total stockholders' equity	8,028	13,712
Total liabilities and stockholders' equity	$ 17,205	$ 22,397

See accompanying notes.

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

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Net sales	$ 4,289	$ 6,391	$ 15,318	$ 30,910
Cost of sales(1)	3,896	6,003	14,112	22,348
Gross profit	393	388	1,206	8,562
Operating expenses:				
Research and development(1)	1,641	2,615	4,941	10,227
Selling, general and administrative(1)	1,554	2,497	4,880	7,977
Total operating expenses	3,195	5,112	9,821	18,204
Operating loss	(2,802)	(4,724)	(8,615)	(9,642)
Other income (expense):				
Interest expense, net	(324)	(98)	(542)	(248)
Other income (expense), net	(8)	4	(8)	12
Total other expense, net	(332)	(94)	(550)	(236)
Loss before provision for income taxes	(3,134)	(4,818)	(9,165)	(9,878)
Provision for income taxes	7	4	9	5
Net loss	$ (3,141)	$ (4,822)	$ (9,174)	$ (9,883)
Net loss per common share:				
Basic and diluted	$ (0.10)	$ (0.17)	$ (0.30)	$ (0.36)
Weighted-average common shares outstanding:				
Basic and diluted	31,268	28,199	30,599	27,680

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

Cost of sales	$ 13	$ 28	$ 37	$ 105
Research and development	162	193	440	538
Selling, general and administrative	266	294	768	877

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Comprehensive Loss
(in thousands)

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Net loss	$ (3,141)	$ (4,822)	$ (9,174)	$ (9,883)
Other comprehensive loss:				
Net unrealized loss on investments in marketable securities, net of tax	—	(2)	—	(1)
Total comprehensive loss	$ (3,141)	$ (4,824)	$ (9,174)	$ (9,884)

See accompanying notes.

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

	Nine Months Ended	
	September 28, 2013	September 29, 2012
Cash flows from operating activities:		
Net loss	$ (9,174)	$ (9,883)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,166	1,541
Amortization of debt discount and debt issuance costs	164	—
Gain on disposal of property and equipment	(5)	—
Stock-based compensation	1,245	1,520
Changes in operating assets and liabilities:		
Restricted cash	(1,000)	—
Accounts receivable	1,324	7,764
Inventories	3,111	(3,918)
Prepaid expenses and other current assets	470	(165)
Other assets	6	32
Accounts payable	(957)	(2,257)
Accrued payroll and related liabilities	(17)	(742)
Accrued expenses and other current liabilities	37	458
Accrued engineering charges	50	—
Net cash used in operating activities	(3,580)	(5,650)
Cash flows from investing activities:		
Acquisition of property and equipment	(75)	(1,648)
Proceeds from sale of property and equipment	25	—
Proceeds from maturities and sales of investments in marketable securities	415	—
Net cash provided by (used in) investing activities	365	(1,648)
Cash flows from financing activities:		
Borrowings on line of credit	—	3,200
Payments on line of credit	—	(400)
Proceeds from bank term loan, net of issuance costs	2,483	1,319
Payments on debt	(1,024)	(1,149)
Proceeds from public offering, net	1,006	3,613
Proceeds from exercise of equity awards, net of taxes remitted for restricted stock	24	621
Net cash provided by financing activities	2,489	7,204
Decrease in cash and cash equivalents	(726)	(94)
Cash and cash equivalents at beginning of period	7,755	10,535
Cash and cash equivalents at end of period	$ 7,029	$ 10,441

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 28, 2013

Note 1—Description of Business

Netlist, Inc. (the "Company" or "Netlist") designs and manufactures a wide variety of high performance, logic-based memory subsystems for the global datacenter, storage and high-performance computing and communications markets. The Company's 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"). Netlist primarily markets and sells its products to leading original equipment manufacturer ("OEM") customers. The Company's solutions are targeted at applications where memory plays a key role in meeting system performance requirements. The Company leverages 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 memory density, small form factor, high signal integrity, attractive thermal characteristics, reduced power consumption and low cost per bit. Our NVvault™ product is the first to offer both DRAM and NAND in a standard form factor memory subsystem as a persistent DIMM in mission critical applications.

Netlist was incorporated in June 2000 and is headquartered in Irvine, California. In 2007, the Company established a manufacturing facility in the People's Republic of China (the "PRC"), which became operational in July 2007 upon the successful qualification of certain key customers.

Liquidity

The Company incurred net losses of approximately $9.2 million and $9.9 million for the nine months ended September 28, 2013 and September 29, 2012, respectively, and has an accumulated deficit of approximately $95.9 million as of September 28, 2013.

On July 18, 2013, the Company obtained debt financing of up to $10 million in term loans and up to $5 million in revolving loans from DBD Credit Funding, LLC ("DBD"), a Delaware limited liability company, an affiliate of Fortress Investment Group, LLC (see Note 6). The first tranche ($6 million) of the debt was drawn immediately and used to pay down all the Silicon Valley Bank term debt and related obligations of approximately $3 million. The tangible net worth covenant in connection with the credit agreement entered into with Silicon Valley Bank was relaxed as part of the SVB amendment agreement which also waived certain events of default related to noncompliance. The new financing with DBD does not have fixed charge ratio or tangible net worth covenants, and the loan is interest only for the first 18 months of the 36 month term.

Concurrent with the debt financing, the Company raised additional net proceeds of approximately $960,000 in a registered public offering of its securities from an institutional investor for the sale of 1,098,902 shares of common stock and a seven-year warrant to purchase 1,098,902 shares of common stock at an exercise price of $1.00 per share.

Pursuant to the Company's sales agreement with Ascendiant Capital Markets LLC ("Ascendiant"),the Company raised net proceeds of approximately $48,000 during the nine months ended September 28, 2013, approximately $3.9 million in the year ended December 29, 2012 and approximately $1.9 million in the year ended December 31, 2011. The sales agreement expires on November 21, 2013.

If adequate working capital is not available when needed, the Company may be required to significantly modify its business model and operations to reduce spending to a sustainable level. Insufficient working capital could cause the Company to be unable to execute its business plan, take advantage of future opportunities, or respond to competitive pressures or customer requirements. It may also cause the Company to delay, scale back or eliminate some or all of its research and development programs, or to reduce or cease operations. While there is no assurance that the Company can meet its revenue forecasts, management anticipates that it can successfully execute its plans and continue operations for at least the next twelve months.

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 condensed consolidated 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 December 29, 2012, included in the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2013.

The condensed consolidated financial statements included herein as of September 28, 2013 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 condensed consolidated financial position of the Company and its wholly-owned subsidiaries as of September 28, 2013, the condensed consolidated statements of its operations and comprehensive loss for the three and nine months ended September 28, 2013 and September 29, 2012, and the condensed consolidated statements of cash flows for the nine months ended September 28, 2013 and September 29, 2012. The results of operations for the nine months ended September 28, 2013 are not necessarily indicative of the results to be expected for the full year or any future interim periods.

Principles of Consolidation

The condensed 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 2013, the Company's fiscal year is scheduled to end on December 28, 2013 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 assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed 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, recoverability of long-lived assets, stock-based transactions 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 component inventories to distributors and other users of memory integrated circuits ("ICs"). Such sales amounted to less than $0.1 million for each of the three and nine month periods ended September 28, 2013 and September 29, 2012.

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 component 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.

Restricted Cash

Restricted cash of $1 million, as of September 28, 2013, consists of cash to secure two standby letters of credit.

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 fair value, 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 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 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. The fair value of the Company's cash equivalents and investments in marketable securities is determined based on quoted prices in active markets for identical assets or Level 1 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 mutual funds. Cash equivalents are maintained with high quality institutions, the composition and maturities of which are regularly monitored by management. The Company had $1.3 million of Federal Deposit Insurance Corporation and Securities Investor Protection Corporation insured cash and cash equivalents at September 28, 2013. Investments in marketable securities are generally in high-credit quality debt instruments. Such investments are made only in instruments issued or enhanced by high-quality institutions. The Company has not incurred any credit 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), foreign credit insurance and letters of credit issued on the Company's behalf. 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 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, 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. In addition, the Company considers changes in the market value of components in determining the net realizable value of its inventory. Once established, lower of cost or market write-downs are considered permanent adjustments to the cost basis of the excess or obsolete inventories. Provisions are made to reduce excess or obsolete inventories to their estimated net realizable values.

Deferred Financing Costs, Debt Discount and Detachable Debt-Related Warrants

Costs incurred to issue debt are deferred and included in debt issuance costs in the accompanying consolidated balance sheet. The Company amortizes debt issuance costs over the expected term of the related debt using the effective interest method. Debt discounts relate to the relative fair value of any warrants issued in conjunction with the debt are recorded as a reduction to the debt balance and accreted over the expected term of the debt to interest expense using the effective interest method.

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 by the Company for impairment on at least an annual basis or whenever events or changes in circumstances indicate that their carrying 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. 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. The Company's management believes there is no impairment of long-lived assets as of September 28, 2013. There can be no assurance, however, that market conditions will not change or demand for the Company's products will continue, which could result in future impairment of long-lived assets.

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 component 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 condensed 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, all of 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. 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 common stock option 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, provided that the accumulated cost recognized as of any date at least equals the value of the vested portion of the award.

The Company recognizes the fair value of restricted stock awards issued to employees and outside directors as stock-based compensation expense on a straight-line basis over the vesting period for the last separately vesting portion of the awards. Fair value is determined as the difference between the closing price of our common stock on the grant date and the purchase price of the restricted stock award, if any, reduced by expected forfeitures.

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 condensed 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.

Collaboration Agreements

In 2011, the Company entered into two memory technology Collaboration Agreements. The first agreement is a HyperCloud ® Technology Collaboration Agreement (the "IBM Agreement") with International Business Machines ("IBM"). Under the IBM Agreement, IBM and the Company have agreed to cooperate with respect to the qualification of HyperCloud ® technology for use with IBM servers and to engage in certain joint marketing efforts if qualification is achieved. IBM and the Company have agreed to commit resources and funds in support of these activities. The IBM Agreement is non-exclusive.

The second agreement is a Collaboration Agreement (the "HP Agreement") with Hewlett-Packard Company ("HP"). Under the HP Agreement, HP and the Company agreed to cooperate and commit resources in furtherance of qualifying of HyperCloud ® technology for use with HP servers and to engage in certain joint marketing efforts if qualification is achieved. HP and the Company agreed to commit resources and funds in support of these activities. The HP Agreement is exclusive for a period of time. HP and the Company agreed to collaborate on the future use of HyperCloud ® load reduction and rank multiplication technologies for next generation server memory for HP.

In total, the Company reimbursed IBM and HP $0.2 million and $1 million, respectively, for the cost of certain qualification activities. In addition, the Company made $0.8 million of payments to IBM for joint HyperCloud ® marketing activities, all of which have been amortized based on actual unit shipments compared with estimated total shipments over the term of the Collaboration Agreement. The Company's net sales were determined after deduction of such customer allowances, in accordance with ASC 605-50. There can be no assurance that the efforts undertaken under either of the IBM or HP collaboration agreements will result in revenues for the Company that are sufficient to cover the cost of qualification activities, including payments made to HP and IBM under the collaboration agreements.

Risks and Uncertainties

The Company is subject to certain risks and uncertainties including their ability to obtain profitable operations due to the Company's history of losses and accumulated deficits, the Company's dependence on a few customers for a significant portion of revenues, risks related to intellectual property matters, market development of and demand for the Company's products, and the length of the sales cycle. Such risks could have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

The Company has invested and expects to continue to invest a significant portion of its research and development budget into the design of ASIC devices, including the HyperCloud ® memory subsystem. This new design and the products it is incorporated into are subject to increased risks as compared to the Company's existing products. The Company may be unable to achieve customer or market acceptance of the HyperCloud ® memory subsystem or other new products, or achieve

such acceptance in a timely manner. The Company has experienced a longer qualification cycle than anticipated with its HyperCloud ® memory subsystems, and as of September 28, 2013, the product has not generated significant revenue relative to the Company's investment in the product. The Company has entered into collaborative agreements with both HP and IBM pursuant to which these OEMs have cooperated with the Company to qualify HyperCloud ® for use in their respective products. The qualifying OEMs have engaged and continue to engage with the Company in joint marketing and further product development efforts. The Company and each of the OEMs have committed financial and other resources toward the collaboration. There can be no assurance that the efforts undertaken pursuant to either of the collaborative agreements will result in any new revenues for the Company. Further delays or any failure in placing or qualifying this product with HP, IBM or other potential customers would adversely impact the Company's consolidated results of operations.

The Company's operations in the PRC are subject to various political, geographical and economic risks and uncertainties inherent to conducting business in the PRC. 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 the PRC, 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. The liabilities of the Company's subsidiaries in the PRC exceeded its assets as of September 28, 2013 and December 29, 2012.

Foreign Currency Remeasurement

The functional currency of the Company's foreign subsidiary is the U.S. dollar. Local currency financial statements are remeasured 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 remeasured using the average exchange rate for the period, except items related to nonmonetary assets and liabilities, which are remeasured using historical exchange rates. All remeasurement gains and losses are included in determining net loss. Transaction gains and losses were not significant in the three and nine months ended September 28, 2013 or September 29, 2012.

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, excluding unvested shares issued pursuant to restricted share awards under the Company's share-based compensation plans. 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 or vesting of outstanding stock options, warrants and restricted stock awards, respectively, 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 unvested restricted share awards on loss per share is anti-dilutive.

Note 3—Supplemental Financial Information

Inventories

Inventories consist of the following (in thousands):

	September 28, 2013	December 29, 2012
Raw materials	$ 2,639	$ 4,544
Work in process	330	70
Finished goods	1,300	2,766
	$ 4,269	$ 7,380

Warranty Liabilities

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

	Nine Months Ended	
	September 28, 2013	September 29, 2012
Beginning balance	$ 235	$ 189
Estimated cost of warranty claims charged to cost of sales	93	148
Cost of actual warranty claims	(70)	(105)
Ending balance	258	232
Less current portion	(155)	(139)
Long-term warranty obligations	$ 103	$ 93

The allowance for warranty liabilities expected to be incurred within one year is included as a component of accrued expenses and other current liabilities in the accompanying condensed consolidated balance sheets. The allowance for warranty liabilities expected to be incurred after one year is included as a component of other liabilities in the accompanying condensed consolidated balance sheets.

Computation of Net Loss Per Share

The following table sets forth the computation of net loss per share, including the reconciliation of the numerator and denominator used in the calculation of basic and diluted net loss per share (in thousands, except per share data):

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Basic and diluted net loss per share:				
Numerator: Net loss	$ (3,141)	$ (4,822)	$ (9,174)	$ (9,883)
Denominator: Weighted-average common shares outstanding, basic and diluted	31,268	28,199	30,599	27,680
Basic and diluted net loss per share	$ (0.10)	$ (0.17)	$ (0.30)	$ (0.36)

The following table sets forth potentially dilutive common share equivalents, consisting of shares issuable upon the exercise or vesting of outstanding stock options and restricted stock awards, respectively computed using the treasury stock method. These potential common shares 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		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Common share equivalents	232	424	225	764

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

The Company's product sales have historically been concentrated in a small number of customers. The following table sets forth sales to customers comprising 10% or more of the Company's net sales as follows:

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Customer:				
Customer A	51%	32%	39%	65%
Customer B	14%	28%	17%	12%

The Company's accounts receivable as of September 28, 2013 were concentrated with two customers, representing approximately 60% and 14% of aggregate gross receivables. At December 29, 2012, two customers represented approximately 41% and 24% 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. The Company mitigates risk with foreign receivables by purchasing comprehensive foreign credit insurance.

Cash Flow Information

The following table sets forth supplemental disclosures of cash flow information and non-cash investing and financing activities (in thousands):

	Nine Months Ended	
	September 28, 2013	September 29, 2012
Supplemental disclosure of non-cash investing and financing activities:		
Purchase of equipment not paid for at the end of the period	$ —	$ 175
Debt financed acquisition of fixed assets	$ 240	$ 180
Debt issuance costs associated with July debt financing	$ 323	$ —
Debt discount related to the relative fair value of detachable warrants issued	$ 1,215	$ —
Paydown of SVB term loan directly with proceeds from July debt financing	$ 2,731	$ —

Note 4—Fair Value Measurements

The following tables detail the fair value measurements within the fair value hierarchy of the Company's assets (in thousands):

		Fair Value Measurements at September 28, 2013 Using		
	Fair Value at September 28, 2013	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market mutual funds	$ 2,834	$ 2,834	$ —	$ —
Total	$ 2,834	$ 2,834	$ —	$ —

		Fair Value Measurements at December 29, 2012 Using		
	Fair Value at December 29, 2012	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market mutual funds	$ 2,338	$ 2,338	$ —	$ —
Auction and variable floating rate notes	415	—	—	415
Total	$ 2,753	$ 2,338	$ —	$ 415

The following tables summarize the Company's assets measured at fair value on a recurring basis as presented in the Company's condensed consolidated balance sheets at September 28, 2013 and December 29, 2012:

	Fair Value at September 28, 2013	Fair Value Measurements at September 28, 2013 Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash equivalents	$ 2,834	$ 2,834	$ —	$ —
	$ 2,834	$ 2,834	$ —	$ —

	Fair Value at December 29, 2012	Fair Value Measurements at December 29, 2012 Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash equivalents	$ 2,338	$ 2,338	$ —	$ —
Long-term marketable securities	415	—	—	415
Total assets measured at fair value	$ 2,753	$ 2,338	$ —	$ 415

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 (see Note 5).

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):

	Nine Months Ended	
	September 28, 2013	September 29, 2012
Beginning balance	$ 415	$ 444
Proceeds from sales of available-for-sale marketable securities	(415)	—
Unrealized loss transferred from other comprehensive loss to earnings	—	(1)
Ending balance	$ —	$ 443

Note 5—Investments in Marketable Securities

Investments in marketable securities consist of the following (in thousands):

	December 29, 2012		
	Amortized Cost	Net Unrealized Loss	Fair Value
Auction and variable floating rate notes	$ 415	$ —	$ 415

At December 29, 2012, the Level 3 fair value of the Company's auction rate security consists of the par value of $500,000 adjusted for a realized loss of $85,000, recorded as other expense as of December 31, 2012.

Realized gains and losses on the sale of investments in marketable securities are determined using the specific identification method. Other than the sale of Company's auction rate security, described below, there were no sales of available-for-sale securities prior to maturity in 2013 or 2012.

The following table provides the breakdown of investments in marketable securities with unrealized losses (in thousands):

	December 29, 2012			
	Continuous Unrealized Loss			
	Less than 12 months		12 months or greater	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Auction and variable floating rate notes	$ 415	$ —	$ —	$ —

Auction Rate Securities

As of December 29, 2012, the Company held one investment in a Baa1 rated auction rate debt security of a municipality with a total purchase cost of $0.5 million and recorded a permanent impairment of this asset for a realized loss of $85,000. During the first quarter of 2013, the Company sold this auction rate security for $415,000.

Note 6—Credit Agreements

Silicon Valley Credit Agreement

On October 31, 2009, the Company entered into a credit agreement with Silicon Valley Bank ("SVB"), which was most recently amended on July 18, 2013 (as amended, the "SVB Credit Agreement"). Currently, the SVB Credit Agreement provides that the Company can borrow up to the lesser of (i) 80% of eligible accounts receivable, or (ii) $5.0 million.

Pursuant to the September 2010 amendment to the SVB Credit Agreement, SVB extended a $1.5 million term loan, bearing interest at a rate of prime plus 2.00%. The Company was required to make monthly principal payments of $41,666 over the 36 month term of the loan, or $0.5 million annually. In May 2011, SVB extended an additional $3.0 million term loan, bearing interest at a rate of prime plus 2.75%. The Company was required to make monthly principal payments of $125,000 over the 24 month term of the loan, or $1.5 million annually. In May 2012, SVB consolidated both term loans and extended additional credit, resulting in a combined balance of $3.5 million as of May 2012 (the "Consolidated Term Loan"). The Consolidated Term Loan was payable in 36 installments of $97,222, beginning December 2012, with interest at a rate of prime plus 2.50%. Interest was payable monthly from the date of funding through final payoff of the loan. On July 18, 2013, as part an amendment to the SVB Credit Agreement entered into with SVB and following the Company's receipt of additional loan financing from DBD, the Consolidated Term Loan and outstanding interest was paid in full. In accordance with the terms of the financing obtained through DBD, the Company recorded all amounts due under the Consolidated Term Loan as long-term portion of debt in the accompanying consolidated balance sheet as of September 28, 2013. See description of DBD, below.

On July 18, 2013, the Company and SVB entered into a loan amendment ("SVB Amendment") to the Company's loan and security agreement with SVB. Pursuant to the SVB Amendment, SVB allowed for the financing and security interests contemplated under the loan agreement entered into with DBD and released certain patents and related assets relating to the NVvault™ product line from the collateral subject to SVB's security interest under the SVB Credit Agreement. Additionally, pursuant to the SVB Amendment, advances under the revolving line now accrue interest at a rate equal to SVB's most recently announced "prime rate" plus 2.75%. The SVB Amendment also relaxed the Company's tangible net worth covenant under the SVB Credit Agreement and waived certain events of default in connection therewith.

Certain reporting requirements under the SVB Credit Agreement were modified while certain reserves with respect to the borrowing base and the availability of revolving loans were removed pursuant to the SVB Amendment. Under the terms of the SVB Credit Agreement, the Company may draw revolving advances in an aggregate outstanding principal amount of up to the lesser of $5 million and the available borrowing base, subject to reserve amounts. The Company's borrowing base under the SVB Credit Agreement is subject to certain adjustments and up to the lesser of 80% of eligible accounts receivable.

Prior to the May 2012 amendment, the SVB Credit Agreement contained an overall sublimit of $10.0 million to collateralize the Company's contingent obligations under letters of credit and other financial services. Amounts outstanding under the overall sublimit reduced the amount available pursuant to the SVB Credit Agreement. As a result of the May 2012 amendment, letters of credit and other financial services were no longer subject to borrowing base sublimits and did not reduce the amount that could be borrowed under the revolving line of credit. The July 18, 2013 amendment requires letters of credit to be secured by cash, which is classified as restricted cash in the accompanying condensed consolidated balance sheet. At September 28, 2013, letters of credit in the amount of $1.0 million were outstanding.

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

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Interest expense	$ 19	$ 36	$ 114	$ 84

The following table presents details of the Company's outstanding borrowings and availability under our line of credit with SVB:

	September 28, 2013	December 29, 2012
Availability under the revolving line of credit	$ 1,813	$ 1,486
Outstanding borrowings on the revolving line of credit	—	—
Amounts reserved under credit sublimits	—	—
Unutilized borrowing availability under the revolving line of credit	$ 1,813	$ 1,486

All obligations under the SVB Credit Agreement are secured by a first priority lien on the Company's tangible and intangible assets, other than its intellectual property, which is subject to a first priority lien held by DBD. The SVB Credit Agreement subjects the Company to certain affirmative and negative covenants, including financial covenants with respect to the Company's liquidity and tangible net worth and restrictions on the payment of dividends. As of September 28, 2013, the Company was in compliance with its debt covenants. As of December 29, 2012, the Company was in violation of the tangible net worth covenant but remained in compliance with the quick ratio covenant. In connection with the July 18, 2013 amendment to the SVB Credit Agreement, the Company obtained a waiver of such non-compliance and amended the tangible net worth covenant which resulted in the Company's compliance with all financial covenants as of July 18, 2013.

On January 23, 2013, the Company entered into a Forbearance Agreement with SVB (the "Forbearance Agreement"), pursuant to which SVB agreed to forbear from filing any legal action or instituting or enforcing any rights and remedies it may have against the Company as a result of its violation of the financial covenants until February 28. 2013. On March 27, 2013, the effectiveness of the Forbearance Agreement was extended until April 30, 2013. As a result of the Company's non-compliance with a loan covenant at December 29, 2012, and in accordance with relevant accounting guidance, the Company reclassified the long-term portion of the Consolidated Term Loan to current portion of debt in the accompanying consolidated balance sheet as of December 29, 2012. In connection with the July 18, 2013 amendment to the SVB Credit Agreement the Company obtained a waiver of such non-compliance.

Pursuant to the Forbearance Agreement that was in effect prior to the July 18, 2013 loan amendment, any principal amount outstanding under the revolving line accrued interest at a per annum rate equal to the following (i) at all times that a Streamline Period (as defined) is in effect, 1.75% above the Prime Rate; and (ii) at all times that a Streamline Period is not in effect, 2.75% above the Prime Rate, which interest was payable monthly. In addition, the reserve on the revolving line was

increased to $2 million. The SVB Credit Agreement requires payment of an unused line fee, as well as anniversary and early termination fees, as applicable. On July 18, 2013, as part of the SVB Amendment, the Streamline Period interest was eliminated and any principal amount outstanding under the Revolving Line accrues interest at 2.75% above the Prime Rate. The SVB Amendment eliminates the reserve on the revolving line of $2 million, thereby increasing the borrowing availability.

DBD Credit Funding, LLC Loan and Security Agreement and Related Agreements

On July 18, 2013, the Company, entered into a loan agreement (“Loan Agreement”) with DBD, an affiliate of Fortress Investment Group LLC, providing for up to $10 million in term loans and up to $5 million in revolving loans. The term loans are available in an initial $6 million tranche (the “Initial Term Loan”) with a second tranche in the amount of $4 million becoming available upon achievement of certain performance milestones relating to intellectual property matters (the “IP Monetization Milestones” and such second tranche loan, “IP Milestone Term Loan”). The $5 million in revolving loans are available at DBD’s discretion and subject to customary conditions precedent. The $6 million Initial Term Loan was fully drawn at closing on July 18, 2013. Proceeds from the Initial Term Loan were used in part to repay the Company’s existing Consolidated Term Loan with SVB. The remainder of such funds will be used to fund the Company’s ongoing working capital needs.

The loans bear interest at a stated fixed rate of 11.0% per annum. During the first eighteen (18) months following the closing date, the payments on the term loans are interest-only at a cash rate of 7.0% per annum and a payment-in-kind deferred cash interest rate of 4.0%, which payment-in-kind interest is capitalized semi-annually, beginning with December 31, 2013. Following the eighteen (18) month interest-only period, the term loans are amortized with 65% of the principal amount due in equal monthly installments over the following eighteen (18) months with a balloon payment equal to 35% of the remaining principal amount of the term loans, plus accrued interest, being payable on July 18, 2016.

The Company’s obligations under the Loan Agreement are secured by a first-priority security interest in the Company’s intellectual property assets (other than certain patents and related assets relating to the NVvault™ product line) pursuant to an intellectual property security agreement with (the “IP Security Agreement”) and a second-priority security interest in substantially all of the Company’s other assets.

In connection with the Loan Agreement, the Company paid certain facility, due diligence and legal fees of DBD on the closing date and is obligated to pay a conditional facility fee upon satisfaction of the IP Monetization Milestones. If the Company repays or prepays all or a portion of the term loans prior to maturity, the Company is obligated to pay DBD a prepayment fee based on a percentage of the then outstanding principal balance being prepaid, equal to 4.0% if the prepayment occurs on or prior to July 18, 2014 (or 2.0% if such prepayment is made in connection with the early repayment option premium discussed in the preceding sentence), 2.0% if the prepayment occurs between July 18, 2014 and July 18, 2015, or 0.0% if the prepayment occurs after July 18, 2015.

The Loan Agreement contains customary representations, warranties and indemnification provisions. The Loan Agreement also contains affirmative and negative covenants that, among other things restrict the ability of the Company to:

- incur additional indebtedness or guarantees;
- incur liens;
- make investments, loans and acquisitions;
- consolidate or merge;
- sell or exclusively license assets, including capital stock of subsidiaries;
- alter the business of the Company;
- engage in transactions with affiliates; and
- pay dividends or make distributions.

The Loan Agreement also includes events of default, including, among other things, payment defaults, breaches of representations, warranties or covenants, certain bankruptcy events, the failure to maintain its listing on a nationally recognized securities exchange or alternatively for its shares to be qualified for trading on the OTC Bulletin Board and certain material adverse changes, including an impairment of the perfection or priority of the lender’s lien. Upon the occurrence of an event of default and following any applicable cure periods, a default interest rate of an additional 5.0% per annum may be applied to the outstanding loan balances, and DBD may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Loan Agreement.

Concurrently with the execution of the Loan Agreement, the Company and an affiliate of DBD entered into a Patent Monetization Side Letter Agreement (the "Letter Agreement"). The Letter Agreement provides, among other things, that DBD may be entitled to share in certain monetization revenues that the Company may derive in the future related to its patent portfolio (the "Patent Portfolio"). The Patent Portfolio does not include certain patents relating to the NVvault™ product line. Monetization revenues subject to this arrangement include revenues recognized during the seven year term of the Letter Agreement from amounts (whether characterized as settlement payments, license fees, royalties, damages, or otherwise) actually paid to the Company or its subsidiaries in connection with any assertion of, agreement not to assert, or license of, the Patent Portfolio (in whole or in part) either (A) in consideration of the grant of a license or covenant not sue, or other immunity with respect to the Patent Portfolio, or (B) as a damages award with respect to such assertion of the Patent Portfolio, less (i) actual legal fees and expenses (including fees payable on a contingency basis) and actual court costs paid or payable by the Company or its subsidiaries in connection with any such assertion and/or grant of a license or covenant not to sue, or other immunity with respect to the Patent Portfolio, provided that such legal fees and expenses shall be capped at forty percent (40%) of such gross, aggregate amounts paid to the Company, (ii) all reasonable and actual legal fees, filing fees, maintenance fees, annuities, and other reasonable and actual costs and expenses paid or required to be paid by the Company or its subsidiaries after the effective date in connection with the prosecution, maintenance, and defense of any patents or patent applications within the Patent Portfolio, (iii) reasonable and actual legal fees and reasonable and actual other costs and expenses paid or required to be paid by the Company or its subsidiaries in connection with the enforcement of any agreement, undertaking, commitment or court order that would generate monetization revenues and the collection thereof, and (iv) reasonable and actual costs of acquisition of patents and patent applications included in the Patent Portfolio that are acquired by or licensed to the Company or its subsidiaries after the effective date. Monetization revenues also include the value attributable to the Patent Portfolio in any sale of the Company during the seven year term, subject to a maximum amount payable to DBD. The Letter Agreement also requires that the Company use commercially reasonable efforts to pursue opportunities to monetize the Patent Portfolio during the term of the Letter Agreement, provided that the Company is under no obligation to pursue any such opportunities that Company does not deem to be in the Company's best interest in the Company's reasonable business judgment. Notwithstanding the foregoing, there can be no assurance that the Company will be successful in these efforts, and the Company may expend resources in pursuit of monetization revenues that may not result in any benefit to the Company.

Concurrently with the execution of the Loan Agreement, the Company issued to an affiliate of DBD a seven-year warrant (the "Warrant") to purchase an aggregate of 1,648,351 shares of the Company's common stock at an exercise price of $1.00 per share, of which 989,011 shares are exercisable immediately on a cash or cashless basis in whole or in part. Pursuant to the stock purchase warrant agreement, (i) 329,670 shares will become exercisable upon the achievement of the IP Monetization Milestones and (ii) the remaining 329,670 shares will become exercisable upon the Company's receipt of an IP Milestone Term Loan. The Warrant was issued in a private placement transaction that was exempt from registration under Section 4(2) of the Securities Act of 1933 (the "Securities Act"). The Company accounted for the warrants as a debt discount and has valued them based on the relative fair value at approximately $1,215,000, to be amortized over the term of the debt instrument, or three years, using the effective interest method. For the three and nine months ended September 28, 2013, the Company amortized approximately $82,000 as interest expense in the consolidated statements of operations.

Also in connection with the Loan Agreement, the Company agreed to pay to a consultant a consulting fee equal to (i) $300,000 to the consultant in connection with the Company's receipt of the Initial Term Loan and (ii) 5% of any additional principal amount loaned to the Company as an IP Milestone Term Loan. The initial $300,000 has been recorded as debt issuance cost to be amortized over the term of the debt instrument, or three years, using the effective interest method. During the three and nine months ended September 28, 2013, the Company amortized approximately $55,000 as interest expense in the consolidated statements of operations.

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Note 7— Debt

Debt consists of the following (in thousands):

	September 28, 2013	December 29, 2012
Consolidated Term Loan with SVB, net of issuance cost of $0 (2013) and $28 (2012)	$ —	$ 3,375
Term Loan, DBD , net of debt discount of 1,133 (2013)	4,867	—
Obligations under capital leases	5	118
	4,872	3,493
Less current portion	(5)	(3,493)
	$ 4,867	$ —

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

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Interest expense	$ 305	$ 62	$ 428	$ 164

Note 8—Income Taxes

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

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Provision for income taxes	$ 7	$ 4	$ 9	$ 5
Effective tax rate	(0.2)%	(0.1)%	(0.1)%	(0.1)%

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 September 28, 2013 and December 29, 2012. Accordingly, no benefit has been recognized for net deferred tax assets.

The Company does not have any unrecognized tax benefits at September 28, 2013 and December 29, 2012.

Note 9—Commitments and Contingencies

Facility Lease

On July 26, 2013, the Company entered into an amendment for a three year lease with the Irvine Company. The amendment terminated the existing lease of the 51 Discovery, Suite 150, Irvine, California, 92618 premise in exchange for office space located at 175 Technology Drive, Suite 150, Irvine, California, 92618 USA. The initial lease payment is $9,269 per month, increasing to $10,090 per month over the term of the lease. This lease is valid through July 31, 2016. The annual payment for this space equates to approximately $111,000 per year.

Litigation and Patent Reexaminations

The Company owns numerous patents and continues to enlarge and strengthen its patent portfolios, which cover different aspects of the Company's technology innovations with various claim scopes. The Company plans to generate revenue by selling or licensing its technology, and intends to vigorously enforce its patent rights against infringers of such rights. The Company dedicates substantial resources in protecting its intellectual property, including its efforts to defend its patents against challenges made by way of reexamination proceedings at the United States Patent and Trademark Office ("USPTO"). These activities are likely to continue for the foreseeable future, without any guarantee that any ongoing or future patent protection and litigation activities will be successful. The Company is also subject to litigation claims that it has infringed on the intellectual property of others, against which the Company intends to defend vigorously.

Litigation, whether or not eventually decided in the Company's favor or settled, is costly and time-consuming and could divert management's attention and resources. Because of the nature and inherent uncertainties of litigation, should the outcome of any of such actions be unfavorable, the Company's business, financial condition, results of operations or cash flows could be materially and adversely affected. Additionally, the outcome of pending litigation, and the related patent reexaminations, as well as any delay in their resolution, could affect the Company's ability to license its intellectual property in the future or to protect against competition in the current and expected markets for its products.

Google Litigation

In May 2008, the Company initiated discussions with Google, Inc. ("Google") based on information and belief that Google had infringed on a U.S. patent owned by the Company, U.S. Patent No. 7,289,386 ("the '386 patent"), which relates generally to technologies to implement rank multiplication in memory modules. Preemptively, Google filed a declaratory judgment lawsuit against the Company in the U.S. District Court for the Northern District of California (the "Northern District Court"), seeking a declaration that Google did not infringe the '386 patent and that the '386 patent was invalid. The Company filed a counterclaim for infringement of the '386 patent by Google. Claim construction proceedings were held in November 2009, and the Company prevailed on every disputed claim construction issue. In June 2010, the Company filed motions for summary judgment of patent infringement and dismissal of Google's affirmative defenses. In May 2010, Google requested and was later granted an *Inter Partes* Reexamination of the '386 patent by the USPTO. The reexamination proceedings are described below. The Northern District Court granted Google's request to stay the litigation pending result of the reexamination, and therefore has not ruled on the Company's motions for summary judgment.

In December 2009, the Company filed a patent infringement lawsuit against Google in the Northern District Court, seeking damages and injunctive relief based on Google's infringement of U.S. Patent No. 7,619,912 ("the '912 patent"), which is related to the '386 patent and relates generally to technologies to implement rank multiplication. In February 2010, Google answered the Company's complaint and 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 breach of contract based on the Company's activities in the JEDEC standard-setting organization. The counterclaim seeks unspecified compensatory damages. Accruals have not been recorded for loss contingencies related to Google's counterclaim because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated. In October 2010, Google requested and was later granted an *Inter Partes* Reexamination of the '912 patent by the USPTO. The reexamination proceedings are described below. In connection with the reexamination request, the Northern District Court granted the Company and Google's joint request to stay the '912 patent infringement lawsuit against Google until the completion of the reexamination proceedings.

Inphi Litigation

In September 2009, the Company filed a patent infringement lawsuit against Inphi Corporation ("Inphi") in the U.S. District Court for the Central District of California (the "Central District Court"). The complaint, as amended, alleges that Inphi is contributorily infringing and actively inducing the infringement of U.S. patents owned by the Company, including the '912 patent, U.S. Patent No. 7,532,537 ("the '537 patent"), which relates generally to memory modules with load isolation and memory domain translation capabilities, and U.S. Patent No. 7,636,274 ("the '274 patent"), which is related to the '537 patent and relates generally to load isolation and memory domain translation technologies. The Company is seeking damages and injunctive relief based on Inphi's use of the Company's patented technology. Inphi denied infringement and claimed that the three patents are invalid. In April 2010, Inphi requested but was later denied *Inter Partes* Reexaminations of the '912, '537 and '274 patents by the USPTO. In June 2010, Inphi submitted new requests and was later granted *Inter Partes* Reexaminations of the '912, '537 and '274 patents by the USPTO. The reexamination proceedings are described below. In connection with the reexamination requests, Inphi filed a motion to stay the patent infringement lawsuit with the Central District Court, which was granted. The Central District Court has requested that the Company notify it within one week of any action taken by the USPTO in connection with the reexamination proceedings, at which time the Central District Court may decide to maintain or lift the stay.

Smart Modular Litigations

In September 2012, Smart Modular, Inc. (“Smart Modular”) filed a patent infringement lawsuit against the Company in the U.S. District Court for the Eastern District of California (the “Eastern District Court”). The complaint alleges that the Company willfully infringes and actively induces the infringement of six claims of a U.S. patent newly issued to Smart Modular, U.S. Patent No. 8,250,295 (“the ‘295 patent”), and seeks damages and injunctive relief. Smart Modular also filed a motion for preliminary injunction and a memorandum in support of the motion on the same day of the complaint. The Company promptly filed a request for reexamination of the ‘295 patent with the USPTO setting forth six different combinations of prior art that would render the six asserted claims of the ‘295 patent unpatentable. The Company also filed an answer to Smart Modular’s complaint with the Eastern District Court in October 2012 to deny infringement of the ‘295 patent, assert that the ‘295 patent is invalid and unenforceable, and bring a set of counterclaims against Smart . Smart Modular filed various motions on the pleadings on November 1, 2012, which were opposed by the Company in its briefs filed in late November 2012.

In December 2012, the USPTO granted the Company’s request for the reexamination of the ‘295 patent, and issued an Office Action rejecting all of the six asserted claims over the six different combinations of prior art set forth by the Company in its request. The Company promptly moved to stay litigation pending result of reexamination. On February 19, 2013, a few days after Smart Modular filed replies in support of its motions, the Eastern District Court issued a Minute Order, in which the court on its own motion took the preliminary injunction; the motion to dismiss and the motion to stay under submission without oral argument and vacated the hearing dates.

On February 7, 2013, Smart Modular filed a response to the Office Action in the reexamination of the ‘295 patent. Thereafter, the Company and Smart Modular made various filings to address certain apparent defects contained in Smart Modular’s response. On March 13, 2013, the USPTO issued a Notice of Defective Paper, in which the USPTO found Smart Modular’s responses, both the initial filing and a supplemental filing, to be improper, and both responses were expunged from the record. The USPTO gave Smart Modular 15 days to submit another response, which Smart Modular submitted on March 26, 2013. The Company timely filed its comments on Smart Modular’s corrected response on April 25, 2013. The USPTO ultimately accepted Smart Modular’s corrected response on July 17, 2013.

On May 30, 2013, the Eastern District Court issued an order granting Netlist’s motion to stay pending results of the reexamination of the ‘295 patent and denied Smart Modular’s motion for preliminary injunction.

On July 1, 2013, Netlist filed a complaint against Smart Modular in the Santa Ana Division of the U.S. District Court for the Central District of California, seeking, among other things, relief under federal antitrust laws for Smart Modular’s violation of Section 2 of the Sherman Act, and damages and other equitable relief under California statutory and common law for Smart Modular’s unfair competition, deceptive trade practices and fraud.

On August 23, 2013, Netlist filed an amended complaint for patent infringement, antitrust violations and trade secret misappropriation against Smart Modular, Smart Storage Systems, Smart Worldwide Holdings and Diablo Technologies (Diablo) in the Santa Ana Division of the U.S. District Court for the Central District of California. Netlist’s amended complaint alleges infringement of five Netlist patents by the defendants. Netlist’s complaint also alleges antitrust violations by Smart Modular and Smart Worldwide, contending that Smart Modular procured a patent (U.S. Patent No. 8,250,295) with blatant inequitable conduct at the USPTO, withheld the patent application leading to the patent from relevant JEDEC committees for more than eight years, sought to improperly enforce that patent against Netlist’s JEDEC-compliant HyperCloud® product by seeking a preliminary injunction against Netlist based on the patent, which was denied by the Court, and made deceptive statements to the public about its lawsuit against Netlist. Netlist’s complaint also alleges trade secret misappropriation and trademark infringement against Diablo, claiming that Diablo misused Netlist trade secrets to create the ULLtraDIMM product for Smart Storage Systems, and that Diablo used Netlist’s HyperCloud® technology to create competing products.

On the same day Netlist filed its amended complaint, Smart Modular and Diablo each filed a complaint in the San Francisco Division of the U.S. District Court Northern District of California, seeking declaratory judgment of non-infringement and invalidity of the patents asserted in the Netlist’s amended complaint. On September 9, 2013, Netlist filed a Motion to Dismiss or Transfer Complaint to the Central District of California. This motion was denied on October 10, 2013.

'386 Patent Reexamination

As noted above, in May 2010, Google requested and was later granted an *Inter Partes* Reexamination of the '386 patent by the USPTO. In October 2010, Smart Modular requested and was later granted an *Inter Partes* Reexamination of the '386 patent. The reexaminations requested by Google and Smart Modular were merged by the USPTO into a single proceeding. In April 2011, a Non-Final Action was issued by the USPTO, rejecting all claims in the patent. In July 2011, the Company responded by amending or canceling some of the claims, adding new claims, and making arguments as to the validity of the rejected claims in view of cited references. Both Google and Smart Modular filed their comments to the Company's response in October 2011. In October 2012, the USPTO issued an Action Closing Prosecution ("ACP") rejecting all 60 claims. The Company filed a response to the ACP on December 3, 2012. On June 21, 2013, the USPTO issued a Right of Appeal Notice (RAN) in which the Examiner maintained his rejection of the claims. Netlist filed a notice of appeal on July 19, 2013. Google filed a notice of cross-appeal on August 2, 2013, and a cross-appeal brief on October 1, 2013. The Company filed an appeal brief and an amendment canceling some of the remaining claims on October 2, 2013 to further focus the issues on appeal. Thus, the reexamination of the '386 patent remains pending and will continue in accordance with established procedures for merged reexamination proceedings.

'912 Patent Reexamination

As noted above, in April 2010, Inphi requested but was later denied an *Inter Partes* Reexamination of the '912 patent by the USPTO. In June 2010, Inphi submitted a new request and was later granted an *Inter Partes* Reexamination of the '912 patent by the USPTO. In September 2010, the USPTO confirmed the patentability of all fifty-one claims of the '912 patent. In October 2010, Google and Smart Modular each filed and were later granted requests for reexamination of the '912 patent. In February 2011, the USPTO merged the Inphi, Google and Smart Modular '912 reexaminations into a single proceeding. In an April 2011 Non-Final Action in the merged reexamination proceeding, the USPTO rejected claims 1-20 and 22-51 and confirmed the patentability of claim 21 of the '912 patent. In July 2011, the Company responded by amending or canceling some of the claims, adding new claims, and making arguments as to the validity of the rejected claims. Inphi, Google, and Smart Modular filed their comments on the Company's response in August 2011. In October 2011, the USPTO mailed a second Non-Final Action confirming the patentability of twenty claims of the '912 patent, including claims that were added in the reexamination process. In January 2012, the Company responded by amending or canceling some of the claims, adding new claims, and making arguments as to the validity of the rejected claims. Google, Inphi and Smart Modular filed their comments to the Company's response in February 2012. The USPTO determined that Smart Modular's comments were defective, and issued a notice to Smart Modular to rectify and resubmit its comments. Smart Modular filed corrected comments and a petition for the USPTO to withdraw the notice in March 2012. The USPTO issued a non-final Office Action on November 13, 2012 maintaining the patentability of many key claims while rejecting some claims that were previously determined to be patentable. The Company filed a response to the Office Action on January 14, 2013. The requesters filed their comments on February 13, 2013. The reexamination of the '912 patent remains pending and will continue in accordance with established procedures for merged reexamination proceedings.

'627 Patent Reexamination

In September 2011, Smart Modular filed a request for reexamination of U.S. Patent No. 7,864,627 ("the '627 patent") issued to the Company on January 4, 2011. The '627 patent is related to the '912 patent. In November 2011, the USPTO granted Smart Modular's request for reexamination of the '627 patent and concurrently issued a Non-Final Action confirming the patentability of three claims. In February 2012, the Company responded by amending or canceling some of the claims, adding new claims, and making arguments as to the validity of the rejected claims. Smart Modular filed its comments to the Company's response in March 2012. The USPTO determined that Smart Modular's comments were defective and issued a notice in April 2012 to Smart Modular to rectify and resubmit its comments. Smart Modular filed corrected comments and a petition for the USPTO to withdraw the notice in April 2012. The USPTO posted an Office Action on December 19, 2012, confirming one claim and rejecting the rest of the claims in the '627 patent. The Company filed a response to the Office Action on March 19, 2013. Smart Modular filed its comments on the Office Action on April 24, 2013. The USPTO issued another Non-Final Office Action on September 26, 2013, withdrawing certain rejections while adopting new rejections for certain of the pending claims. The Company has until November 26, 2013, to respond to the Non-Final Office Action. The reexamination of the '627 patent remains pending and will continue in accordance with established *Inter Partes* Reexamination procedures.

‘537 Patent Reexamination

As noted above, in April 2010, Inphi requested and was later denied an *Inter Partes* Reexamination of the ‘537 patent by the USPTO. In June 2010, Inphi submitted a new request and was later granted an *Inter Partes* Reexamination of the ‘537 patent by the USPTO. In September 2010, the USPTO issued a Non-Final Action confirming the patentability of four claims. In October 2010, the Company responded by amending or canceling some of the claims, adding new claims, and making arguments as to the validity of the rejected claims. Inphi filed its comments on the Company’s response in January 2011. In June 2011, the USPTO issued an ACP, which reconfirmed the patentability of the four claims. In August 2010, the Company responded by amending some of the claims and making arguments as to the validity of the rejected claims. Inphi filed its comments to the Company’s response in September 2011. The USPTO issued a Right of Appeal Notice (“RAN”) in February 2012, in which the claim rejections were withdrawn, thus confirming the patentability of all sixty (60) claims in view of all the previously submitted comments by both Inphi and the Company. Inphi filed a notice of appeal in March 2012 followed by an appeal brief in May 2012. In response, the USPTO issued a Notice of Defective Appeal Brief. Inphi filed a corrective appeal brief in late May 2012, and the Company filed its reply brief to the corrected Inphi appeal brief in early July 2012. The examiner responded to Inphi’s corrected appeal brief as well as the Company’s reply brief by Examiner’s Answer on April 16, 2013, in which he maintained his position confirming all sixty (60) claims. Inphi filed a rebuttal brief on May 16, 2013. Netlist filed a request for oral hearing on June 14, 2013. The Company and the examiner will jointly defend the ‘537 patent in a hearing on November 20, 2013 before the Patent Trial and Appeal Board at the USPTO, in accordance with established procedures for *Inter Partes* Reexamination.

‘274 Patent Reexamination

As noted above, in April 2010, Inphi requested and was later denied an *Inter Partes* Reexamination of the ‘274 patent by the USPTO. In June 2010, Inphi submitted a new request and was later granted an *Inter Partes* Reexamination of the ‘274 patent by the USPTO. In September 2011, the USPTO issued a Non-Final Action, confirming the patentability of six claims. The Company has responded by amending or canceling some of the claims, adding new claims, and making arguments as to the validity of the rejected claims. Inphi filed its comments on the Company’s response in November 2011. The USPTO issued an ACP in March 2012, which confirmed the patentability of one hundred and four (104) claims in view of all the previously submitted comments by both Inphi and the Company. The USPTO subsequently issued a RAN in June 2012. This RAN triggered Inphi’s right as the losing party to file a notice of appeal and corresponding appeal brief, which Inphi filed when due. The Company responded to Inphi’s appeal brief by filing a reply brief in October 2012. The examiner responded to Inphi’s appeal brief and the reply brief by Examiner’s Answer on April 16, 2013, in which he maintained his position confirming the one hundred and four (104) claims. Inphi filed a rebuttal brief on May 16, 2013. Netlist filed a request for oral hearing on June 14, 2013. The Company and the USPTO examiner will jointly defend the ‘274 patent in a hearing on November 20, 2013 before the Patent Trial and Appeal Board at the USPTO, in accordance with established procedures for *Inter Partes* Reexamination.

Other Contingent Obligations

During its normal course of business, the Company has made certain indemnities, commitments and guarantees pursuant to 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

Serial Preferred Stock

The Company’s authorized capital includes 10,000,000 shares of Serial Preferred Stock, with a par value of $0.001 per share. No shares were outstanding at September 28, 2013 or December 29, 2012.

Common Stock

In November 2011, the Company entered into a sales agreement with Ascendiant Capital Markets LLC ("Ascendiant"), whereby shares with a total value of up to $10.0 million may be released for sale to the public at the discretion of management at a price equal to the current market price in an "at-the-market" offering as defined in Rule 415 under the Securities Act of 1933. During 2012 and 2011, the Company received net proceeds of approximately $3.9 million and $1.9 million, respectively, raised through the sale of 1,312,669 and 697,470 shares of common stock, respectively. The sales agreement with Ascendiant expires on November 21, 2013. During the nine months ended September 28, 2013, the Company received net proceeds of approximately $48,000, raised through the sale of 42,588 shares of common stock.

On December 20, 2012, the Company raised gross proceeds of $1.5 million in a registered public offering ("Offering") of its securities. The Offering closed on December 26, 2012, and the Company received net proceeds of $1.3 million after deducting commissions and offering costs. The Offering resulted in the issuance of 1,685,394 shares of common stock and warrants to purchase up to an aggregate of 2,275,282 shares of the Company's common stock, which represents 135% of the number of shares issued and sold in the Offering. Each warrant grants the holder the right to purchase one share of the Company's common stock at an exercise price of $0.89 per share and expires in June 2018. These warrants became exercisable 181 days following the December 26, 2012 issuance date.

On July 17, 2013, the Company entered into a definitive securities purchase agreement for the sale of common stock and warrants in a registered public offering ("2013 Offering") of its securities for gross proceeds of $1.0 million. The 2013 Offering closed on July 19, 2013, and the Company received net proceeds of $960,000 after deducting commissions and offering costs. The 2013 Offering resulted in the issuance 1,098,902 shares of the Company's common stock and a warrant to purchase up to an aggregate of 1,098,902 shares of the Company's common stock. The warrant is exercisable as of the date of its issuance, has a term of seven years, and an exercise price of $1.00 per share. The exercise price and the number of warrant shares issuable upon exercise of warrant is subject to adjustment in the event of, among other things, certain transactions affecting the Company's common stock (including without limitation stock splits and stock dividends), and certain fundamental transactions (including without limitation a merger or other sale-of-company transaction).

In addition, on July 18, 2013, concurrent with the execution of the Loan Agreement, the Company issued to an affiliate of DBD, a seven-year warrant (the "Warrant") to purchase an aggregate of 1,648,351 shares of the Company's common stock at a per share price of $1.00, of which 989,011 shares are exercisable immediately on a cash or cashless basis in whole or in part. Pursuant to the terms of the stock purchase warrant agreement, (i) 329,670 shares will become exercisable upon the achievement of the IP Monetization Milestones and (ii) the remaining 329,670 shares will become exercisable upon the Company's receipt of an IP Milestone Term Loan. The Warrant was issued in a private placement transaction that was exempt from registration under Section 4(2) of the Securities Act of 1933 (the "Securities Act"). See Note 6 for treatment of the warrant.

During the nine months ended September 28, 2013 and the year ended December 29, 2012, the Company cancelled 19,575 and 23,631 shares of common stock, respectively, valued at approximately $15,000 and $64,000, respectively, in connection with its obligation to holders of restricted stock to withhold the number of shares required to satisfy the holders' tax liabilities in connection with the vesting of such shares.

The Company is incorporated in the state of Delaware, and as such, is subject to various state laws which may restrict the payment of dividends or purchase of treasury shares.

Stock-Based Compensation

The Company has stock-based compensation awards outstanding pursuant to the Amended and Restated 2000 Equity Incentive Plan (the "2000 Plan") and the Amended and Restated 2006 Equity Incentive Plan (the "2006 Plan"), under which a variety of option and direct stock-based awards may be granted to employees and nonemployees of the Company. Further grants under the 2000 Plan were suspended upon the adoption of the 2006 Plan. In addition to awards made pursuant to the 2006 Plan, the Company periodically issues inducement grants outside the 2006 Plan to certain new hires.

Subject to certain adjustments, as of September 28, 2013, the Company was authorized to issue a maximum of 6,605,566 shares of common stock pursuant to awards under the 2006 Plan. That maximum number will automatically increase on the first day of each subsequent calendar year by the lesser of (i) 5.0% of the number of shares of common stock that are issued and outstanding as of the first day of the calendar year, and (ii) 1,200,000 shares of common stock, subject to adjustment for certain corporate actions. At September 28, 2013, the Company had 765,854 shares available for grant under the 2006 Plan. Options granted under the 2000 Plan and the 2006 Plan equity incentive plans primarily vest at a rate of at least 25% per year over four years and expire 10 years from the date of grant. Restricted stock awards vest in eight equal increments at intervals of approximately six months from the date of grant.

A summary of the Company's common stock option activity for the nine months ended September 28, 2013 is presented below (shares in thousands):

	Options Outstanding	
	Number of Shares	Weighted-Average Exercise Price
Options outstanding at December 29, 2012	4,752	$ 3.22
Options granted	2,080	0.77
Options exercised	(113)	0.34
Options cancelled	(921)	2.16
Options outstanding at September 28, 2013	5,798	$ 2.58

The intrinsic value of options exercised in the nine months ended September 28, 2013 was $44,791.

A summary of the Company's restricted stock awards as of and for the nine months ended September 28, 2013 is presented below (shares in thousands):

	Restricted Stock Outstanding	
	Number of Shares	Weighted-Average Grant-Date Fair Value per Share
Balance outstanding at December 29, 2012	158	$ 3.32
Restricted stock forfeited	(9)	3.49
Restricted stock vested	(95)	3.39
Balance outstanding at September 28, 2013	54	$ 3.17

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:

	Nine Months Ended	
	September 28, 2013	September 29, 2012
Expected term (in years)	6.1	6.3
Expected volatility	121%	127%
Risk-free interest rate	1.60%	1.15%
Expected dividends	—	—
Weighted-average grant date fair value per share	$ 0.70	$ 3.03

The fair value per share of restricted stock grants is calculated based on the fair value of the Company's common stock on the respective grant dates. The grant date fair value of restricted stock vested was $0.3 million in the nine months ended September 28, 2013 and September 29, 2012.

At September 28, 2013, the amount of unearned stock-based compensation currently estimated to be expensed from fiscal 2013 through fiscal 2016 related to unvested common stock options and restricted stock awards is approximately $3.0 million, net of estimated forfeitures. The weighted-average period over which the unearned stock-based compensation is expected to be recognized is approximately 2.4 years. If there are any modifications or cancellations of the underlying unvested awards, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense.

Note 11—Segment and Geographic Information

The Company operates in one reportable segment, which is 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 September 28, 2013 and December 29, 2012, approximately $0.8 and $1.5 million, respectively, of the Company's long-lived assets, net of depreciation and amortization, respectively, were located in the PRC. Substantially all other long-lived assets were located in the U.S.

Note 12 — Subsequent Events

We have evaluated subsequent events through the filing date of this Form 10-Q and have determined that no subsequent events have occurred that would require recognition in the condensed consolidated financial statements or disclosure in the notes thereto.

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 December 29, 2012 and subsequent reports on Form 10-Q and 8-K, which discuss our business in greater detail.

This report contains forward-looking statements regarding future events and our future performance. These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those expected or projected. These risks and uncertainties include, but are not limited to risks associated with: the uncertainty of our future capital requirements and the likelihood that we need to raise additional funds; the amount and terms of our indebtedness; the launch and commercial success of our products, programs and technologies; the success of product partnerships; continuing development, qualification and volume production of EXPRESSvault™, NVvault™, HyperCloud™ and VLP Planar-X RDIMM; the timing and magnitude of anticipated additional decreases in sales to our key customer; our ability to leverage our NVvault™ technology in a more diverse customer base; the rapidly-changing nature of technology; risks associated with intellectual property, including the costs and unpredictability of litigation and reexamination proceedings before the USPTO; volatility in the pricing of DRAM ICs and NAND; changes in and uncertainty of customer acceptance of, and demand for, our existing products and products under development, including uncertainty of and/or delays in product orders and product qualifications; delays in our and our customers' product releases and development; introductions of new products by competitors; changes in end-user demand for technology solutions; our ability to attract and retain skilled personnel; our reliance on suppliers of critical components and vendors in the supply chain; fluctuations in the market price of critical components; evolving industry standards; the political and regulatory environment in the PRC; and our ability to maintain our Nasdaq listing. Other risks and uncertainties are described under the heading "Risk Factors" in Part II, Item IA of this Quarterly Report on Form 10-Q, and similar discussions in our other SEC filings. 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, intelligent memory subsystems for datacenter server and high-performance computing and communications 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. 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 memory density, small form factor, high signal integrity, attractive thermal characteristics and low cost per bit.

Our Products

HyperCloud ®

In November 2009, we introduced our 16GB HyperCloud ® DDR3 memory technology. In November 2011, we introduced a 32GB two-virtual rank HyperCloud ® HCDIMM enabling up to 768GB of DRAM memory in next generation two-processor servers. Our HyperCloud ® technology incorporates our patented rank multiplication technology that increases memory capacity and load reduction technology that increases memory bandwidth. We expect that these patented technologies will make possible improved levels of performance for memory intensive datacenter applications and workloads, including enterprise virtualization, cloud computing infrastructure, business intelligence real-time data analytics, and high performance computing. HyperCloud ® is interoperable with JEDEC standard DDR3 memory modules. Our HyperCloud ® products are designed to allow for installation in servers without the need for a BIOS change.

In November 2011, we announced collaborative agreements with each of Hewlett-Packard Company ("HP") and International Business Machines ("IBM"), pursuant to which these OEMs have cooperated with us in efforts to qualify HyperCloud ® memory products for use with their respective products. In February 2012 and May 2012, we achieved memory qualification of our 16GB HyperCloud ® product at IBM and HP, respectively. In September 2012 and July 2013, we achieved memory qualification of our 32GB HyperCloud ® product at IBM and HP, respectively. We and each of the OEMs have committed financial and other resources toward the collaboration. However, we have experienced longer qualification cycles than anticipated and the efforts undertaken with each of these collaborative agreements have not resulted in significant product margins for us to date relative to our investment in developing and marketing these products. There is no assurance that we will achieve sufficient revenues or margins from our HyperCloud ® products under these arrangements or otherwise.

NVvault™

Our NVvault™ product line consists primarily of battery-free and battery-powered flash backed cache memory subsystem targeting Redundant Array of Independent Disks, ("RAID") storage applications. NVvault™ battery-free provides server and storage OEMs a solution for enhanced datacenter fault recovery. The NVvault™ products have historically been sold primarily to Dell, for incorporation in its PERC 7 server products. Following Intel's launch of its Romley platform in the first quarter of 2012, we have experienced a rapid decline in NVvault™ sales to Dell. Sales of NVvault™ products to Dell totaled $1.2 million and $2.1 million for the three and nine months ended September 28, 2013, respectively, compared to $0 and $15.1 million for the three and nine months ended September 29, 2012, respectively. We expect that we will continue to see declining demand from Dell through 2013, after which sales of NVvault™ products for incorporation into PERC 7 servers will be minimal. In order to leverage our NVvault™ technology into a more diverse customer base, we continue to pursue additional qualifications of NVvault™ with other customers. We introduced EXPRESSvault™ in March 2011, and continue to pursue qualifications of next generation DDR3 NVvault™ with customers. However, our efforts may not result in significant revenues from the sale of NVvault™ products.

Specialty Memory Modules and Flash-Based Products

The remainder of our net sales is primarily from OEM sales of specialty memory modules and flash-based products, the majority of which were utilized in data center and industrial applications. When developing custom modules for an equipment product launch, we engage 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. Revenues from our specialty modules and flash-based products are subject to fluctuation as a result of the life cycles of the products into which our modules are incorporated. Our ability to continue to produce revenues from specialty memory modules and flash-based products is dependent on our ability to qualify our products on new platforms as current platforms reach the end of their lifecycles, and on the state of the global economy.

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. Two customers represented approximately 39% and 17% and 65% and 12% of our net sales for the nine months ended September 28, 2013 and September 29, 2012, respectively.

Technology

We have a portfolio of proprietary technologies and design techniques and have assembled an engineering team with expertise in semiconductors, printed circuit boards, memory subsystem and system design. Our technology competencies include:

IC Design Expertise. We have designed special algorithms that can be implemented in stand-alone integrated circuits or integrated into other functional blocks in ASICs. We utilize these algorithms in the HyperCloud ® chipset to incorporate rank multiplication and load reduction functionality. We also incorporate these algorithms in our NVvault ™ product line of RDIMMS.

Very Low Profile Designs. We were the first company to create memory subsystems in a form factor of less than one inch in height. We believe our proprietary board design technology is particularly useful in the blade server market, where efficient use of motherboard space is critical. Our technology has allowed us to decrease the system board space required for memory, and improve thermal performance and operating speeds, by enabling our customers to use alternative methods of component layout.

Proprietary PCB Designs. We utilize advanced, proprietary techniques to optimize electronic signal strength and integrity within a PCB. These techniques include the use of 8- or 10-layer boards, matching conductive trace lengths, a minimized number of conductive connectors, or vias, and precise load balancing to, among other things, help reduce noise and crosstalk between adjacent traces. In addition, our proprietary designs for the precise placement of intra-substrate components allow us to assemble memory subsystems with significantly smaller physical size, enabling OEMs to develop products with smaller footprints for their customers.

Planar-X Designs. Our patented Planar-X circuit design provides additional board space for a large number of DRAM components. This enables us to produce higher capacity RDIMM modules, such as our 32GB two-virtual rank HyperCloud ® RDIMM, at a lower cost by allowing us to use standard, currently available 4GB DRAM technology.

Thermal Management Designs. We design our memory subsystems to ensure effective heat dissipation. We use thermal cameras to obtain thermal profiles of the memory subsystem during the design phase, allowing us to rearrange components to enhance thermal characteristics and, if necessary, replace components that do not meet specifications. We use thermal simulation and modeling software to create comprehensive heat transfer models of our memory subsystems, which enables our engineers to quickly develop accurate solutions for potential thermal issues. We also develop and use proprietary heat spreaders to enhance the thermal management characteristics of our memory subsystems.

NVvault™ . We were the first to develop and market memory subsystems that incorporate both DRAM and NAND in a single NVvault™ persistent DIMM solution for backup of volatile data to non-volatile NAND. NVvault™ is desirable for mission critical backups during power interruption in RAID and main memory for Cloud, Big Data, on-line banking and other real time applications. NVvault™ is incorporated in our EXPRESSvault PCIe solution for both acceleration and backup in storage applications.

Key Business Metrics

The following describes certain line items in our condensed 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 U.S. dollars. We also sell excess component inventory of DRAM ICs and NAND to distributors and other users of memory ICs. Component inventory sales are 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 frequently 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, fluctuations in DRAM IC and NAND inventory sales as a percentage of our overall sales could impact our overall gross margin. We assess the valuation of our inventories on a quarterly 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, stock-based compensation, non-recurring engineering fees, computer-aided design software licenses, reference design development costs, patent filing and protection legal fees, depreciation or rental of evaluation equipment, 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 them. All research and development costs are expensed as incurred. In order to conserve capital resources in light of the significant year over year revenue decline, we have materially reduced our research and development expenditures by reducing headcount and professional and outside service costs. However, 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. In order to conserve capital resources in light of the significant year over year revenue decline, we have materially reduced our selling, general and administrative expenditures by reducing headcount and other expenses.

Critical Accounting Policies

The preparation of our condensed 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 condensed 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 condensed 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 exists, 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 component 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. 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 is determined based on quoted prices in active markets for identical assets or Level 1 inputs. The fair value of our auction rate securities is determined based on Level 3 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 collectibility 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.

Deferred Financing Costs, Debt Discount and Detachable Debt-Related Warrants . Costs incurred to issue debt are deferred and included in debt issuance costs in the accompanying consolidated balance sheet. We amortize debt issuance costs over the expected term of the related debt using the effective interest method. Debt discounts related to the relative fair value of any warrants issued in conjunction with the debt are recorded as a reduction to the debt balance and accreted over the expected term of the debt to interest expense using the effective interest method.

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 carrying 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 condensed 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. 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 common stock option 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, provided that the accumulated cost recognized as of any date at least equals the value of the vested portion of the award.

We recognize the fair value of restricted stock awards issued to employees and outside directors as stock-based compensation expense on a straight-line basis over the vesting period for the last separately vesting portion of the awards. Fair value is determined as the difference between the closing price of our common stock on the grant date and the purchase price of the restricted stock award, if any, reduced by expected forfeitures.

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. Deferred tax assets and liabilities are recognized to reflect the estimated future tax effects of future deductible or taxable amounts attributable to events that have been recognized on a cumulative basis in the condensed consolidated financial statements, calculated at enacted tax rates for expected periods of realization. We regularly review our deferred tax assets for recoverability and establish a valuation allowance, when determined necessary, based on historical taxable income, projected future taxable income, and the expected timing of the reversals of existing temporary differences. Because we have operated at a loss for an extended period of time, we did not recognize deferred tax assets related to losses incurred in 2012 or 2011. In the future, if we realize a deferred tax asset that currently carries a valuation allowance, we may record an income tax benefit or a reduction to income tax expense in the period of such realization.

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 condensed consolidated statements of operations data as a percentage of net sales for the periods indicated:

	Three Months Ended		Nine Months Ended	
	September 28, 2013	September 29, 2012	September 28, 2013	September 29, 2012
Net sales	100%	100%	100%	100%
Cost of sales	91	94	92	72
Gross profit	9	6	8	28
Operating expenses:				
Research and development	38	41	32	33
Selling, general and administrative	36	39	32	26
Total operating expenses	74	80	64	59
Operating loss	(65)	(74)	(56)	(31)
Other income (expense):				
Interest expense, net	(8)	(1)	(4)	(2)
Other income (expense), net	—	—	—	—
Total other expense, net	(8)	(1)	(4)	(2)
Loss before provision for income taxes	(73)	(75)	(60)	(33)
Provision for income taxes	—	—	—	—
Net loss	(73)%	(75)%	(60)%	(33)%

Three and Nine Months Ended September 28 2013 Compared to Three and Nine Months Ended September 29, 2012

Net Sales, Cost of Sales and Gross Profit

The following table presents net sales, cost of sales and gross profit for the three and nine months ended September 28, 2013 and September 29, 2012 (in thousands, except percentages):

	Three Months Ended			
	September 28, 2013	September 29, 2012	Change	% Change
Net sales	$ 4,289	$ 6,391	$ (2,102)	(33)%
Cost of sales	3,896	6,003	(2,107)	(35)%
Gross profit	$ 393	$ 388	$ 5	1%
Gross margin	9%	6%	3%	

	Nine Months Ended			
	September 28, 2013	September 29, 2012	Change	% Change
Net sales	$ 15,318	$ 30,910	$ (15,592)	(50)%
Cost of sales	14,112	22,348	(8,236)	(37)%
Gross profit	$ 1,206	$ 8,562	$ (7,356)	(86)%
Gross margin	8%	28%	(20)%	

Net Sales. The decrease in net sales for the three months ended September 28, 2013 as compared with the three months ended September 29, 2012 resulted primarily from decreases of approximately $1.8 million of VLP sales, $0.6 million of HyperCloud® sales, and $0.7 million of specialty module sales primarily used in industrial applications. These decreases were partially offset by increases of $0.6 million of sales of NVvault™ non-volatile cache systems and $0.5 million of PERC sales to Dell and of $0.3 million in sales of flash products.

The decrease in net sales for the nine months ended September 28, 2013 as compared with the nine months ended September 29, 2012 resulted primarily from decreases of approximately (i) $6.0 million in sales of NVvault™ non-volatile cache systems to Dell (ii) $7.0 million of PERC sales to Dell (iii) $1.8 million of specialty module sales primarily used in industrial applications as customers slowed production as a result of the product nearing the end of its life (iv) $1.0 million in sales of HyperCloud® and (v) $1.0 million of VLP sales. These decreases were partially offset by an increase of $0.7 million in sales of flash products and an increase of $0.8 million of NVvault™ and PERC sales to customers other than Dell.

Gross Profit and Gross Margin. The increase in gross profit and margin for the three months ended September 28, 2013 as compared to the three months ended September 29, 2012 is primarily the result of a change in our product mix with more NVvault™ sales in the three months ended September 28, 2013. The decrease in gross profit and margin for the nine months ended September 28, 2013 as compared with the nine months ended September 29, 2012 is primarily the result of lower revenues, our absorption of fixed overhead costs and changes in our product mix as PERC and NVvault™ sales to Dell continue towards end of life.

Research and Development .

The following table presents research and development expenses for the three and nine months ended September 28, 2013 and September 29, 2012 (in thousands, except percentages):

	Three Months Ended			
	September 28, 2013	September 29, 2012	Change	% Change
Research and development	$ 1,641	$ 2,615	$ (974)	(37)%

	Nine Months Ended			
	September 28, 2013	September 29, 2012	Change	% Change
Research and development	$ 4,941	$ 10,227	$ (5,286)	(52)%

The decrease in research and development expense in the three months ended September 28, 2013 as compared to the three months ended September 29, 2012 is primarily attributable to decreases of (i) $0.9 million in internal engineering headcount costs and related overhead and travel expenses, (ii) $0.1 million in non-recurring engineering charges for supply partners engaged in new product development activities, and (iii) $0.1 million in material expenses related to product builds and testing, which were partially offset by an increase of $0.1 million in professional and outside services.

The decrease in research and development expense in the nine months ended September 29, 2013 as compared to the nine months ended September 29, 2012 resulted primarily from decreases of (i) $3.4 million in internal engineering headcount costs and related overhead and travel expenses, (ii) $0.1 million in professional and outside services, (iii) $0.7 million in non-recurring engineering charges for supply partners engaged in new product development activities and (iv) $1.1 million in material expenses related to product builds and testing.

Selling, General and Administrative .

The following table presents selling, general and administrative expenses for the three and nine months ended September 28, 2013 and September 29, 2012 (in thousands, except percentages):

	Three Months Ended			
	September 28, 2013	**September 29, 2012**	**Change**	**% Change**
Selling, general and administrative	$ 1,554	$ 2,497	$ (943)	(38)%

	Nine Months Ended			
	September 28, 2013	**September 29, 2012**	**Change**	**% Change**
Selling, general and administrative	$ 4,880	$ 7,977	$ (3,097)	(39)%

Selling, general and administrative expense decreased by approximately $1.0 million for the three months ended September 28, 2013 as compared to the three months ended September 29, 2012. These decreases were primarily due to a reduction of (i) $0.7 million in headcount costs and related overhead and travel expenses, (ii) $0.1 million in outside consultants and (iii) $0.2 million in advertising and product evaluation expenses due to the reduction in sales volume and research and development activity.

Selling, general and administrative expense decreased by approximately $3.1 million for the nine months ended September 28, 2013 as compared to the nine months ended September 29, 2012. These decreases were primarily due to a reduction of (i) $2.1 million in headcount costs and related overhead and travel expenses, (ii) $0.4 million in outside consultants and sales representatives and (iii) $0.6 million in advertising and product evaluation expenses.

Other (Expense) Income.

The following table presents other (expense) income for the three and nine months ended September 28, 2013 and September 29, 2012 (in thousands, except percentages):

	Three Months Ended			
	September 28, 2013	**September 29, 2012**	**Change**	**% Change**
Interest expense, net	$ (324)	$ (98)	$ (226)	231%
Other income (expense), net	(8)	4	(12)	(300)%
Total other expense, net	$ (332)	$ (94)	$ (238)	253%

	Nine Months Ended			
	September 28, 2013	**September 29, 2012**	**Change**	**% Change**
Interest expense, net	$ (542)	$ (248)	$ (294)	119%
Other income (expense), net	(8)	12	(20)	(167)%
Total other expense, net	$ (550)	$ (236)	$ (314)	133%

The increase in interest expense for the three and nine months ended September 28, 2013 compared with the three and nine months ended September 29, 2012 is primarily due to (i) increased interest charges on our former term debt with Silicon Valley Bank as a result of the bank forbearance agreements negotiated in the second quarter of 2013, (ii) an increase in interest expense related to our new term debt, and (iii) the amortization of debt discount and debt issuance costs associated with the loan we received on July 18, 2013 pursuant to our new term debt with DBD Funding.

Other income (expense), net, for the three and nine months ended September 28, 2013 and September 29, 2012 was insignificant.

Provision for Income Taxes .

The following table presents the provision for income taxes for the three and nine months ended September 28, 2013 and September 29, 2012 (in thousands, except percentages):

	Three Months Ended			
	September 28, 2013	September 29, 2012	Change	% Change
Provision for income taxes	$ 7	$ 4	$ 3	75%

	Nine Months Ended			
	September 28, 2013	September 29, 2012	Change	% Change
Provision for income taxes	$ 9	$ 5	$ 4	80%

We did not record a benefit of income taxes for the three and nine months ended September 28, 2013 and September 29, 2012, as tax benefits resulting from operating losses generated were fully reserved.

Liquidity and Capital Resources

We have historically financed our operations primarily through issuances of equity and bank debt and cash generated from operations. We have also funded our operations with a revolving line of credit and term loans under bank credit facilities, capitalized lease obligations and from the sale and leaseback of our former 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):

	September 28, 2013	December 29, 2012
Working Capital	$ 10,694	$ 11,116
Cash and cash equivalents(1)	$ 7,029	$ 7,755
Investments in marketable securities(1)	—	415
	$ 7,029	$ 8,170

(1) Included in working capital

Our working capital decreased in the nine months ended September 28, 2013 primarily as a result of reductions of (i) inventory levels by approximately $3.1 million, (ii) accounts receivable by approximately $1.3 million as the result of lower sales, and (iii) prepaid expenses from the amortization of $0.2 million of marketing funds which was partially offset by a decrease in cash and cash equivalents and restricted cash of $0.3 million, a reduction of accounts payable and other liabilities of $0.9 million and a reduction in the current portion of long term debt of $3.5 million primarily due to our re-classification of term debt from current to long term as a result of our loan agreement with DBD Credit and our payoff of our old term loan with SVB.

Cash (Used in) Provided by in the Nine Months Ended September 28, 2013 and September 29, 2012

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

	Nine Months Ended	
	September 28, 2013	September 29, 2012
Net cash (used in) provided by :		
Operating activities	$ (3,580)	$ (5,650)
Investing activities	365	(1,648)
Financing activities	2,489	7,204
Net decrease in cash and cash equivalents	$ (726)	$ (94)

Operating Activities. Net cash used in operating activities for the nine months ended September 28, 2013 was primarily the result of a net loss of approximately $9.2 million, partially offset by (i) approximately $3.0 million in net cash provided by changes in operating assets and liabilities, which were primarily from changes in inventories, accounts receivable, restricted cash and prepaid expenses and (ii) approximately $2.6 million in net non-cash operating expenses, mainly comprised of depreciation and amortization, amortization of debt discount and debt issuance costs and stock based compensation. Net cash used in operating activities for the nine months ended September 29, 2012 was primarily the result of (i) net loss of approximately $9.9 million partially offset by cash provided by changes in operating assets and liabilities of approximately $1.2 million and (ii) $3.0 million in net non-cash operating expenses, primarily comprised of depreciation and amortization and stock-based compensation.

Accounts receivable decreased approximately $1.3 million during the nine months ended September 28, 2013 primarily as a result of the decrease in our net sales during the period and a decrease in the average days sales were outstanding.

Inventories decreased by approximately $3.1 million during the nine months ended September 28, 2013 as we utilized inventory on hand to support our sales during the quarter.

Investing Activities. Net cash provided by investing activities for the nine months ended September 28, 2013 was primarily the result of our sale of an auction rate security resulting in proceeds of $0.4 million. Net cash used in investing activities for the nine months ended September 29, 2012 was the result of our acquisition of $1.6 million in property and equipment.

Financing Activities. Net cash provided by financing activities for the nine months ended September 28, 2013 was primarily the result of (i) net proceeds from a term loan with DBD Credit Funding, LLC of $2.5 million, described below under the caption Capital Resources and (ii) $1.0 million in net proceeds from the sale of 1,098,902 shares of our common stock through a registered public offering, described below under the caption Capital Resources, offset by repayment of bank debt, capital leases and other notes payable of $1.0 million. Net cash provided by financing activities for the nine months ended September 29, 2012 was primarily the result of net proceeds of (i) $3.6 million from the sale of 1,058,336 shares of our common stock through our sales agreement with Ascendiant, described below under the caption *Capital Resources* , (ii) $2.8 million in net borrowings under our line of credit with SVB, (iii) $1.3 million in net proceeds from the consolidation of and additional credit extended under our bank term loan with SVB, and (iv) $0.6 million in proceeds from the exercise of equity awards under our stock option plan, offset by repayment of bank debt, capital leases and other notes payable of $1.1 million.

Capital Resources

Silicon Valley Bank Credit Agreement

On October 31, 2009, we entered into a credit agreement with Silicon Valley Bank, which was most recently amended on July 18, 2013 (as amended, the "SVB Credit Agreement"). Currently, the SVB Credit Agreement provides that we can borrow up to the lesser of (i) 80% of eligible accounts receivable, or (ii) $5.0 million.

The September 2010 amendment to the SVB Credit Agreement, Silicon Valley Bank extended a $1.5 million term loan under the SVB Credit Agreement, bearing interest at a rate of prime plus 2.00%. We were required to make monthly principal payments of $41,666 over the 36 month term of the loan, or $0.5 million annually. In May 2011, Silicon Valley Bank extended an additional $3.0 million term loan, bearing interest at a rate of prime plus 2.75%. We were required to make monthly principal payments of $125,000 over the 24 month term of the loan, or $1.5 million annually. In May 2012, Silicon Valley Bank consolidated both term loans and extended additional credit, resulting in a combined balance of $3.5 million (the "Consolidated Term Loan"). The Consolidated Term Loan was payable in 36 installments of $97,222, beginning December 2012, with interest at a rate of prime plus 2.50%. Interest was payable monthly from the date of funding through final payoff of the loan. On July 18, 2013, as part of our amendment of the SVB Credit Agreement and following our receipt of additional loan financing obtained through DBD Credit Funding, LLC, as further described below, the term loan and outstanding interest was paid in full. In accordance with the terms of the financing obtained through DBD Credit Funding, LLC, the Company recorded all amounts due as long-term portion of debt in the accompanying consolidated balance sheet as of September 28, 2013.

Prior to the May 2012 amendment, the SVB Credit Agreement contained an overall sublimit of $10.0 million to collateralize our contingent obligations under letters of credit and other financial services. Amounts outstanding under the overall sublimit reduced the amount available pursuant to the SVB Credit Agreement. As a result of the May 2012 amendment, letters of credit and other financial services were no longer subject to borrowing base sublimits and did not reduce the amount that could be borrowed under the revolving line of credit. The July 18, 2013 amendment requires letters of credit to be secured by cash. At September 28, 2013, letters of credit in the amount of $1.0 million were outstanding.

Following its most recent amendment on July 18, 2013, the SVB Credit Agreement permits the debt financing and security interests contemplated under our Loan Agreement with DBD Credit Funding, LLC (described below) and releases certain patents and related assets from the collateral subject to SVB's security interest under the SVB Credit Agreement. Additionally, pursuant to the SVB Credit Agreement, advances under the revolving line now accrue interest at a rate equal to SVB's most recently announced "prime rate" plus 2.75%. The SVB Credit Agreement also relaxed our tangible net worth covenant and waived certain events of default in connection therewith. Certain reporting requirements under the SVB Credit Agreement were modified while certain reserves with respect to the borrowing base and the availability of revolving loans were removed. Under the terms of the SVB Credit Agreement, we may draw revolving advances in an aggregate outstanding principal amount of up to the lesser of $5 million and the available borrowing base, subject to reserve amounts. Our borrowing base under the SVB Credit Agreement is 80% of eligible accounts receivable, subject to certain adjustment.

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

	September 28, 2013	December 29, 2012
Availability under the revolving line of credit	$ 1,813	$ 1,486
Outstanding borrowings on the revolving line of credit	—	—
Amounts reserved under credit sublimits	—	—
Unutilized borrowing availability under the revolving line of credit	$ 1,813	$ 1,486

We made no borrowings under the Silicon Valley Bank line of credit in the nine months ended September 28, 2013. Outstanding borrowings under the line of credit did not exceed $3.2 million at any time during the year ended December 29, 2012.

Loan Agreement with DBD Credit Funding, LLC

Concurrent with our amendment of the SVB Credit Agreement, on July 18, 2013 we entered into a loan and security agreement (the "Loan Agreement") with DBD Credit Funding, LLC, a Delaware limited liability company (the "DBD"), an affiliate of Fortress Investment Group LLC, providing for up to $10 million in term loans and up to $5 million in revolving loans. The term loans are available in an initial $6 million tranche (the "Initial Term Loan") with a second tranche in the amount of $4 million becoming available upon achievement of certain performance milestones relating to intellectual property matters (the "IP Monetization Milestones" and such second tranche loan, "IP Milestone Term Loan"). The $5 million in revolving loans are available at the DBD's discretion and subject to customary conditions precedent. The $6 million Initial Term Loan was fully drawn at closing on July 18, 2013. Proceeds from the Initial Term Loan were used in part to repay our existing consolidated term loan with Silicon Valley Bank. The remainder of such funds will be used to fund our ongoing working capital needs.

The loans bear interest at a stated fixed rate of 11.0% per annum. During the first eighteen (18) months following the closing date, the payments on the term loans are interest-only at a cash rate of 7.0% per annum and a payment-in-kind deferred cash interest rate of 4.0%, which payment-in-kind interest is capitalized semi-annually, beginning with December 31, 2013. Following the eighteen (18) month interest-only period, the term loans are amortized with 65% of the principal amount due in equal monthly installments over the following eighteen (18) months with a balloon payment equal to 35% of the remaining principal amount of the term loans, plus accrued interest, being payable on July 18, 2016 (the "Maturity Date").

Patent Monetization Side Letter Agreement

Concurrently with the execution of the Loan Agreement, the Company and an affiliate of the DBD entered into a Patent Monetization Side Letter Agreement (the "Letter Agreement"). The Letter Agreement provides, among other things, that the DBD may be entitled to share in certain monetization revenues that we may derive in the future related to its patent portfolio (the "Patent Portfolio"). The Patent Portfolio does not include certain patents relating to the NVvault™ product line. Monetization revenues subject to this arrangement include revenues recognized during the seven year term of the Letter Agreement from amounts (whether characterized as settlement payments, license fees, royalties, damages, or otherwise) actually paid to us or our subsidiaries in connection with any assertion of, agreement not to assert, or license of, the Patent Portfolio (in whole or in part) either (A) in consideration of the grant of a license or covenant not sue, or other immunity with respect to the Patent Portfolio, or (B) as a damages award with respect to such assertion of the Patent Portfolio, less (i) actual legal fees and expenses (including fees payable on a contingency basis) and actual court costs paid or payable by us or our subsidiaries in connection with any such assertion and/or grant of a license or covenant not to sue, or other immunity with respect to the Patent Portfolio, provided that such legal fees and expenses shall be capped at forty percent (40%) of such gross, aggregate amounts paid to us, (ii) all reasonable and actual legal fees, filing fees, maintenance fees, annuities, and other reasonable and actual costs and expenses paid or required to be paid by us or our subsidiaries after the effective date in connection with the prosecution, maintenance, and defense of any patents or patent applications within the Patent Portfolio, (iii) reasonable and actual legal fees and reasonable and actual other costs and expenses paid or required to be paid by is or our subsidiaries in connection with the enforcement of any agreement, undertaking, commitment or court order that would generate monetization revenues and the collection thereof, and (iv) reasonable and actual costs of acquisition of patents and patent applications included in the Patent Portfolio that are acquired by or licensed to us or our subsidiaries after the effective date. Monetization revenues also include the value attributable to the Patent Portfolio in any sale of the Company during the seven year term, subject to a maximum amount payable to the DBD. The Letter Agreement also requires that the we use commercially reasonable efforts to pursue opportunities to monetize the Patent Portfolio during the term of the Letter Agreement, provided that we are under no obligation to pursue any such opportunities that we do not deem to be in our best interest. Notwithstanding the foregoing, there can be no assurance that we will be successful in these efforts, and we may expend resources in pursuit of monetization revenues that may not result in any benefit to us.

Sales Agreement with Ascendiant Capital

On November 21, 2011, we entered into a sales agreement with Ascendiant as sales agent. In accordance with the terms of the sales agreement, we were able to issue and sell shares of our common stock having an aggregate offering price of up to $10.0 million. Since November 2011, we have received net proceeds of approximately $6.0 million, including approximately $3.9 million raised through the sale of approximately 1,312,669 shares during the year ended December 29, 2012 and approximately $48,500 through the sale of 42,588 shares during the nine months ended September 28, 2013. Sales of shares of our common stock may be made in a series of transactions from time to time as we may direct Ascendiant in sales deemed to be an "at the market" offering as defined in Rule 415 under the Securities Act of 1933. Such sales are made pursuant to our effective $40 million shelf registration statement filed with the SEC in September 2011. We may terminate

the sales agreement with Ascendiant at any time prior to its expiration on November 21, 2013. In the event of such termination, we would expect to make available any remaining unsold portion of the $10.0 million in aggregate offering price for other sources of financing that are permitted under the effective shelf registration statement. The sales agreement with Ascendiant does not preclude us from pursuing other sources of financing. We may be limited in our ability to benefit from the agreement with Ascendiant if the volume of our shares traded in the market or the market price of our shares is low. The sales agreement expires on November 21, 2013.

December 2012 Equity Financing

On December 20, 2012, we raised gross proceeds of $1.5 million in a registered public offering of our securities. The offering closed on December 26, 2012, and we received net proceeds of $1.3 million after deducting commissions and offering costs. The offering resulted in the issuance of 1,685,394 shares of common stock and warrants to purchase up to an aggregate of 2,275,282 shares of our common stock, which represents 135% of the number of shares issued and sold in the offering. Each warrant grants the holder the right to purchase one share of our common stock at an exercise price of $0.89 per share and expires in June 2018. These warrants become exercisable 181 days following the December 26, 2012 issuance date.

July 2013 Equity Financing

On July 17, 2013, we entered into a definitive securities purchase agreement for the sale of common stock and warrant for gross proceeds of $1.0 million in an additional registered public offering of its securities. The offering closed on July 19, 2013, and we received net proceeds of approximately $960,000 after deducting commissions and offering costs. The offering resulted in the issuance of 1,098,902 shares of our common stock and a warrant to purchase up to an aggregate of 1,098,902 shares of our common stock. The warrant is exercisable as of the date of its issuance, has a term of seven years, and an exercise price of $1.00 per share. The exercise price and the number of warrant shares issuable upon exercise of warrant is subject to adjustment in the event of, among other things, certain transactions our common stock (including without limitation stock splits and stock dividends), and certain fundamental transactions (including without limitation a merger or other sale-of-company transaction).

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

We believe our existing cash balances, borrowing availability under our new bank credit facility, borrowing availability under the SVB Credit Agreement 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. Should we need additional capital, we may seek to raise capital through, among other things, public and private equity offerings and debt financings. 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. Additional funds may not be available on terms acceptable to us, or at all. If adequate working capital is not available when needed, we may be required to significantly modify our business model and operations to reduce spending to a sustainable level. It could cause us to be unable to execute our business plan, take advantage of future opportunities, or respond to competitive pressures or customer requirements. It may also cause us to delay, scale back or eliminate some or all of our research and development programs, or to reduce or cease operations.

Liquidity

We incurred net losses of approximately $9.2 million and $9.9 million for the nine months ended September 28, 2013 and September 29, 2012, respectively, and have an accumulated deficit of approximately $95.9 million as of September 28, 2013.

On July 18, 2013, we obtained debt financing of up to $10 million in term loans and up to $5 million in revolving loans from DBD Credit Funding, LLC, a Delaware limited liability company, an affiliate of Fortress Investment Group, LLC. The first tranche ($6 million) of the debt was drawn immediately and used to pay down all the Silicon Valley Bank term debt and related obligations of approximately $3 million. The tangible net worth covenant in connection with the credit agreement entered into with Silicon Valley Bank was relaxed as part of the SVB amendment agreement, which also waived certain events of default related to the noncompliance. The new financing with DBD Credit Funding, LLC does not have fixed charge ratio or tangible net worth covenants, and the loan is interest only for the first 18 months of the 36 month term.

Concurrent with the debt financing, we raised additional net proceeds of approximately $960,000 in a registered public offering of its securities from an institutional investor for the sale of 1,098,902 shares of common stock and a seven-year warrant to purchase 1,098,902 shares of common stock at an exercise price of $1.00 per share.

Pursuant to the Company's sales agreement with Ascendiant Capital Markets LLC ("Ascendiant"),the Company raised net proceeds of approximately $48,000 during the nine months ended September 28, 2013, approximately $3.9 million in the year ended December 29, 2012 and approximately $1.9 million in the year ended December 31, 2011. The sales agreement expires on November 21, 2013.

If adequate working capital is not available when needed, we may be required to significantly modify our business model and operations to reduce spending to a sustainable level. It could cause us to be unable to execute our business plan, take advantage of future opportunities, or respond to competitive pressures or customer requirements. It may also cause us to delay, scale back or eliminate some or all of our research and development programs, or to reduce or cease operations. While there is no assurance that we can meet our revenue forecasts we anticipate that we can successfully execute our plans and continue operations for at least the next twelve months.

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 financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

Item 4. 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 September 28, 2013. 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 September 28, 2013, 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.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The information set forth in the sections entitled Litigation and Patent Reexaminations 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

You should consider each of the following factors as well as the other information in this Report in evaluating our business and our prospects. The risks described below are not the only ones we face. Additional risks we are not presently aware of or that we currently believe are immaterial may also impair our business operations. The trading price of our common stock could decline due to any of these risks, and you could lose all or part of your investment. In assessing these risks, you should also refer to the other information contained or incorporated by reference in this Report, including our consolidated financial statements and related notes.

Risks related to our business

We expect a number of factors to cause our operating results to fluctuate on a quarterly and annual basis, which may make it difficult to predict our future performance.

Our operating results have varied significantly in the past and will continue to fluctuate from quarter-to-quarter or year-to-year in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these quarterly and annual fluctuations include the following factors, as well as other factors described elsewhere in this quarterly report:

- general economic conditions, including the possibility of a prolonged period of limited economic growth in the U.S. and Europe; disruptions to the credit and financial markets in the U.S., Europe and elsewhere;
- our inability to develop new or enhanced products that achieve customer or market acceptance in a timely manner, including our HyperCloud ® memory module and our flash-based memory products;
- our failure to maintain the qualification of our products with our current customers or to qualify current and future products with our current or prospective customers in a timely manner or at all;
- the timing of actual or anticipated introductions of competing products or technologies by us or our competitors, customers or suppliers;
- the loss of, or a significant reduction in sales to, a key customer;
- the cyclical nature of the industry in which we operate;
- a reduction in the demand for our high performance memory subsystems or the systems into which they are incorporated;
- our customers' failure to pay us on a timely basis;
- costs, inefficiencies and supply risks associated with outsourcing portions of the design and the manufacture of integrated circuits;
- our ability to absorb manufacturing overhead if our revenues decline or vary from our projections;
- delays in fulfilling orders for our products or a failure to fulfill orders;
- our ability to procure an adequate supply of key components, particularly DRAM ICs and NAND;
- dependence on large suppliers who are also competitors and whose manufacturing priorities may not support our production schedules;
- changes in the prices of our products or in the cost of the materials that we use to build our products, including fluctuations in the market price of DRAM ICs and NAND;
- our ability to effectively operate our manufacturing facility in the PRC;
- manufacturing inefficiencies associated with the start-up of new manufacturing operations, new products and initiation of volume production;
- our failure to produce products that meet the quality requirements of our customers;
- disputes regarding intellectual property rights and the possibility of our patents being reexamined by the USPTO;
- the costs and management attention diversion associated with litigation;
- the loss of any of our key personnel;
- changes in regulatory policies or accounting principles;
- our ability to adequately manage or finance internal growth or growth through acquisitions;

- the effect of our investments and financing arrangements on our liquidity; and
- the other factors described in this "Risk Factors" section and elsewhere in this quarterly report.

Due to the various factors mentioned above, and others, the results of any prior quarterly or annual periods should not be relied upon as an indication of our future operating performance. In one or more future periods, our results of operations may fall below the expectations of securities analysts and investors. In that event, the market price of our common stock would likely decline. In addition, the market price of our common stock may fluctuate or decline regardless of our operating performance.

We have historically incurred losses and may continue to incur losses.

Since the inception of our business in 2000, we have only experienced one fiscal year (2006) with profitable results. In order to regain profitability, or to achieve and sustain positive cash flows from operations in the future, we must further reduce operating expenses and/or increase our revenues. Although we have in the past engaged in a series of cost reduction actions, and believe that we could reduce our current level of expenses through elimination or reduction of strategic initiatives, such expense reductions alone may not make us profitable or allow us to sustain profitability if it is achieved. Our ability to achieve profitability will depend on increased revenue growth from, among other things, increased demand for our memory subsystems and related product offerings, as well as our ability to expand into new and emerging markets. We may not be successful in achieving the necessary revenue growth or the expected expense reductions. Moreover, we may be unable to sustain past or expected future expense reductions in subsequent periods. We may not achieve profitability or sustain such profitability, if achieved, on a quarterly or annual basis in the future.

Any failure to achieve profitability could result in increased capital requirements and pressure on our liquidity position. We believe our future capital requirements will depend on many factors, including our levels of net sales, the timing and extent of expenditures to support sales, marketing, research and development activities, the expansion of manufacturing capacity both domestically and internationally and the continued market acceptance of our products. Our capital requirements could result in our having to, or otherwise choosing to, seek additional funding through public or private equity offerings or debt financings. Such funding may not be available on terms acceptable to us, or at all, either of which could result in our inability to meet certain of our financial obligations and other related commitments.

Our future capital needs are uncertain and we may need to raise additional funds, which may not be available on acceptable terms or at all.

We believe our existing cash balances, borrowing availability under our bank credit facility with Silicon Valley Bank, borrowing availability under our loan agreement with DBD Credit Funding, LLC, 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. However, we will likely need significant additional capital, which we may seek to raise through, among other things, public and private equity offerings and debt financings. 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. Additional funds may not be available on terms acceptable to us, or at all. Furthermore, if we issue equity or convertible debt securities to raise additional funds, our existing stockholders may experience dilution, and the new equity or debt securities may have rights, preferences, and privileges senior to those of our existing stockholders. If we incur additional debt, it may increase our leverage relative to our earnings or to our equity capitalization.

If adequate working capital is not available when needed, we may be required to significantly modify our business model and operations to reduce spending to a sustainable level. It could cause us to be unable to execute our business plan, take advantage of future opportunities, or respond to competitive pressures or customer requirements. It may also cause us to delay, scale back or eliminate some or all of our research and development programs, or to reduce or cease operations.

We have incurred a material amount of indebtedness to fund our operations, the terms of which required that we pledge substantially all of our assets as security and that we agree to share certain patent monetization revenues that may accrue in the future. Our level of indebtedness and the terms of such indebtedness, could adversely affect our operations and liquidity.

We have incurred debt secured by all of our assets under our credit facilities and term loans with DBD Credit Funding, LLC, an affiliate of Fortress Investment Group, LLC (the "DBD"), and Silicon Valley Bank ("SVB"). Our credit facility with the DBD is secured by a first-priority security interest in our intellectual property assets (other than certain patents and related assets relating to the NVvault product line) and a second priority security interest in substantially all of

our other assets. Our credit facility with SVB is secured by a first priority security interest in all of our assets other than our intellectual property assets, to which SVB has a second priority security interest. The credit facility with DBD contains customary representations, warranties and indemnification provisions, as well as affirmative and negative covenants that, among other things restrict our ability to:

- incur additional indebtedness or guarantees;
- incur liens;
- make investments, loans and acquisitions;
- consolidate or merge;
- sell or exclusively license assets, including capital stock of subsidiaries;
- alter our business;
- engage in transactions with affiliates; and
- pay dividends or make distributions.

The credit facilities also include events of default, including, among other things, payment defaults, breaches of representations, warranties or covenants, certain bankruptcy events, and certain material adverse changes. If we were to default under either credit facility and were unable to obtain a waiver for such a default, interest on the obligations would accrue at an increased rate. In the case of a default, the lenders could accelerate our obligations under the credit agreements and exercise their rights to foreclose on their security interests, which would cause substantial harm to our business and prospects.

Incurrence and maintenance of this debt could have material consequences, such as:

- requiring us to dedicate a portion of our cash flow from operations and other capital resources to debt service, thereby reducing our ability to fund working capital, capital expenditures, and other cash requirements;

- increasing our vulnerability to adverse economic and industry conditions;

- limiting our flexibility in planning for, or reacting to, changes and opportunities in, our business and industry, which may place us at a competitive disadvantage; and

- limiting our ability to incur additional debt on acceptable terms, if at all.

Concurrently with the execution of the credit facility with DBD, we entered into a Patent Monetization Side Letter Agreement which provides, among other things, that an affiliate of DBD may be entitled to share in certain monetization revenues that we may derive in the future related to our patent portfolio (excluding certain patents relating to the NVvault ™ product line). Monetization revenues subject to this arrangement include revenues recognized during the seven year term of the Letter Agreement from net amounts actually paid to us or our subsidiaries in connection with any assertion of, agreement not to assert, or license of, our patent portfolio. Monetization revenues subject to the arrangement also include the value attributable to our patent portfolio in any sale of the Company during the seven year term, subject to a maximum amount. The Letter Agreement also requires that we use commercially reasonable efforts to pursue opportunities to monetize our patent portfolio during the term of the Letter Agreement, provided that we are under no obligation to pursue any such opportunities that we do not deem to be in Company's best interest in our reasonable business judgment. Notwithstanding the foregoing, there can be no assurance that we will be successful in these efforts, and we may expend resources in pursuit of monetization revenues that may not result in any benefit to us. Moreover, the revenue sharing obligation will reduce the benefit we receive from any monetization transactions, which could adversely affect our operating results and would reduce the amounts payable to our stockholders in the event of a sale transaction.

Our revenues and results of operations have been substantially dependent on NVvault™ and we may be unable to replace revenue lost from the rapid decline in NVvault™ sales.

For the nine months ended September 28, 2013 and September 29, 2012, our NVvault™ non-volatile RDIMM used in cache-protection and data logging applications, including our NVvault™ battery-free, the flash-based cache system, accounted for approximately 32% and 55% of total net sales, respectively. Following Intel's launch of its Romley platform in the first quarter of 2012, we have experienced a rapid decline in NVvault™ sales to Dell, and we recognized $2.1 million in NVvault™ sales to Dell in the nine months ended September 28, 2013, as compared to $15.1 million in the nine months ended September 29, 2012. We expect that after product in the supply chain is consumed, we will see modest demand from Dell through 2013, after which sales of NVvault™ products for incorporation into PERC 7 servers will be minimal. In order to leverage our NVvault™ technology and diversify our customer base, we continue to pursue additional qualifications of

NVvault™ with other OEMs. We also introduced EXPRESSvault™ in March 2011 and we continue to pursue qualification of next generation DDR3 NVvault™ with customers. Our future operating results will depend on our ability to commercialize these NVvault™ product extensions, as well as other new products such as HyperCloud ® and other high-density and high-performance solutions. We may not be successful in marketing any new or enhanced products. If we are not successful in generating sales of other products, the decrease or cessation of sales of NVvault™ products to Dell will significantly reduce our annual revenues and negatively affect our results of operations.

We are subject to risks relating to our focus on developing our HyperCloud ® product and lack of market diversification.

We have historically derived a substantial portion of our net sales from sales of our high performance memory subsystems for use in the server market. We expect these memory subsystems to continue to account for a significant portion of our net sales in the near term. Continued market acceptance of these products for use in servers is critical to our success.

In an attempt to set our products apart from those of our competitors, we have invested a significant portion of our research and development budget into the design of ASIC devices, including the HyperCloud ® memory subsystem, introduced in November 2009. This design and the products it is incorporated into are subject to increased risks as compared to our other products. For example:

- we may be unable to achieve customer or market acceptance of the HyperCloud ® memory subsystem or other new products, or achieve such acceptance in a timely manner;

- the HyperCloud ® memory subsystem or other new products may contain currently undiscovered flaws, the correction of which would result in increased costs and time to market;

- we are dependent on a limited number of suppliers for both the DRAM ICs and the ASIC devices that are essential to the functionality of the HyperCloud ® memory subsystem, and could experience supply chain disruption as a result of business issues that are specific to our suppliers or the industry as a whole; and

- we are required to demonstrate the quality and reliability of the HyperCloud ® memory subsystem or other new products to our customers, and are required to qualify these new products with our customers, both of which have required and will continue to require a significant investment of time and resources prior to the receipt of any revenue from such customers.

We experienced a longer qualification cycle than anticipated with our HyperCloud ® memory subsystems, and as of September 28, 2013, we have not generated significant HyperCloud ® product revenues relative to our investment in the product. We entered into collaborative agreements with both IBM and HP pursuant to which these OEMs qualified the 16GB and 32GB versions of HyperCloud ® for use with their products. In February 2012 and May 2012, we achieved memory qualification of our 16GB HyperCloud ® product at IBM and HP, respectively. In September 2012 and July 2013, we achieved memory qualification of our 32GB HyperCloud ® product at IBM and HP, respectively. We and each of the OEMs have committed financial and other resources toward the collaboration. However, the efforts undertaken with each of these collaborative agreements have not resulted in significant product margins for us to date relative to our investment in developing and marketing these products and there is no assurance that we will achieve sufficient revenues or margins from our HyperCloud ® products under these arrangements.

Additionally, if the demand for servers deteriorates or if the demand for our products to be incorporated in servers declines, our operating results would be adversely affected, and we would be forced to diversify our product portfolio and our target markets. We may not be able to achieve this diversification, and our inability to do so may adversely affect our business.

We may lose our competitive position if we are unable to timely and cost-effectively develop new or enhanced products that meet our customers' requirements and achieve market acceptance.

Our industry is characterized by intense competition, rapid technological change, evolving industry standards and rapid product obsolescence. Evolving industry standards and technological change or new, competitive technologies could render our existing products obsolete. Accordingly, our ability to compete in the future will depend in large part on our ability to identify and develop new or enhanced products on a timely and cost-effective basis, and to respond to changing customer requirements. In order to develop and introduce new or enhanced products, we need to:

- identify and adjust to the changing requirements of our current and potential customers;

- identify and adapt to emerging technological trends and evolving industry standards in our markets;

- design and introduce cost-effective, innovative and performance-enhancing features that differentiate our products from those of our competitors;
- develop relationships with potential suppliers of components required for these new or enhanced products;
- qualify these products for use in our customers' products; and
- develop and maintain effective marketing strategies.

Our product development efforts are costly and inherently risky. It is difficult to foresee changes or developments in technology or anticipate the adoption of new standards. Moreover, once these things are identified, if at all, we will need to hire the appropriate technical personnel or retain third party designers, develop the product, identify and eliminate design flaws, and manufacture the product in production quantities either in-house or through third-party manufacturers. As a result, we may not be able to successfully develop new or enhanced products or we may experience delays in the development and introduction of new or enhanced products. Delays in product development and introduction could result in the loss of, or delays in generating, net sales and the loss of market share, as well as damage to our reputation. Even if we develop new or enhanced products, they may not meet our customers' requirements or gain market acceptance.

Our customers require that our products undergo a lengthy and expensive qualification process without any assurance of net sales.

Our prospective customers generally make a significant commitment of resources to test and evaluate our memory subsystems prior to purchasing our products and integrating them into their systems. This extensive qualification process involves rigorous reliability testing and evaluation of our products, which may continue for six months or longer and is often subject to delays. In addition to qualification of specific products, some of our customers may also require us to undergo a technology qualification if our product designs incorporate innovative technologies that the customer has not previously encountered. Such technology qualifications often take substantially longer than product qualifications and can take over a year to complete. Qualification by a prospective customer does not ensure any sales to that prospective customer. Even after successful qualification and sales of our products to a customer, changes in our products, our manufacturing facilities, our production processes or our component suppliers may require a new qualification process, which may result in additional delays.

In addition, because the qualification process is both product-specific and platform-specific, our existing customers sometimes require us to requalify our products, or to qualify our new products, for use in new platforms or applications. For example, as our OEM customers transition from prior generation DDR2 DRAM architectures to current generation DDR3 DRAM architectures, we must design and qualify new products for use by those customers. In the past, the process of design and qualification has taken up to six months to complete, during which time our net sales to those customers declined significantly. After our products are qualified, it can take several months before the customer begins production and we begin to generate net sales from such customer.

Likewise, when our memory component vendors discontinue production of components, it may be necessary for us to design and qualify new products for our customers. Such customers may require of us or we may decide to purchase an estimated quantity of discontinued memory components necessary to ensure a steady supply of existing products until products with new components can be qualified. Purchases of this nature may affect our liquidity. Additionally, our estimation of quantities required during the transition may be incorrect, which could adversely impact our results of operations through lost revenue opportunities or charges related to excess and obsolete inventory.

We must devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualify our products with prospective customers in anticipation of sales. Significant delays in the qualification process, such as those experienced with our HyperCloud ® product, could result in an inability to keep up with rapid technology change or new, competitive technologies. If we delay or do not succeed in qualifying a product with an existing or prospective customer, we will not be able to sell that product to that customer, which may result in our holding excess and obsolete inventory and harm our operating results and business.

Sales to a limited number of customers represent a significant portion of our net sales and the loss of, or a significant reduction in sales to, any one of these customers could materially harm our business.

Sales to certain of our OEM customers have historically represented a substantial majority of our net sales. Approximately 39% and 17% and 65% and 12% of our net sales in the nine months ended September 28, 2013 and September 29, 2012, respectively, were to two of our customers. We currently expect that sales to a limited number of major

OEM customers will continue to represent a significant percentage of our net sales for the foreseeable future. We do not have long-term agreements with our OEM customers, or with any other customer. Any one of these customers could decide at any time to discontinue, decrease or delay their purchase of our products. In addition, the prices that these customers pay for our products could change at any time. The loss of any of our OEM customers, or a significant reduction in sales to any of them, could significantly reduce our net sales and adversely affect our operating results.

Our ability to maintain or increase our net sales to our key customers depends on a variety of factors, many of which are beyond our control. These factors include our customers' continued sales of servers and other computing systems that incorporate our memory subsystems and our customers' continued incorporation of our products into their systems. Because of these and other factors, net sales to these customers may not continue and the amount of such net sales may not reach or exceed historical levels in any future period. Because these customers account for a substantial portion of our net sales, the failure of any one of these customers to pay on a timely basis would negatively impact our cash flow. In addition, while we may not be contractually obligated to accept returned products, we may determine that it is in our best interest to accept returns in order to maintain good relations with our customers. As we describe in more detail elsewhere in this Report, we have experienced a significant decline in sales of NVvault™ to our key customer, Dell. This reduction in sales has had, and is expected to continue to have, a significant impact on our revenues and gross profit.

A limited number of relatively large potential customers dominate the markets for our products.

Our target markets are characterized by a limited number of large companies. Consolidation in one or more of our target markets may further increase this industry concentration. As a result, we anticipate that sales of our products will continue to be concentrated among a limited number of large customers in the foreseeable future. We believe that our financial results will depend in significant part on our success in establishing and maintaining relationships with, and effecting substantial sales to, these potential customers. Even if we establish and successfully maintain these relationships, our financial results will be largely dependent on these customers' sales and business results.

If a standardized memory solution which addresses the demands of our customers is developed, our net sales and market share may decline.

Many of our memory subsystems are specifically designed for our OEM customers' high performance systems. In a drive to reduce costs and assure supply of their memory module demand, our OEM customers may endeavor to design JEDEC standard DRAM modules into their new products. Although we also manufacture JEDEC modules, this trend could reduce the demand for our higher priced customized memory solutions which in turn would have a negative impact on our financial results. In addition, customers deploying custom memory solutions today may in the future choose to adopt a JEDEC standard, and the adoption of a JEDEC standard module instead of a previously custom module might allow new competitors to participate in a share of our customers' memory module business that previously belonged to us.

If our OEM customers were to adopt JEDEC standard modules, our future business may be limited to identifying the next generation of high performance memory demands of OEM customers and developing solutions that addresses such demands. Until fully implemented, this next generation of products may constitute a much smaller market, which may reduce our net sales and market share.

We may not be able to maintain our competitive position because of the intense competition in our targeted markets.

We participate in a highly competitive market, and we expect competition to intensify. Many of our competitors have longer operating histories, significantly greater resources and name recognition, a larger base of customers and longer-standing relationships with customers and suppliers than we have. As a result, some of these competitors are able to devote greater resources to the development, promotion and sale of products and are better positioned than we are to influence customer acceptance of their products over our products. These competitors also may be able to respond better to new or emerging technologies or standards and may be able to deliver products with comparable or superior performance at a lower price. For these reasons, we may not be able to compete successfully against these competitors. We also expect to face competition from new and emerging companies that may enter our existing or future markets. These potential competitors may have similar or alternative products which may be less costly or provide additional features.

In addition to the competition we face from DRAM and logic suppliers such as SK hynix, Samsung, Micron, Inphi and IDT, some of our OEM customers have their own internal design groups that may develop solutions that compete with ours. These design groups have some advantages over us, including direct access to their respective companies' technical information and technology roadmaps. Our OEM customers also have substantially greater resources, financial and otherwise, than we do, and may have lower cost structures than ours. As a result, they may be able to design and manufacture competitive products more efficiently or inexpensively. If any of these OEM customers are successful in competing against

us, our sales could decline, our margins could be negatively impacted and we could lose market share, any or all of which could harm our business and results of operations. Further, some of our significant suppliers are also competitors, many of whom have the ability to manufacture competitive products at lower costs as a result of their higher levels of integration.

We expect our competitors to continue to improve the performance of their current products, reduce their prices and introduce new or enhanced technologies that may offer greater performance and improved pricing. If we are unable to match or exceed the improvements made by our competitors, our market position would deteriorate and our net sales would decline. In addition, our competitors may develop future generations and enhancements of competitive products that may render our technologies obsolete or uncompetitive.

Our operating results may be adversely impacted by worldwide economic and political uncertainties and specific conditions in the markets we address, including the cyclical nature of and volatility in the memory market and semiconductor industry.

Adverse changes in domestic and global economic and political conditions have made it extremely difficult for our customers, our vendors and us to accurately forecast and plan future business activities, and they have caused and could continue to cause U.S. and foreign businesses to slow spending on our products and services, which would further delay and lengthen sales cycles. In addition, sales of our products are dependent upon demand in the computing, networking, communications, printer, storage and industrial markets. These markets have been cyclical and are characterized by wide fluctuations in product supply and demand. These markets have experienced significant downturns, often connected with, or in anticipation of, maturing product cycles, reductions in technology spending and declines in general economic conditions. These downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and the erosion of average selling prices.

We may experience substantial period-to-period fluctuations in future operating results due to factors affecting the computing, networking, communications, printers, storage and industrial markets. A decline or significant shortfall in demand in any one of these markets could have a material adverse effect on the demand for our products. As a result, our sales will likely decline during these periods. In addition, because many of our costs and operating expenses are relatively fixed, if we are unable to control our expenses adequately in response to reduced sales, our gross margins, operating income and cash flow would be negatively impacted.

During challenging economic times our customers may face issues gaining timely access to sufficient credit, which could impair their ability to make timely payments to us. If that were to occur, we may be required to increase our allowance for doubtful accounts and our days sales outstanding would be negatively impacted. Furthermore, our vendors may face similar issues gaining access to credit, which may limit their ability to supply components or provide trade credit to us. We cannot predict the timing, strength or duration of any economic slowdown or subsequent economic recovery, worldwide, or in the memory market and related semiconductor industry. If the economy or markets in which we operate do not continue to improve or if conditions worsen, our business, financial condition and results of operations will likely be materially and adversely affected. Additionally, the combination of our lengthy sales cycle coupled with challenging macroeconomic conditions could compound the negative impact on the results of our operations.

Our lack of a significant backlog of unfilled orders, and the difficulty inherent in forecasting customer demand, makes it difficult to forecast our short-term production requirements to meet that demand, and any failure to optimally calibrate our production capacity and inventory levels to meet customer demand could adversely affect our revenues, gross margins and earnings.

We make significant decisions regarding the levels of business that we will seek and accept, production schedules, component procurement commitments, personnel needs and other resource requirements, based on our estimates of customer requirements. We do not have long-term purchase agreements with our customers. Instead, our customers often place purchase orders no more than two weeks in advance of their desired delivery date, and these purchase orders generally have no cancellation or rescheduling penalty provisions. The short-term nature of commitments by many of our customers, the fact that our customers may cancel or defer purchase orders for any reason, and the possibility of unexpected changes in demand for our customers' products each reduce our ability to accurately estimate future customer requirements for our products. This fact, combined with the quick turn-around times that apply to each order, makes it difficult to forecast our production needs and allocate production capacity efficiently. We attempt to forecast the demand for the DRAM ICs, NAND, and other components needed to manufacture our products. Lead times for components vary significantly and depend on various factors, such as the specific supplier and the demand and supply for a component at a given time.

Our production expense and component purchase levels are based in part on our forecasts of our customers' future product requirements and to a large extent are fixed in the short term. As a result, we likely will be unable to adjust spending on a timely basis to compensate for any unexpected shortfall in those orders. If we overestimate customer demand, we may have excess raw material inventory of DRAM ICs and NAND. If there is a subsequent decline in the prices of DRAM ICs or NAND, the value of our inventory will fall. As a result, we may need to write-down the value of our DRAM IC or NAND inventory, which may result in a significant decrease in our gross margin and financial condition. Also, to the extent that we manufacture products in anticipation of future demand that does not materialize, or in the event a customer cancels or reduces outstanding orders, we could experience an unanticipated increase in our finished goods inventory. In the past, we have had to write-down inventory due to obsolescence, excess quantities and declines in market value below our costs. Any significant shortfall of customer orders in relation to our expectations could hurt our operating results, cash flows and financial condition.

Also, any rapid increases in production required by our customers could strain our resources and reduce our margins. If we underestimate customer demand, we may not have sufficient inventory of DRAM ICs and NAND on hand to manufacture enough product to meet that demand. We also may not have sufficient manufacturing capacity at any given time to meet our customers' demands for rapid increases in production. These shortages of inventory and capacity will lead to delays in the delivery of our products, and we could forego sales opportunities, lose market share and damage our customer relationships.

Declines in our average sales prices, driven by volatile prices for DRAM ICs and NAND, among other factors, may result in declines in our revenues and gross profit.

Our industry is competitive and historically has been characterized by declines in average sales price, based in part on the market price of DRAM ICs and NAND, which have historically constituted a substantial portion of the total cost of our memory subsystems. Our average sales prices may decline due to several factors, including overcapacity in the worldwide supply of DRAM and NAND memory components as a result of worldwide economic conditions, increased manufacturing efficiencies, implementation of new manufacturing processes and expansion of manufacturing capacity by component suppliers.

Once our prices with a customer are negotiated, we are generally unable to revise pricing with that customer until our next regularly scheduled price adjustment. Consequently, we are exposed to the risks associated with the volatility of the price of DRAM ICs and NAND during that period. If the market prices for DRAM ICs and NAND increase, we generally cannot pass the price increases on to our customers for products purchased under an existing purchase order. As a result, our cost of sales could increase and our gross margins could decrease. Alternatively, if there are declines in the price of DRAM ICs and NAND, we may need to reduce our selling prices for subsequent purchase orders, which may result in a decline in our expected net sales.

In addition, since a large percentage of our sales are to a small number of customers that are primarily distributors and large OEMs, these customers have exerted, and we expect they will continue to exert, pressure on us to make price concessions. If not offset by increases in volume of sales or the sales of newly-developed products with higher margins, decreases in average sales prices would likely have a material adverse effect on our business and operating results.

We use a small number of custom ASIC, DRAM IC and NAND suppliers and are subject to risks of disruption in the supply of custom ASIC, DRAM ICs and NAND.

Our ability to fulfill customer orders or produce qualification samples is dependent on a sufficient supply of DRAM ICs and NAND, which are essential components of our memory subsystems. We are also dependent on a sufficient supply of custom ASIC devices to produce our HyperCloud ® memory modules. There are a relatively small number of suppliers of DRAM ICs and NAND, and we purchase from only a subset of these suppliers. We have no long-term DRAM or NAND supply contracts. Additionally, we could face obstacles in moving production of our ASIC components away from our current design and production partners. Our dependence on a small number of suppliers and the lack of any guaranteed sources of ASIC components, DRAM and NAND supply expose us to several risks, including the inability to obtain an adequate supply of these important components, price increases, delivery delays and poor quality.

Historical declines in customer demand and our revenues caused us to reduce our purchases of DRAM ICs and NAND. Such fluctuations could occur in the future. Should we not maintain sufficient purchase levels with some suppliers, our ability to obtain supplies of raw materials may be impaired due to the practice of some suppliers to allocate their products to customers with the highest regular demand.

From time to time, shortages in DRAM ICs and NAND have required some suppliers to limit the supply of their DRAM ICs and NAND. As a result, we may be unable to obtain the DRAM ICs or NAND necessary to fill customers' orders for our products in a timely manner. If we are unable to obtain a sufficient supply of DRAM ICs or NAND to meet our customers' requirements, these customers may reduce future orders for our products or not purchase our products at all, which would cause our net sales to decline and harm our operating results. In addition, our reputation could be harmed, we may not be able to replace any lost business with new customers, and we may lose market share to our competitors.

Our customers qualify the ASIC components, DRAM ICs and NAND of our suppliers for use in their systems. If one of our suppliers should experience quality control problems, it may be disqualified by one or more of our customers. This would disrupt our supplies of ASIC components, DRAM ICs and NAND and reduce the number of suppliers available to us, and may require that we qualify a new supplier. If our suppliers are unable to produce qualification samples on a timely basis or at all, we could experience delays in the qualification process, which could have a significant impact on our ability to sell that product.

If the supply of other component materials used to manufacture our products is interrupted, or if our inventory becomes obsolete, our results of operations and financial condition could be adversely affected.

We use consumables and other components, including PCBs, to manufacture our memory subsystems. We sometimes procure PCBs and other components from single or limited sources to take advantage of volume pricing discounts. Material shortages or transportation problems could interrupt the manufacture of our products from time to time in the future. These delays in manufacturing could adversely affect our results of operations.

Frequent technology changes and the introduction of next-generation products also may result in the obsolescence of other items of inventory, such as our custom-built PCBs, which could reduce our gross margin and adversely affect our operating performance and financial condition. We may not be able to sell some products developed for one customer to another customer because our products are often designed to address specific customer requirements, and even if we are able to sell these products to another customer, our margin on such products may be reduced.

A prolonged disruption of our manufacturing facility could have a material adverse effect on our business, financial condition and results of operations.

We maintain a manufacturing facility in the PRC for producing most of our products, which allows us to utilize our materials and processes, protect our intellectual property and develop the technology for manufacturing. A prolonged disruption or material malfunction of, interruption in or the loss of operations at our manufacturing facility, or the failure to maintain a sufficient labor force at such facility, would limit our capacity to meet customer demand and delay new product development until a replacement facility and equipment, if necessary, were found. The replacement of the manufacturing facility could take an extended amount of time before manufacturing operations could restart. The potential delays and costs resulting from these steps could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to manufacture our products efficiently, our operating results could suffer.

We must continuously review and improve our manufacturing processes in an effort to maintain satisfactory manufacturing yields and product performance, to lower our costs and to otherwise remain competitive. As we manufacture more complex products, the risk of encountering delays or difficulties increases. The start-up costs associated with implementing new manufacturing technologies, methods and processes, including the purchase of new equipment, and any resulting manufacturing delays and inefficiencies, could negatively impact our results of operations.

If we need to add manufacturing capacity, an expansion of our existing manufacturing facility or establishment of a new facility could be subject to factory audits by our customers. Any delays or unexpected costs resulting from this audit process could adversely affect our net sales and results of operations. In addition, we cannot be certain that we will be able to increase our manufacturing capacity on a timely basis or meet the standards of any applicable factory audits.

We depend on third-parties to design and manufacture custom components for some of our products.

Significant customized components, such as ASICs, that are used in some of our products such as HyperCloud ® are designed and manufactured by third parties. The ability and willingness of such third parties to perform in accordance with their agreements with us is largely outside of our control. If one or more of our design or manufacturing partners fails to perform its obligations in a timely manner or at satisfactory quality levels, our ability to bring products to market or deliver products to our customers, as well as our reputation, could suffer. In the event of any such failures, we may have no readily

available alternative source of supply for such products, since, in our experience, the lead time needed to establish a relationship with a new design and/or manufacturing partner is at least 12 months, and the estimated time for our OEM customers to re-qualify our product with components from a new vendor ranges from four to nine months. We cannot assure you that we can redesign, or cause to have redesigned, our customized components to be manufactured by a new manufacturer in a timely manner, nor can we assure you that we will not infringe on the intellectual property of our current design or manufacture partner when we redesign the custom components, or cause such components to be redesigned by a new manufacturer. A manufacturing disruption experienced by our manufacturing partners, the failure of our manufacturing partners to dedicate adequate resources to the production of our products, the financial instability of our manufacturing or design partners, or any other failure of our design or manufacturing partners to perform according to their agreements with us, would have a material adverse effect on our business, financial condition and results of operations.

We have many other risks due to our dependence on third-party manufacturers, including: reduced control over delivery schedules, quality, manufacturing yields and cost; the potential lack of adequate capacity during periods of excess demand; limited warranties on products supplied to us; and potential misappropriation of our intellectual property. We are dependent on our manufacturing partners to manufacture products with acceptable quality and manufacturing yields, to deliver those products to us on a timely basis and to allocate a portion of their manufacturing capacity sufficient to meet our needs. Although our products are designed using the process design rules of the particular manufacturers, we cannot assure you that our manufacturing partners will be able to achieve or maintain acceptable yields or deliver sufficient quantities of components on a timely basis or at an acceptable cost. Additionally, we cannot assure you that our manufacturing partners will continue to devote adequate resources to produce our products or continue to advance the process design technologies on which the qualification and manufacturing of our products are based.

If our products do not meet the quality standards of our customers, we may be forced to stop shipments of products until the quality issues are resolved.

Our customers require our products to meet strict quality standards. Should our products not meet such standards, our customers may discontinue purchases from us until we are able to resolve the quality issues that are causing us to not meet the standards. Such “quality holds” could have a significant adverse impact on our revenues and operating results.

If our products are defective or are used in defective systems, we may be subject to warranty, product recalls or product liability claims.

If our products are defectively manufactured, contain defective components or are used in defective or malfunctioning systems, we could be subject to warranty and product liability claims and product recalls, safety alerts or advisory notices. While we have product liability insurance coverage, it may not be adequate to satisfy claims made against us. We also may be unable to obtain insurance in the future at satisfactory rates or in adequate amounts. Warranty and product liability claims or product recalls, regardless of their ultimate outcome, could have an adverse effect on our business, financial condition and reputation, and on our ability to attract and retain customers. In addition, we may determine that it is in our best interest to accept product returns in circumstances where we are not contractually obligated to do so in order to maintain good relations with our customers. Accepting product returns may negatively impact our operating results.

If we fail to protect our proprietary rights, our customers or our competitors might gain access to our proprietary designs, processes and technologies, which could adversely affect our operating results.

We rely on a combination of patent protection, trade secret laws and restrictions on disclosure to protect our intellectual property rights. We have submitted a number of patent applications regarding our proprietary processes and technology. It is not certain when or if any of the claims in the remaining applications will be allowed. To date, we have had eighteen patents issued. We intend to continue filing patent applications with respect to most of the new processes and technologies that we develop. However, patent protection may not be available for some of these processes or technologies.

It is possible that our efforts to protect our intellectual property rights may not:

- prevent challenges to, or the invalidation or circumvention of, our existing intellectual property rights;
- prevent our competitors from independently developing similar products, duplicating our products or designing around any patents that may be issued to us;
- prevent disputes with third parties regarding ownership of our intellectual property rights;
- prevent disclosure of our trade secrets and know-how to third parties or into the public domain;

- result in valid patents, including international patents, from any of our pending or future applications; or
- otherwise adequately protect our intellectual property rights.

Others may attempt to reverse engineer, copy or otherwise obtain and use our proprietary technologies without our consent. Monitoring the unauthorized use of our technologies is difficult. We cannot be certain that the steps we have taken will prevent the unauthorized use of our technologies. This is particularly true in foreign countries, such as the PRC, where we have established a manufacturing facility and where the laws may not protect our proprietary rights to the same extent as applicable U.S. laws.

If some or all of the claims in our patent applications are not allowed, or if any of our intellectual property protections are limited in scope by a court or circumvented by others, we could face increased competition with regard to our products. Increased competition could significantly harm our business and our operating results.

We are involved in and expect to continue to be involved in costly legal and administrative proceedings to defend against claims that we infringe the intellectual property rights of others or to enforce or protect our intellectual property rights.

As is common to the semiconductor industry, we have experienced substantial litigation regarding patent and other intellectual property rights. Lawsuits claiming that we are infringing others' intellectual property rights have been and may in the future be brought against us, and we are currently defending against claims of invalidity in the USPTO. See Note 9 of Notes to Unaudited Condensed Consolidated Financial Statements, for a description of our legal contingencies as of September 28, 2013.

The process of obtaining and protecting patents is inherently uncertain. In addition to the patent issuance process established by law and the procedures of the USPTO, we must comply with JEDEC administrative procedures in protecting our intellectual property within its industry standard setting process. These procedures evolve over time, are subject to variability in their application, and may be inconsistent with each other. Failure to comply with JEDEC's administrative procedures could jeopardize our ability to claim that our patents have been infringed.

By making use of new technologies and entering new markets there is an increased likelihood that others might allege that our products infringe on their intellectual property rights. Litigation is inherently uncertain, and an adverse outcome in existing or any future litigation could subject us to significant liability for damages or invalidate our proprietary rights. An adverse outcome also could force us to take specific actions, including causing us to:

- cease manufacturing and/or selling products, or using certain processes, that are claimed to be infringing a third party's intellectual property;
- pay damages (which in some instances may be three times actual damages), including royalties on past or future sales;
- seek a license from the third party intellectual property owner to use their technology in our products, which license may not be available on reasonable terms, or at all; or
- redesign those products that are claimed to be infringing a third party's intellectual property.

If any adverse ruling in any such matter occurs, any resulting limitations in our ability to market our products, or delays and costs associated with redesigning our products or payments of license fees to third parties, or any failure by us to develop or license a substitute technology on commercially reasonable terms could have a material adverse effect on our business, financial condition and results of operations.

There is a limited pool of experienced technical personnel that we can draw upon to meet our hiring needs. As a result, a number of our existing employees have worked for our existing or potential competitors at some point during their careers, and we anticipate that a number of our future employees will have similar work histories. In the past, some of these competitors have claimed that our employees misappropriated their trade secrets or violated non-competition or non-solicitation agreements. Some of our competitors may threaten or bring legal action involving similar claims against us or our existing employees or make such claims in the future to prevent us from hiring qualified candidates. Lawsuits of this type may be brought, even if there is no merit to the claim, simply as a strategy to drain our financial resources and divert management's attention away from our business.

We also may find it necessary to litigate against others, including our competitors, customers and former employees, to enforce our intellectual property, contractual and commercial rights including, in particular, our trade secrets, as well as to challenge the validity and scope of the proprietary rights of others. We could become subject to counterclaims or countersuits against us as a result of this litigation. Moreover, any legal disputes with customers could cause them to cease buying or using our products or delay their purchase of our products and could substantially damage our relationship with them.

Any litigation, regardless of its outcome, would be time consuming and costly to resolve, divert our management's time and attention and negatively impact our results of operations. We cannot assure you that current or future infringement claims by third parties or claims for indemnification by customers or end users of our products resulting from infringement claims will not be asserted in the future or that such assertions, if proven to be true, will not materially adversely affect our business, financial condition or results of operations.

We may become involved in non-patent related litigation and administrative proceedings that may materially adversely affect us.

From time to time, we may become involved in various legal proceedings relating to matters incidental to the ordinary course of our business, including commercial, product liability, employment, class action, whistleblower and other litigation and claims, and governmental and other regulatory investigations and proceedings. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Furthermore, because litigation is inherently unpredictable, the results of these actions could have a material adverse effect on our business, results of operations and financial condition.

If we are required to obtain licenses to use third party intellectual property and we fail to do so, our business could be harmed.

Although some of the components used in our final products contain the intellectual property of third parties, we believe that our suppliers bear the sole responsibility to obtain any rights and licenses to such third party intellectual property. While we have no knowledge that any third party licensor disputes our belief, we cannot assure you that disputes will not arise in the future. The operation of our business and our ability to compete successfully depends significantly on our continued operation without claims of infringement or demands resulting from such claims, including demands for payments of money in the form of, for example, ongoing licensing fees.

We are also developing products to enter new markets. Similar to our current products, we may use components in these new products that contain the intellectual property of third parties. While we plan to exercise precautions to avoid infringing on the intellectual property rights of third parties, we cannot assure you that disputes will not arise.

If it is determined that we are required to obtain inbound licenses and we fail to obtain licenses, or if such licenses are not available on economically feasible terms, our business, operating results and financial condition could be significantly harmed.

The flash memory market is constantly evolving and competitive, and we may not have rights to manufacture and sell certain types of products utilizing emerging flash formats, or we may be required to pay a royalty to sell products utilizing these formats.

The flash-based storage market is constantly undergoing rapid technological change and evolving industry standards. Many consumer devices, such as digital cameras, PDAs and smartphones, are transitioning to emerging flash memory formats, such as the Memory Stick, and xD Picture Card formats, which we do not currently manufacture and do not have rights to manufacture. Although we do not currently serve the consumer flash market, it is possible that certain OEMs may choose to adopt these higher-volume, lower-cost formats. This could result in a decline in demand, on a relative basis, for other products that we manufacture such as CompactFlash, SD and embedded USB drives. If we decide to manufacture flash memory products utilizing emerging formats such as those mentioned, we will be required to secure licenses to give us the right to manufacture such products that may not be available at reasonable rates or at all. If we are not able to supply flash card formats at competitive prices or if we were to have product shortages, our net sales could be adversely impacted and our customers would likely cancel orders or seek other suppliers to replace us.

Our indemnification obligations for the infringement by our products of the intellectual property rights of others could require us to pay substantial damages.

As is common in the industry, we currently have in effect a number of agreements in which we have agreed to defend, indemnify and hold harmless our customers and suppliers from damages and costs which may arise from the

infringement by our products of third-party patents, trademarks or other proprietary rights. The scope of such indemnity varies, but may, in some instances, include indemnification for damages and expenses, including attorneys' fees. Our insurance does not cover intellectual property infringement. The term of these indemnification agreements is generally perpetual any time after execution of the agreement. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. We may periodically have to respond to claims and litigate these types of indemnification obligations. Although our suppliers may bear responsibility for the intellectual property inherent in the components they sell to us, they may lack the financial ability to stand behind such indemnities. Additionally, it may be costly to enforce any indemnifications that they have granted to us. Accordingly, any indemnification claims by customers could require us to incur significant legal fees and could potentially result in the payment of substantial damages, both of which could result in a material adverse effect on our business and results of operations.

We depend on a few key employees, and if we lose the services of any of those employees or are unable to hire additional personnel, our business could be harmed.

To date, we have been highly dependent on the experience, relationships and technical knowledge of certain key employees. We believe that our future success will be dependent on our ability to retain the services of these key employees, develop their successors, reduce our reliance on them, and properly manage the transition of their roles should departures occur. The loss of these key employees could delay the development and introduction of, and negatively impact our ability to sell, our products and otherwise harm our business. We do not have employment agreements with any of these key employees other than Chun K. Hong, our President, Chief Executive Officer and Chairman of the Board. We maintain "Key Man" life insurance on Chun K. Hong; however, we do not carry "Key Man" life insurance on any of our other key employees.

Our future success also depends on our ability to attract, retain and motivate highly skilled engineering, manufacturing, and other technical and sales personnel. Competition for experienced personnel is intense. We may not be successful in attracting new engineers or other technical personnel, or in retaining or motivating our existing personnel. If we are unable to hire and retain engineers with the skills necessary to keep pace with the evolving technologies in our markets, our ability to continue to provide our current products and to develop new or enhanced products will be negatively impacted, which would harm our business. In addition, the shortage of experienced engineers, and other factors, may lead to increased recruiting, relocation and compensation costs for such engineers, which may exceed our expectations and resources. These increased costs may make hiring new engineers difficult, or may increase our operating expenses.

Historically, a significant portion of our workforce has consisted of contract personnel. We invest considerable time and expense in training these contract employees. We may experience high turnover rates in our contract employee workforce, which may require us to expend additional resources in the future. If we convert any of these contract employees into permanent employees, we may have to pay finder's fees to the contract agency.

We rely on third-party manufacturers' representatives and the failure of these manufacturers' representatives to perform as expected could reduce our future sales.

We sell some of our products to customers through manufacturers' representatives. We are unable to predict the extent to which our manufacturers' representatives will be successful in marketing and selling our products. Moreover, many of our manufacturers' representatives also market and sell other, potentially competing products. Our representatives may terminate their relationships with us at any time. Our future performance will also depend, in part, on our ability to attract additional manufacturers' representatives that will be able to market and support our products effectively, especially in markets in which we have not previously distributed our products. If we cannot retain our current manufacturers' representatives or recruit additional or replacement manufacturers' representatives, our sales and operating results will be harmed.

The operation of our manufacturing facility in the PRC could expose us to significant risks.

Since 2009, substantially all of our world-wide manufacturing production has been performed at our manufacturing facility in the People's Republic of China, or PRC. Language and cultural differences, as well as the geographic distance from our headquarters in Irvine, California, further compound the difficulties of running a manufacturing operation in the PRC. Our management has limited experience in creating or overseeing foreign operations, and this new facility may divert substantial amounts of their time. We may not be able to maintain control over product quality, delivery schedules, manufacturing yields and costs. Furthermore, the costs related to having excess capacity have in the past and may in the future continue to have an adverse impact on our gross margins and operating results.

We manage a local workforce that may subject us to regulatory uncertainties. Changes in the labor laws of the PRC could increase the cost of employing the local workforce. The increased industrialization of the PRC, as well as general economic and political conditions in the PRC, could also increase the price of local labor. Any or all combination of these factors could negatively impact the cost savings we currently enjoy from having our manufacturing facility in the PRC.

The PRC currently provides for favorable tax rates for certain foreign-owned enterprises operating in specified locations in the PRC through 2012. We have established our PRC facility in such a tax-favored location. Should we fail to achieve profitability while favorable tax rates are in effect, or before our loss carryforwards in the PRC expire, it is possible that we would not realize the tax benefits to the extent originally anticipated and this could adversely impact our operating results.

Economic, political and other risks associated with international sales and operations could adversely affect our net sales.

Part of our growth strategy involves making sales to foreign corporations and delivering our products to facilities located in foreign countries. To facilitate this process and to meet the long-term projected demand for our products, we have set up a manufacturing facility in the PRC. Selling and manufacturing in foreign countries subjects us to additional risks not present with our domestic operations. We are operating in business and regulatory environments in which we have limited previous experience. We will need to continue to overcome language and cultural barriers to effectively conduct our operations in these environments. In addition, the economies of the PRC and other countries have been highly volatile in the past, resulting in significant fluctuations in local currencies and other instabilities. These instabilities affect a number of our customers and suppliers in addition to our foreign operations and continue to exist or may occur again in the future.

In the future, some of our net sales may be denominated in Chinese Renminbi (“RMB”). The Chinese government controls the procedures by which RMB is converted into other currencies, and conversion of RMB generally requires government consent. As a result, RMB may not be freely convertible into other currencies at all times. If the Chinese government institutes changes in currency conversion procedures, or imposes restrictions on currency conversion, those actions may negatively impact our operations and could reduce our operating results. In addition, fluctuations in the exchange rate between RMB and U.S. dollars may adversely affect our expenses and results of operations as well as the value of our assets and liabilities. These fluctuations may also adversely affect the comparability of our period-to-period results. If we decide to declare dividends and repatriate funds from our Chinese operations, we will be required to comply with the procedures and regulations of applicable Chinese law. Any changes to these procedures and regulations, or our failure to comply with those procedures and regulations, could prevent us from making dividends and repatriating funds from our Chinese operations, which could adversely affect our financial condition. If we are able to make dividends and repatriate funds from our Chinese operations, these dividends would be subject to U.S. corporate income tax.

International turmoil and the threat of future terrorist attacks, both domestically and internationally, have contributed to an uncertain political and economic climate, both in the U.S. and globally, and have negatively impacted the worldwide economy. The occurrence of one or more of these instabilities could adversely affect our foreign operations and some of our customers or suppliers, each of which could adversely affect our net sales. In addition, our failure to meet applicable regulatory requirements or overcome cultural barriers could result in production delays and increased turn-around times, which would adversely affect our business.

Our international sales are subject to other risks, including regulatory risks, tariffs and other trade barriers, timing and availability of export licenses, political and economic instability, difficulties in accounts receivable collections, difficulties in managing distributors, lack of a significant local sales presence, difficulties in obtaining governmental approvals, compliance with a wide variety of complex foreign laws and treaties and potentially adverse tax consequences. In addition, the U.S. or foreign countries may implement quotas, duties, taxes or other charges or restrictions upon the importation or exportation of our products, leading to a reduction in sales and profitability in that country.

Our operations could be disrupted by power outages, natural disasters or other factors.

Due to the geographic concentration of our manufacturing operations and the operations of certain of our suppliers, a disruption resulting from equipment failure, power failures, quality control issues, human error, government intervention or natural disasters, including earthquakes and floods like those that have struck Japan and Thailand, respectively, could interrupt or interfere with our manufacturing operations and consequently harm our business, financial condition and results of operations. Such disruptions would cause significant delays in shipments of our products and adversely affect our operating results.

Our failure to comply with environmental laws and regulations could subject us to significant fines and liabilities or cause us to incur significant costs.

We are subject to various and frequently changing U.S. federal, state and local and foreign governmental laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants into the air and water, the management and disposal of hazardous substances and wastes, the cleanup of contaminated sites and the maintenance of a safe workplace. In particular, some of our manufacturing processes may require us to handle and dispose of hazardous materials from time to time. For example, in the past our manufacturing operations have used lead-based solder in the assembly of our products. Today, we use lead-free soldering technologies in our manufacturing processes, as this is required for products entering the European Union. We could incur substantial costs, including clean-up costs, civil or criminal fines or sanctions and third-party claims for property damage or personal injury, as a result of violations of, or noncompliance with, environmental laws and regulations. These laws and regulations also could require us to incur significant costs to remain in compliance.

Our internal controls over financial reporting may not be effective, which could have a significant and adverse effect on our business.

Section 404 of the Sarbanes-Oxley Act of 2002 and the rules and regulations of the SEC, which we collectively refer to as Section 404, require us to evaluate our internal controls over financial reporting to allow management to report on those internal controls as of the end of each year. Effective internal controls are necessary for us to produce reliable financial reports and are important in our effort to prevent financial fraud. In the course of our Section 404 evaluations, we may identify conditions that may result in significant deficiencies or material weaknesses and we may conclude that enhancements, modifications or changes to our internal controls are necessary or desirable. Implementing any such matters would divert the attention of our management, could involve significant costs, and may negatively impact our results of operations.

We note that there are inherent limitations on the effectiveness of internal controls, as they cannot prevent collusion, management override or failure of human judgment. If we fail to maintain an effective system of internal controls or if management or our independent registered public accounting firm were to discover material weaknesses in our internal controls, we may be unable to produce reliable financial reports or prevent fraud, and it could harm our financial condition and results of operations, result in a loss of investor confidence and negatively impact our stock price.

If we do not effectively manage future growth, our resources, systems and controls may be strained and our results of operations may suffer.

We have in the past expanded our operations, both domestically and internationally. Any future growth may strain our resources, management information and telecommunication systems, and operational and financial controls. To manage future growth effectively, including the expansion of volume in our manufacturing facility in the PRC, we must be able to improve and expand our systems and controls. We may not be able to do this in a timely or cost-effective manner, and our current systems and controls may not be adequate to support our future operations. In addition, our officers have relatively limited experience in managing a rapidly growing business or a public company. As a result, they may not be able to provide the guidance necessary to manage future growth or maintain future market position. Any failure to manage our growth or improve or expand our existing systems and controls, or unexpected difficulties in doing so, could harm our business.

If we acquire other businesses or technologies in the future, these acquisitions could disrupt our business and harm our operating results and financial condition.

We will evaluate opportunities to acquire businesses or technologies that might complement our current product offerings or enhance our technical capabilities. We have no experience in acquiring other businesses or technologies. Acquisitions entail a number of risks that could adversely affect our business and operating results, including, but not limited to:

- difficulties in integrating the operations, technologies or products of the acquired companies;
- the diversion of management's time and attention from the normal daily operations of the business;
- insufficient increases in net sales to offset increased expenses associated with acquisitions or acquired companies;
- difficulties in retaining business relationships with suppliers and customers of the acquired companies;

- the overestimation of potential synergies or a delay in realizing those synergies;
- entering markets in which we have no or limited experience and in which competitors have stronger market positions; and
- the potential loss of key employees of the acquired companies.

Future acquisitions also could cause us to incur debt or be subject to contingent liabilities. In addition, acquisitions could cause us to issue equity securities that could dilute the ownership percentages of our existing stockholders. Furthermore, acquisitions may result in material charges or adverse tax consequences, substantial depreciation, deferred compensation charges, in-process research and development charges, the amortization of amounts related to deferred stock-based compensation expense and identifiable purchased intangible assets or impairment of goodwill, any or all of which could negatively affect our results of operations.

The issuance of additional sales of our common stock, or the perception that such issuances may occur, including through our "at the market" offering, could cause the market price of our common stock to fall.

We have entered into a Sales Agreement with Ascendiant Capital Markets, LLC ("Ascendiant"), for the offer and sale of up to $10 million in aggregate amount of our shares from time to time through Ascendiant, as our sales agent, pursuant to an effective Registration Statement on Form S-3. Ascendiant is not required to sell any specific number or dollar amount of shares of our common stock but will use its reasonable efforts, as our agent and subject to the terms of the Sales Agreement, to sell that number of shares up to $10 million upon our request. Sales of the shares, if any, may be made by any means permitted by law and deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended, and will generally be made by means of brokers' transactions on the NASDAQ Global Market or otherwise at market prices prevailing at the time of sale, or as otherwise agreed with Ascendiant. The Sales Agreement expires on November 21, 2013.

As of September 28, 2013, we have sold an aggregate of 2,052,727 shares pursuant to the Sales Agreement at a weighted average sales price of $2.94, net of commissions, including 1,312,669 shares during the year ended December 29, 2012 at a weighted average sales price of $2.98 per share and 42,588 shares during the nine months ended September 28, 2013 at a weighted average sales price of $1.14 per share. We may terminate the Sales Agreement at any time or it will terminate once proceeds of $10 million have been raised or it expires in November 2013. Whether we choose to consummate future sales under the at-the-market program prior to its expiration on November 21, 2013 will depend upon a variety of factors, including, among others, market conditions and the trading price of our common stock relative to other sources of capital. The issuance from time to time of these new shares of common stock through our at-the-market program or in any other equity offering, or the perception that such sales may occur, could have the effect of depressing the market price of our common stock.

We may not be able to maintain our NASDAQ listing.

On August 15, 2013, we received a notice from Nasdaq indicating that Netlist no longer complies with the requirements of Nasdaq Marketplace Rule 5450(b)(1)(A) for continued listing on the Nasdaq Global Market. The rule requires that we maintain minimum stockholders' equity of $10,000,000 (the "Stockholders' Equity Rule"). As reported in our Quarterly Report on Form 10-Q for the period ended June 29, 2013, the Company's stockholders' equity was $8,539,000. As explained in the notice, Netlist was required to provide a plan to regain compliance with Nasdaq Global Market listing requirements by September 30, 2013. Following our submission to NASDAQ, Nasdaq granted us an extension to December 31, 2013 to regain compliance with the Stockholders' Equity Rule. We are evaluating various actions to pursue including a request to transfer to Nasdaq Capital Market where we must maintain a minimum stockholders' equity of $2.5 million. If we fail to regain compliance with the Stockholders' Equity Rule or otherwise maintain the standards required now or in future by NASDAQ, our common stock could be delisted. Such delisting could cause our stock to be classified as "penny stock," among other potentially detrimental consequences, any of which could significantly impact our stockholders' ability to sell shares of our common stock or to sell shares at a price that a stockholder may deem to be acceptable.

Our principal stockholders have significant voting power and may take actions that may not be in the best interest of our other stockholders.

As of October 31, 2013, approximately 19.31 % of our outstanding common stock was held by affiliates, including 19.18% held by Chun K. Hong, our chief executive officer and chairman of our board of directors. As a result, Mr. Hong has the ability to exert substantial influence over all matters requiring approval by our stockholders, including the election and removal of directors and any proposed merger, consolidation or sale of all or substantially all of our assets and other corporate transactions. This concentration of control could be disadvantageous to other stockholders with interests different from those of Mr. Hong and our other executive officers and directors. For example, our executive officers, directors and principal stockholders could delay or prevent an acquisition or merger even if the transaction would benefit other stockholders. In addition, this significant concentration of share ownership may adversely affect the trading price for our common stock because investors may perceive disadvantages in owning stock in companies with stockholders that have the ability to exercise significant control.

Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control and could also limit the market price of our stock.

Our certificate of incorporation and bylaws contain provisions that could delay or prevent a change of control of our company or changes in our board of directors that our stockholders might consider favorable. In addition, these provisions could limit the price that investors would be willing to pay in the future for shares of our common stock. The following are examples of provisions which are included in our certificate of incorporation and bylaws, each as amended:

- our board of directors is authorized, without prior stockholder approval, to designate and issue preferred stock, commonly referred to as "blank check" preferred stock, with rights senior to those of our common stock;

- stockholder action by written consent is prohibited;

- nominations for election to our board of directors and the submission of matters to be acted upon by stockholders at a meeting are subject to advance notice requirements; and

- our board of directors is expressly authorized to make, alter or repeal our bylaws.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporate Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our certificate of incorporation and bylaws, and of Delaware law, could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors, including delaying or impeding a merger, tender offer, or proxy contest or other change of control transaction involving our company. Any delay or prevention of a change of control transaction or changes in our board of directors could prevent the consummation of a transaction in which our stockholders could receive a substantial premium over the then-current market price for their shares.

The price of and volume in trading of our common stock has and may continue to fluctuate significantly.

Our common stock has been publicly traded since November 2006. The price of our common stock and the trading volume of our shares are volatile and have in the past fluctuated significantly. There can be no assurance as to the prices at which our common stock will trade in the future or that an active trading market in our common stock will be sustained in the future. The market price at which our common stock trades may be influenced by many factors, including but not limited to, the following:

- our operating and financial performance and prospects, including our ability to achieve and sustain profitability in the future;

- investor perception of us and the industry in which we operate;

- the availability and level of research coverage of and market making in our common stock;

- changes in earnings estimates or buy/sell recommendations by analysts;

- sales of our newly issued common stock or other securities in association with our $40 million effective shelf registration on Form S-3, or the perception that such sales may occur

- general financial and other market conditions; and

- changing and recently volatile domestic and international economic conditions.

In addition, shares of our common stock and the public stock markets in general, have experienced, and may continue to experience, extreme price and trading volume volatility. These fluctuations may adversely affect the market price of our common stock and a stockholder's ability to sell their shares into the market at the desired time or at the desired price.

In 2007, following a drop in the market price of our common stock, securities litigation was initiated against us. Given the historic volatility of our industry, we may become engaged in this type of litigation in the future. Securities litigation is expensive and time-consuming.

Item 6. Exhibits

(a)(2) Exhibits

3.1	Restated Certificate of Incorporation of Netlist, Inc. (incorporated by reference to exhibit 3.1 of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the Securities and Exchange Commission (the "SEC") on October 23, 2006).
3.2	Amended and Restated Bylaws of Netlist, Inc. (incorporated by reference to exhibit number 3.1 of the registrant's Current Report on Form 8-K filed with the SEC on December 20, 2012).
10.1+	Loan and Security Agreement, dated July 18, 2013, between Netlist, Inc. and DBD Credit Funding LLC
10.2*	Monetization Letter Agreement, dated July 18, 2013, between Netlist, Inc. and Drawbridge Special Opportunities Fund LP
10.3+	Intellectual Property Security Agreement, dated July 18, 2013, between Netlist, Inc. and DBD Credit Funding LLC
10.4+	Stock Purchase Warrant, issued by Netlist, Inc. on July 18, 2013 to Drawbridge Special Opportunities Fund LP
10.5+	Subordination Agreement, dated July 18, 2013, among Netlist, Inc., Netlist Electronics (Suzhou) Co., Ltd., Netlist HK Limited and DBD Credit Funding LLC
10.6+	Amendment to Loan Documents, dated July 17, 2013, between Netlist, Inc. and Silicon Valley Bank
10.7	Securities Purchase Agreement, dated July 17, 2013, between Netlist, Inc. and the purchaser identified therein (incorporated by reference to exhibit number 10.1 of the registrant's Current Report on Form 8-K filed with the SEC on July 18, 2013)
10.8	Form of Warrant issued pursuant to the Securities Purchase Agreement dated July 17, 2013 (incorporated by reference to exhibit number 4.1 of the registrant's Current Report on Form 8-K filed with the SEC on July 18, 2013)
31.1+	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2+	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32+	Certification by Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS++	XBRL Instance Document
101.SCH++	XBRL Taxonomy Extension Schema Document
101.CAL++	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB++	XBRL Taxonomy Extension Label Linkbase Document
101.PRE++	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF++	XBRL Taxonomy Extension Definition Linkbase Document

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+ Filed herewith.

* Filed herewith. Confidential treatment has been requested with respect to portions of this exhibit pursuant to Rule 24b-2 of the Exchange Act and these confidential portions have been redacted from the document filed as an exhibit to this report. A complete copy of this agreement, including the redacted terms, has been separately filed with the SEC.

++ Furnished herewith. In accordance with Rule 406T of Regulation S-T, the information in these exhibits shall not be deemed to be "filed" for purposes of Section 18 of the Securities and Exchange Act of 1934, or otherwise subject to liability under that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, except as expressly set forth by specific reference in such filing.

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: November 12, 2013

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 10.1

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this " Agreement ") dated as of July 18, 2013 (the " Effective Date ") between DBD CREDIT FUNDING LLC, a Delaware limited liability company (the " Initial Lender " and together with any other financial institutions from time to time permitted to be party to this Agreement pursuant to the terms hereof sometimes referred to herein as a " Lender "), and NETLIST, INC., a Delaware corporation (" Borrower "), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13 . All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay the Lenders the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.1.1 Revolving Loans.

(a) Availability . Subject to the terms and conditions of this Agreement, Lenders shall make revolving loans not exceeding the Maximum Monetization Revolver Amount (any such revolving loans, the " Revolving Loans "; and together with the Term Loans, the " Facilities "). Revolving Loans hereunder may be repaid and, prior to the day that is five (5) Business Days prior to the Revolving Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) Termination; Repayment . Borrower's ability to request Revolving Loans shall terminate on the day that is five (5) Business Days prior to the Revolving Maturity Date. The Monetization Revolving Line terminates on the Revolving Maturity Date, when the principal amount of all Revolving Loans, the unpaid interest thereon, and all other Obligations relating to the Monetization Revolving Line shall be immediately due and payable.

2.1.2 Term Loans.

(a) Closing Date Term Loan .

(i) Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Borrower contained herein, Initial Lender agrees to make a term loan available to Borrower on the Effective Date in an aggregate principal amount up to the Closing Date Term Loan Amount (such term loan, the " Closing Date Term Loan ").

(ii) Amounts borrowed as a Closing Date Term Loan which are repaid or prepaid may not be reborrowed.

(iii) Commencing with the month that is nineteen (19) months after the Effective Date, Borrower shall repay the Closing Date Term Loan in (i) eighteen (18) equal installments of principal, plus (ii) monthly payments of accrued interest, in each case, in an amount equal to the amount set forth on Schedule 2.1.2(a)(iii)(1), with the final payment, which shall be an amount equal to the entire remaining principal balance of the Closing Date Term Loan, any accrued and unpaid interest therein, and all other Obligations relating to the Closing Date Term Loans, being immediately due and payable on the Maturity Date, subject to any extension of the Maturity Date with respect to the Closing Date Term Loan pursuant to Section 2.1.2(c) .

(b) IP Monetization Milestone Term Loan .

(i) Subject to the terms and conditions of this Agreement (including, without limitation, the conditions set forth in Section 3.2 and the occurrence of the IP Monetization Milestones) and in reliance upon the representations and warranties of Borrower contained herein, the Lenders agrees to lend to Borrower, from the Effective Date until the day that is the earlier of (x) one year after the occurrence of the IP Monetization Milestones and (y) two years after the Effective Date, on such date as requested by Borrower, term loans in an aggregate principal amount not to exceed the IP Monetization Milestone Term Loan Amount (such the term loans, the " IP Monetization Milestone Term Loans "; together with the Closing Date Term Loan, sometimes referred to individually as a " Term Loan " and together as the " Term Loans "); provided that (x) the minimum amount of each IP Monetization Milestone Term Loan being requested shall be at least $200,000 and (y) the date on which such IP Monetization Milestone Term Loan is to become funded shall not be less than 5 days after the date of the notice from Borrower as set forth in Section 3.2) (with respect to each IP Monetization Milestone Term Loan, the date on such IP Monetization Milestone Term Loan is funded, the " IP Monetization Milestone Term Loan Effective Date "). Any IP Monetization Milestone Term Loan funded on a particular IP Monetization Milestone Term Loan Effective Date shall constitute a separate " IP Monetization Milestone Term Loan Tranche " under this Agreement distinct from any other tranche of IP Monetization Milestone Term Loans funded on any other IP Monetization Milestone Term Loan Effective Date.

(ii) Amounts borrowed as an IP Monetization Milestone Term Loan which are repaid or prepaid may not be reborrowed.

(iii) Commencing with the month that is nineteen (19) months after the Effective Date, Borrower shall repay each IP Monetization Milestone Term Loan in (i) eighteen (18) equal installments of principal or, with respect to any IP Monetization Milestone Term Loan that is advanced with less than eighteen (18) months remaining prior to the Maturity Date, in a number of equal installments of principal equal to such number of months remaining prior to the Maturity Date, plus (ii) monthly payments of accrued interest, in each case, in an amount equal to the amount set forth on Schedule 2.1 . 2(a)(iii) (as such schedule shall be

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(1) Schedule to reflect 65% of principal amount of Closing Date Term Loan paid over such 18 month period, with balloon payment of remaining 35% payable at maturity.

updated from time to time by the Initial Lender to reflect each additional IP Monetization Milestone Term Loan Tranche), with the final payment, which shall be an amount equal to the entire remaining principal balance of each such IP Monetization Milestone Term Loan, any accrued and unpaid interest therein, and all other Obligations relating to the IP Monetization Milestone Term Loans, being immediately due and payable on the Maturity Date, subject to any extension of the Maturity Date with respect to such IP Monetization Milestone Term Loans pursuant to Section 2.1.2(c) .

(c) Amortization Option . At any time during the period that is after the month that is eighteen (18) months after the Effective Date and on or prior to the Maturity Date, upon Borrower's request and subject to the sole approval of Initial Lender (such approval discretion to be exercised in good faith), the outstanding principal amount of Term Loans due on the Maturity Date may be repaid in equal installments during an additional six month period immediately following the Maturity Date (such extension, the " Amortization Option "); provided, however, it being understood and agreed that the foregoing is not an obligation of Initial Lender to approve such Amortization Option and the granting of such Amortization Option may require concurrent modifications of the financial terms hereunder, including without limitation, increases to the interest rates and/or the payment of additional fees.

2.1.3 Optional Prepayments.

(a) Optional Repayment of Revolving Loans . Borrower may at any time and from time to time prepay Revolving Loans, in whole or in part, with irrevocable prior written notice to the Initial Lender given not later than 2:00 p.m. at least one (1) Business Day prior to the date of prepayment, specifying the date and amount of prepayment. Partial prepayments shall be in an aggregate amount of $1,000,000 or a whole multiple of $250,000 in excess thereof. Any such notice of prepayment received after 2:00 p.m. shall be deemed received on the next Business Day. Each such repayment shall be accompanied by any accrued and unpaid interest with respect to the Revolving Loans.

(b) Optional Repayment of Term Loans . Borrower may at any time upon at leastfive (5) Business Days (or such shorter period as is acceptable to Initial Lender) prior written notice by Borrower to Initial Lender, prepay the Term Loans in whole or in part in an amount greater than or equal to $1,000,000, in each instance, subject to any applicable Prepayment Premium as provided in Section 2.1.5 . Optional partial prepayments of Term Loans shall be applied to prepay all remaining installments of the Term Loans on a pro rata basis. Optional partial prepayments of Term Loans in amounts less than $100,000 shall not be permitted.

2.1.4 Other Mandatory Prepayments.

(a) Transfers and Events of Loss . If Borrower or any Subsidiary of Borrower shall at any time or from time to time:

(i) make a Transfer (other than a Transfer permitted under Section 7.1) or

(ii) suffer an Event of Loss;

then (A) Borrower shall promptly notify Initial Lender of such Transfer or Event of Loss (including the amount of the Net Proceeds to be received by Borrower and/or such Subsidiary in respect thereof) and (B) promptly upon receipt by Borrower and/or such Subsidiary of the Net Proceeds of such Transfer or Event of Loss, Borrower shall deliver, or cause to be delivered, an amount equal to such excess Net Proceeds to Initial Lender as a prepayment of the Loans, which prepayment shall be applied in

accordance with Section 2.1.4(d) hereof. Notwithstanding the foregoing and provided no Event of Default has occurred and is continuing, such prepayment shall not be required to the extent Borrower or such Subsidiary reinvests the Net Proceeds of such Event of Loss or Transfer in productive assets (other than Inventory, except to the extent Inventory is the subject of Event of Loss) of a kind then used or usable in the business of Borrower or such Subsidiary, within one hundred eighty (180) days after the earlier of (x) the date of such Event of Loss or Transfer or (y) receipt of such Net Proceeds with respect to such Event of Loss. For the avoidance of doubt, after the occurrence and during the continuance of an Event of Default, all Net Proceeds of any Event of Loss or Transfer shall, at the option of the Initial Lender and subject to the terms of the Intercreditor Agreement, be payable to the Lenders on account of the Obligations.

(b) Issuances of Indebtedness. Subject to the terms of the Intercreditor Agreement, upon the receipt by Borrower or any Subsidiary of Borrower of the Net Issuance Proceeds of any incurrence of Indebtedness (other than Net Issuance Proceeds from the incurrence of Indebtedness permitted hereunder), Borrower shall deliver, or cause to be delivered, to the Lenders an amount equal to such Net Issuance Proceeds, for application to the Loans in accordance with Section 2.1.4(d).

(c) Extraordinary Receipts. Subject to the terms of the Intercreditor Agreement, promptly, and in any event, within three (3) Business Days upon receipt by Borrower or any Subsidiary of Borrower of any Extraordinary Receipts (net of the reasonable costs and expenses paid to Persons that are not Affiliates of Borrower) other than any Extraordinary Receipt constituting Smart Modular Proceeds, Borrower shall prepay the Loans in an aggregate amount equal to 100% of such proceeds.

(d) Application of Prepayments. Subject to Section 1.9(c), any prepayments pursuant to Section 2.1.4(a), Section 2.1.4(b) and Section 2.1.4(c) shall be applied (i) first, to prepay all remaining installments of the Term Loans on a pro rata basis, together with all accrued interest thereon plus any applicable Prepayment Premium set forth in Section 2.1.5 and (ii) second, to prepay any outstanding amounts of the Revolving Loans (with a corresponding reduction to the Maximum Monetization Revolver Amount).

2.1.5 Prepayment Premiums.

(a) Call Premium. Any prepayment or repayment (whether mandatory or optional) of the Term Loans other than any such prepayment or repayment resulting in or requiring the payment of the Early Repayment Option A Premium, in each case on or prior to the second anniversary of the Effective Date shall be accompanied by a prepayment premium, payable to the Lenders, equal to: (i) if such prepayment or repayment occurs on or prior to the first anniversary of the Effective Date, 4.0% (or if a prepayment or repayment has during such period has occurred resulting in or requiring the payment of the Early Repayment Option A Premium, 2.0%) of the principal amount of such prepayment or repayment, as the case may be, (ii) if such prepayment or repayment occurs after the first anniversary of the Effective Date and on or prior to the second anniversary of the Effective Date, 2.0% of the principal amount of such prepayment or repayment, as the case may be and (iii) if such prepayment or repayment occurs after the second anniversary of the Effective Date, 0% of the principal amount of such prepayment or repayment, as the case may be (each of the foregoing, a "Call Premium").

(b) Early Repayment Option A. To the extent Borrower repays or prepays all of the outstanding Term Loans on or prior to the first anniversary of the Effective Date (whether mandatory or optional) (such date of repayment or prepayment, the "Repayment Date"), such repayment or prepayment shall (i) be accompanied by a prepayment premium, payable to the Lenders, equal to 20.0% of the amount of principal amount of all Loans funded prior to the Repayment Date (including, for the avoidance of doubt, all PIK Interest added as principal amount of the Loans) (the "Early Repayment Option A

Premium"; and together with the Call Premium, each a "Prepayment Premium" and collectively, the "Prepayment Premiums") and (ii) require Borrower to pay Initial Lender or its Affiliates such additional monetization payments set forth under the Monetization Side Letter with respect to the Early Repayment Option A Net Revenues (as such term is defined in the Monetization Side Letter).

(c) The parties hereto acknowledge and agree that, in light of the impracticality and extreme difficulty of ascertaining actual damages, the Prepayment Premiums referred to in this Section 2.1.5 are intended to be a reasonable calculation of the actual damages that would be suffered by the Lenders as a result of any such repayment/prepayment. The parties hereto further acknowledge and agree that the Prepayment Premiums referred to in Section 2.1.5 are not intended to act as a penalty or to punish Borrower for any such repayment/prepayment.

(d) Notwithstanding anything in this Agreement to the contrary, the payment of any Prepayment Premium shall be subject to the terms of the Monetization Side Letter.

2.2 Overadvances. If at any time or for any reason, the amount of Revolving Loans exceeds the Maximum Monetization Revolver Amount (such excess amount, the "Overadvance"), then Borrower shall immediately pay to Initial Lender in cash such Overadvance. Without limiting Borrower's obligation to repay the Lenders any amount of the Overadvance, Borrower agrees to pay the Lenders interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest. Subject to Section 2.3(b), the principal amount of Loans outstanding shall accrue interest at a per annum rate equal to 11.0%; which interest shall be payable monthly in accordance with Section 2.3(f) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percentage points (5.00%) above the rate that is otherwise applicable thereto (the "Default Rate") unless Initial Lender otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Lenders.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) Payment; Interest Computation. Interest is payable monthly on the last calendar day of each month on the outstanding principal amount of the Loans (including any interest capitalized thereon) at a rate equal to the Cash Interest Rate (which amount shall be paid in cash) plus a rate equal to the PIK Interest Rate (which amount shall be paid in-kind, by capitalizing and adding such interest to the unpaid principal amount of the Loans (including any interest capitalized thereon) (such capitalized interest, "PIK Interest")). All PIK Interest so added shall be capitalized semi-annually (such first capitalization to be on December 31, 2013) and treated as principal amount of the Loans for all purposes of this Agreement. Following any such increase in the principal amount of the Loans, all interest

(whether at the Cash Interest Rate or PIK Interest Rate) will accrue on such increased amount. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all Payments received after 12:00 p.m. Eastern time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension (or the capitalization of any PIK Interest) shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

2.4 Fees. Borrower shall pay to the Lenders:

(a) Facility Fee . A fully earned, non-refundable fee equal to 1.5% of the Closing Date Term Loan, payable on the Effective Date; and

(b) IP Monetization Milestone Fee . A fully earned, non-refundable fee equal to the product of 1.5% and $4,000,000.00, payable upon the occurrence of the IP Monetization Milestones; and

(c) Bank Expenses . All Bank Expenses required to be paid by Borrower under Section 12.12 hereof (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement and the other Loan Documents) incurred through and after the Effective Date, when due (or, if there is no stated due date, upon demand by Initial Lender).

2.5 Payments; Application of Payments.

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in U.S. Dollars, without setoff or counterclaim, before 12:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) All payments with respect to the Obligations may be applied in such order and manner as Initial Lender shall determine in its sole discretion. Borrower shall have no right to specify the order or the accounts to which Initial Lender shall allocate or apply any payments required to be made by Borrower to Initial Lender or otherwise received by Initial Lender under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

2.6 Increased Costs.

(a) Increased Costs Generally . If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender together with a certificate for reimbursement in accordance with Section 2.6(c), Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Credit Extensions of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, upon request of such Lender together with a certificate for reimbursement in accordance with Section 2.6(c), Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company as specified in paragraph (a) or (b) of this Section 2.6, including a reasonable basis therefore in reasonable detail, and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.6 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.7 Taxes. For purposes of this Section 2.7, the term "applicable law" includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.7) the applicable Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the applicable Lender timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower. Borrower shall indemnify Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.7) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify Initial Lender within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Initial Lender for such Indemnified Taxes and without limiting the obligation of Borrower to do so) and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Initial Lender in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Initial Lender shall be conclusive absent manifest error. Each Lender hereby authorizes Initial Lender to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Initial Lender to the Lender from any other source against any amount due to Initial Lender under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.7, Borrower shall deliver to the applicable Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Lender.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.7(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be requested by Borrower) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable:

1. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2. executed originals of IRS Form W-8ECI;

3. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN; or

4. to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be requested by Borrower) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such DOCUMENTATION PRESCRIBED BY APPLICABLE LAW (INCLUDING AS PRESCRIBED BY SECTION 1471(b)(3)(C)(i) OF THE INTERNAL REVENUE CODE) AND SUCH ADDITIONAL DOCUMENTATION REASONABLY REQUESTED BY BORROWER AS MAY BE NECESSARY FOR BORROWER TO COMPLY WITH ITS OBLIGATIONS UNDER FATCA AND TO DETERMINE THAT SUCH LENDER HAS COMPLIED WITH SUCH LENDER'S OBLIGATIONS UNDER FATCA OR TO DETERMINE THE AMOUNT TO DEDUCT AND WITHHOLD FROM SUCH PAYMENT. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

(g) Treatment of Certain Refunds . If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.7 (including by the payment of additional amounts pursuant to this Section 2.7) , it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than

the indemnified party would have been in if Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.7 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Credit Extensions and the repayment, satisfaction or discharge of all obligations under any Loan Document.

2.8 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.6, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.7, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.6 or 2.7, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.6, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.7 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.8(a), then Borrower may, at its sole expense and effort, upon notice to such Lender, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.2), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.6 or Section 2.7) and obligations under this Agreement and the related Loan Documents to another Lender (or to any other Person to which Borrower consents) that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that: (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts); (ii) in the case of any such assignment resulting from a claim for compensation under Section 2.6 or payments required to be made pursuant to Section 2.7, such assignment will result in a reduction in such compensation or payments thereafter; and (iii) such assignment does not conflict with applicable law.

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. The Initial Lender's obligation to make the initial Credit Extension is subject to the condition precedent that the Initial Lender shall have received, in form and substance satisfactory to Initial Lender, such documents, and completion of such other matters, as Initial Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) Borrower and Guarantor shall have delivered duly executed signatures to the Loan Documents to which it is a party, including this Agreement, the Guaranty, the Guarantor Security Agreement, the IP Security Agreement, the Intercompany Subordination Agreement, and the Monetization Side Letter;

(b) [reserved];

(c) Borrower shall have delivered: (i) its Operating Documents; and (ii) good standing certificates with respect to Borrower issued by the applicable Secretary of State — and, if separate, the state tax authority — of the jurisdiction of organization of Borrower and the applicable Secretary of State — and, if separate, the state tax authority of the jurisdictions (other than the applicable jurisdiction of organization of Borrower) in which Borrower's failure to be duly qualified or licensed would constitute a Material Adverse Change, in each case, as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) Guarantor shall have delivered: (i) its Operating Documents; and (ii) good standing certificates with respect to Guarantor issued by the applicable Secretary of State — and, if separate, the state tax authority — of the jurisdiction of organization of Guarantor and the applicable Secretary of State — and, if separate, the state tax authority of the jurisdictions (other than the applicable jurisdiction of organization of Guarantor) in which Guarantor's failure to be duly qualified or licensed would constitute a "Material Adverse Change" (as such term is defined in the Guarantor Security Agreement), in each case, as of a date no earlier than thirty (30) days prior to the Effective Date;

(e) Borrower shall have delivered duly executed signatures to the completed Borrowing Resolutions for Borrower;

(f) Guarantor shall have delivered duly executed signature(s) to the completed certified resolutions & incumbency certificate of Guarantor;

(g) the Perfection Certificate of Borrower, together with the duly executed original signatures thereto;

(h) Borrower shall have delivered evidence reasonably satisfactory to Initial Lender that the insurance policies required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Initial Lender;

(i) with respect to Borrower and each Guarantor, Initial Lender shall have received certified copies, dated as of a recent date, of financing statement searches, as Initial Lender shall request, reflecting Initial Lender's financing statements filed of record with respect to Initial Lender's Liens, and accompanied by written evidence (including any UCC termination statements) that the Liens (other than the Initial Lender's Liens) indicated in any financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(j) the completion of the Initial Audit with results satisfactory to Initial Lender in its good faith business judgment;

(k) payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof;

(l) Borrower and SVB shall have amended the SVB Agreement to reduce the maximum amount permitted to be borrowed thereunder to $5,000,000 and substantially concurrently with the funding of the Closing Date Term Loan, the outstanding amount of term loans under the SVB Agreement shall have been repaid in full;

(m) Borrower, Guarantor, SVB and Initial Lender shall have entered into the Intercreditor Agreement;

(n) Borrower shall have issued to Initial Lender or its Affiliate, Warrants (substantially in the form attached hereto as Exhibit C) for 1,648,351 shares of Warrant Stock (as such term is defined in the Warrant) and having an Exercise Price (as such term is defined in the Warrant) equal to $1.00.

(o) Initial Lender shall have received, on behalf of itself and the Lenders, a legal opinion of Morrison & Foerster LLP, special counsel for the Loan Parties (A) dated as of the date of this Agreement, (B) addressed to the Initial Lender and (C) covering such matters relating to the Loan Documents, Monetization Side Letter and Warrant Documents, and the execution, delivery and performance of their respective obligations under the Loan Documents, Monetization Side Letter and Warrant Documents, and the initial Credit Extensions hereunder, and matters reasonably related, respectively, thereto, in each case as are customary and reasonable.

3.2 Conditions Precedent to all Credit Extensions. Each Lender's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) no Default or Event of Default has occurred and is continuing or would reasonably be expected to result immediately after giving effect to any Credit Extension;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in Initial Lender's sole discretion, there has not been a Material Adverse Change;

(d) solely with respect to the IP Monetization Milestone Term Loans, the IP Monetization Milestones have been achieved; and

(e) solely with respect to the Revolving Loans, Initial Lender shall have determined, in its sole discretion, to fund the requested Revolving Loan.

3.3 [Reserved]

3.4 Covenant to Deliver. Borrower agrees to deliver to Initial Lender each item required to be delivered to Initial Lender under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Initial Lender of any such item shall not constitute a waiver by Initial Lender of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Initial Lender's sole discretion.

3.5 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Credit Extension set forth in this Agreement, in order for Borrower to obtain a Credit Extension, Borrower, shall notify Initial Lender (which notice shall be irrevocable) by electronic mail or telephone by 12:00 p.m. Eastern time at least three (3) Business Days prior to the proposed Funding Date of the request for such Credit Extension. Initial Lender shall credit Credit Extensions to the Designated Deposit Account. Initial Lender may make Revolving Loans under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Revolving Loans are necessary to meet Obligations which have become due. Initial Lender may rely on any telephone notice given by a person whom Initial Lender in its good faith business judgment believes is a Responsible Officer or designee; provided, that in such circumstances, Borrower agrees that any such telephonic notice will be confirmed in writing within twenty-four (24) hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Initial Lender (on behalf of all Lenders), to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Initial Lender (on behalf of all Lenders), the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

4.2 Priority of Security Interest.

(a) Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be, subject to the terms of the Intercreditor Agreement, a first priority perfected security interest in the Collateral (subject in lien priority only to those Permitted Liens that are expressly entitled to such priority over the security interests of Initial Lender by operation of law or by written subordination agreement duly executed and delivered by Initial Lender in favor of the holders of such Permitted Liens). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Initial Lender in a writing signed by Borrower of the general details thereof and grant to Initial Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Initial Lender.

(b) If this Agreement is terminated, Initial Lender’s Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as each Lender’s obligation to make Credit Extensions has terminated, Initial Lender shall, at Borrower’s sole cost and expense, release its Liens in the Collateral (including making any filings and taking other actions as reasonably necessary to evidence such termination) and all rights therein shall revert to Borrower.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Initial Lender to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Initial Lender’s interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Initial Lender under the Code. Such financing statements may indicate the Collateral as “all assets of the Debtor” or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Initial Lender’s discretion.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization, Authorization; Power and Authority.

(a) Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Initial Lender a completed certificate, entitled "Perfection Certificate". Borrower represents and warrants to Initial Lender that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Initial Lender of such occurrence and provide Initial Lender with Borrower's organizational identification number.

(b) The execution, delivery and performance by Borrower of the Loan Documents, the Warrant Documents and the Monetization Side Letter (including, without limitation, the incurrence of Loans hereunder and the issuance of Warrants pursuant to the Warrant Documents), in each case, to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) (x) contravene, conflict with, constitute a default under or violate that certain Securities Purchase Agreement dated as of December 20, 2012 between Borrower and Midsummer Small Cap Master, Ltd. or (y) materially contravene, conflict with or constitute a material default under the SVB Loan Agreement, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 Collateral.

(a) Borrower has good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no deposit account other than the deposit accounts with Initial Lender and

deposit accounts described in the Perfection Certificate delivered to Initial Lender in connection herewith or as disclosed to Initial Lender pursuant to Section 6.8(b) , other than deposit accounts not required to be disclosed pursuant to Section 6.8(b) . The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate other than any Collateral not having an aggregate value in excess of $250,000. None of the components of the Collateral having an aggregate value in excess of $250,000 shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2 . In the event that Borrower intends to store or otherwise deliver any portion of the Collateral with an aggregate value in excess of $250,000 to any one or more bailees, then Borrower shall, promptly upon Initial Lender's request therefor, use commercially reasonable efforts to deliver to Initial Lender a bailee agreement (in form and substance satisfactory to Initial Lender in its good faith business judgment) duly executed by such bailee.

(c) With respect to any leased premises of Borrower at which Collateral with an aggregate value of more than $250,000 is located, Borrower shall, promptly upon Initial Lender's request therefor, use commercially reasonable efforts to deliver to Initial Lender a landlord agreement (in form and substance satisfactory to Initial Lender in its good faith business judgment) duly executed by the lessor of such leased premises.

(d) All Inventory is in all material respects of good and marketable quality, free from material defects.

(e) Borrower is the sole owner of the Intellectual Property which it owns or purports to own, free and clear of all Liens (other than non-exclusive licenses granted to its customers in the ordinary course of business) and such Intellectual Property comprises all Intellectual Property owned by and used in the business of Borrower, the Guarantors and their respective Subsidiaries, except for (a) over-the-counter software that is commercially available to the public, and (b) Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each issued Patent that Borrower or any Guarantor owns or purports to own is subsisting and, to the best knowledge of Borrower, valid and enforceable. No part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part, and, except with respect to the reexamination proceedings as set forth on Schedule 5.2(e) (as such schedule may be updated from time to time) or claims or counterclaims made in any of the litigation identified in Schedule 5.2(e) (as such schedule may be updated from time to time) no Person has challenged the validity, enforceability, or registrability of any of the Intellectual Property that Borrower or any Guarantor owns or purports to own. To the best of Borrower's knowledge, except the claims made by Smart Modular, Inc. in any pending litigation between Borrower and Smart Modular, Inc. and disclosed to Initial Lender on or prior to the date hereof, no claim has been made that Borrower, any Guarantor or the conduct of Borrower's business violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

(f) Except as noted on the Perfection Certificate or as notified to Initial Lender in accordance with Section 6.10(c) , Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 [Reserved].

5.4 Litigation. Except as expressly identified in the Perfection Certificate, there are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than $100,000 individually, or $250,000 in the aggregate.

5.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Initial Lender fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the date of such financial statements, except that that interim financial statements may be subject to normal year-end audit adjustments (which will not be material in the aggregate) and need not contain footnote disclosures required by GAAP. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Initial Lender.

5.6 Solvency. The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, including Environmental Laws, the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous or other Persons, in disposing, producing, storing, treating, or transporting any hazardous or toxic substance other than legally, and none of Borrower or any of its Subsidiaries has any material liabilities under Environmental Laws. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except for such taxes, assessment, deposits and contributions that do not, individually or in the aggregate, exceed fifty thousand dollars ($50,000). Notwithstanding the foregoing, Borrower may defer payment of any contested taxes (except for payroll taxes and other tax obligations subject to a federal tax lien), provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Initial Lender in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital, capital expenditures, licensing costs and for other general corporate purposes and not for personal, family, household or agricultural purposes or for purposes not expressly prohibited under this Agreement or any other Loan Document.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Initial Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Initial Lender, and in light of the circumstances in which made, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Initial Lender that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Indebtedness. Borrower is not liable for any Indebtedness other than Permitted Indebtedness.

5.13 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance .

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations, including Environmental Laws, to which it is subject, noncompliance with which could have a material adverse effect on Borrower's business. Borrower shall also conduct and complete all material investigations, studies, sampling and testing, and all material remedial, removal and other actions required under Environmental Laws or by Governmental Authorities.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Initial Lender in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Initial Lender.

(c) Use its reasonable best efforts to maintain the listing of its common shares on NASDAQ (or on another nationally recognized securities exchange), and in the event that such shares are delisted from NASDAQ, shall cause its common shares to be qualified for trading on the OTC Bulletin Board within two business days of such delisting.

6.2 Financial Statements, Reports, Certificates. Provide Initial Lender with the following:

(a) [reserved];

(b) [reserved];

(c) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet and income statement covering Borrower's and each of its Subsidiary's operations for such month certified by a Responsible Officer and in a form acceptable to Initial Lender (the "Monthly Financial Statements") ;

(d) within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Initial Lender shall reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(e) within three (3) days after entering into a change, modification, amendment, revision, waiver or consent to SVB Loan Document, written notice (together with copies of all executed instruments relating thereto) of any such change, modification, amendment, revision, waiver or consent to any SVB Loan Document;

(f) within thirty (30) days after the end of each fiscal year of Borrower (or more frequently as updated), (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the new fiscal year of Borrower, and (B) annual financial projections for the new fiscal year (on a quarterly basis) as approved by Borrower's board of directors, together with any related business forecasts used in the preparation of such annual financial projections;

(g) as soon as available, and in any event concurrently with the delivery of the copy of (or link to) Borrower's 10-K report for the applicable fiscal year required under clause (h) below, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Initial Lender in its reasonable discretion;

(h) As long as Borrower is subject to the reporting requirements under the Exchange Act, within five (5) days of filing, copies (or a link to such documents on Borrower's or another website on the Internet) of all periodic and other reports (including Borrower's 10-K, 10Q, and 8K reports), proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. As to any information contained in the materials furnished pursuant to this clause (h), Borrower shall not be required separately to furnish such information under clause (g) but the foregoing shall not be in derogation of the obligation of Borrower to furnish the information and materials described in such clause (g) at the times specified therein.

(i) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders, to SVB under the SVB Loan Documents, or to any holders of Subordinated Debt; provided, that, for the avoidance of doubt, no such statements, reports or notices currently required to be delivered under the SVB Loan Documents shall be required to be delivered to Initial Lender under this Section 6.2(i) if such statements, reports or notices are no longer required to be delivered under the SVB Loan Documents;

(j) prompt written notice of (i) any material change in the composition of Borrower's Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Borrower in or to any copyright, patent or trademark not previously disclosed in writing to Initial Lender, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of Borrower's Intellectual Property; and

(k) prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of at least $100,000, individually, or at least $250,000, in the aggregate; and

(l) other financial information and information regarding the Intellectual Property reasonably requested by Initial Lender.

6.3 [Reserved].

6.4 [Reserved].

6.5 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all income and all other material tax returns and reports that are required to be filed and timely pay, and require each of its Subsidiaries to timely pay, all federal, state, income and all other material state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Initial Lender, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.6 Access to Collateral; Books and Records. At reasonable times, on at least five (5) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), Initial Lender, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books, which inspections (after the Initial Audit) shall be conducted no less frequently than twice per year, or more frequently as conditions may warrant in Initial Lender's good faith business judgment. The foregoing inspections and audits shall be at Borrower's expense, plus reasonable out-of-pocket expenses. In the event Borrower and Initial Lender schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedules the audit with less than ten (10) days written notice to Initial Lender, then (without limiting any of Initial Lender's rights or remedies), Borrower shall pay Initial Lender a fee of $1,000 plus any out-of—pocket expenses incurred by Initial Lender to compensate Initial Lender for the anticipated costs and expenses of the cancellation or rescheduling.

6.7 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and, if the SVB Agreement is no longer in effect, as Initial Lender may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that (i) if the SVB Agreement remains effective, are standard for companies in Borrower's industry and location, and (ii) if the SVB Agreement is no longer in effect, are satisfactory to Initial Lender.

(b) All property policies (but not Borrower's D&O insurance) shall have a lender's loss payable endorsement showing Initial Lender as lender loss payee and waive subrogation against Initial Lender. All liability policies shall show, or have endorsements showing, Initial Lender as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Initial Lender at least twenty (20) days notice before canceling, amending, or declining to renew its policy. At Initial Lender's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Initial Lender's option, be payable to Initial Lender on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Initial Lender, Initial Lender may make all or part of such payment or obtain such insurance policies required in this Section 6.7 , and take any action under the policies Initial Lender deems prudent.

6.8 Operating Accounts.

(a) [Reserved].

(b) As to any Collateral Accounts maintained with an institution other than a Lender, Borrower shall cause such institution to enter into a Control Agreement in form acceptable to Initial Lender in its good faith business judgment in order to perfect Initial Lender's security interest in such Collateral Accounts (to the extent that Initial Lender determines in its good faith business judgment that a Control Agreement is necessary to perfect and protect such security interest), and each such Control Agreement may not be terminated without the prior written consent of Initial Lender. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Initial Lender by Borrower as such; and (ii) Borrower's (or its Subsidiary's) Collateral Accounts located in China and relating to Borrower's (or its Subsidiary's) operations in Suzhou, China; provided, that (x) the aggregate amount of all cash and Cash Equivalents located in such Chinese account shall not exceed $600,000 at any one time outstanding and (y) the aggregate amount of all cash and Cash Equivalents of Borrower and Guarantors which are not maintained in an account subject to a Control Agreement shall not exceed $600,000 at any one time outstanding; provided that, upon the reasonable request of Borrower and Initial Lender's consent (such consent not to be unreasonably withheld or delayed), the thresholds in clauses (x) and (y) shall be increased to $1,000,000 each.

6.9 Financial Covenants. Satisfy at all times, the Liquidity Condition with respect to Borrower and its Subsidiaries.

6.10 Protection and Registration of Intellectual Property Rights.

(a) Borrower shall: (1) protect, defend and pay all fees and make all routine filings with the U.S. Patent and Trademark Office and/or U.S. Copyright Office (as applicable) to maintain the validity and enforceability of any and all of its Intellectual Property; (2) promptly advise Initial Lender in writing of known infringements of its Intellectual Property; and (3) not allow any Intellectual Property to be abandoned, forfeited or dedicated to the public without Initial Lender's written consent.

(b) Borrower hereby represents and warrants that, as of the Effective Date, Borrower does not own any maskworks, computer software, or other copyrights of Borrower that are registered (or the subject of an application for registration) with the United States Copyright Office. Borrower will NOT register with the United States Copyright Office (or apply for such registration of) any of Borrower's maskworks, computer software, or other copyrights, unless Borrower: (i) provides Initial Lender with at least fifteen (15) days prior written notice of its intent to register such copyrights or mask works together

with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (ii) executes and delivers a security agreement or such other documents as Initial Lender may reasonably request to maintain the perfection and priority of Initial Lender's security interest in the copyrights or mask works intended to be registered with the United States Copyright Office; and (iii) records such security agreement with the United States Copyright Office contemporaneously with or promptly (but in no event more than 10 days) after filing the copyright or mask work application(s) with the United States Copyright Office. Borrower shall promptly provide to Initial Lender a copy of the application(s) actually filed with the United States Copyright Office together with evidence of the recording of the security agreement necessary for Initial Lender to maintain the perfection and priority of its security interest in the copyrights or mask works intended to be registered with the United States Copyright Office. Borrower hereby represents and warrants that, as of the Effective Date, the IP Security Agreement identifies all Patents and Trademarks of Borrower that are registered (or the subject of an application for registration) with the United States Patent and Trademark Office. From and after the Effective Date, Borrower shall provide written notice to Initial Lender of any application filed by Borrower in the United States Patent and Trademark Office for a Patent or to register a Trademark or of any registered or applied Patent or Trademark acquired by Borrower or any Guarantor, in each case, within 30 days after any such filing or acquisition, and, upon the request of Initial Lender, Borrower shall promptly execute and deliver a security agreement or such other documents as Initial Lender may reasonably request with respect to such additional Patents and/or Trademarks of Borrower that are registered (or the subject of an application for registration) with the United States Patent and Trademark Office. The foregoing notwithstanding, Initial Lender shall not acquire any interest in any intent to use a federal trademark application for a trademark, servicemark, or other mark filed on Borrower's behalf prior to the filing under applicable law of a verified statement of use (or equivalent) for such mark that is the subject of such application.

(c) Provide written notice to Initial Lender within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Initial Lender requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Initial Lender to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Initial Lender to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Initial Lender's rights and remedies under this Agreement and the other Loan Documents.

6.11 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Initial Lender, without expense to Initial Lender, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Initial Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Initial Lender with respect to any Collateral or relating to Borrower.

6.12 Intercompany Debt. All present and future indebtedness of Borrower and any Guarantor owed or owing to any one or more of Borrower, any Guarantor, or any other Affiliate of Borrower or any other Affiliate of any Guarantor shall, at all times, be subordinated to the Obligations pursuant to a subordination agreement reasonably satisfactory to Initial Lender (the "Intercompany Subordination Agreement").

6.13 Subsidiaries. As of the Effective Date, the Perfection Certificate identifies each direct or indirect Subsidiary of Borrower. Without limiting any requirements for Initial Lender's consent under one or more of Section 7.3 and Section 7.7, at the time that Borrower or any Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, Borrower shall

promptly notify Initial Lender in writing of such formation or acquisition, and, if so requested by Initial Lender, Borrower or such Guarantor shall (a) cause such new Subsidiary to provide to Initial Lender: (i) either (y) a joinder to the Loan Agreement to cause such Subsidiary to become a co-borrower hereunder, or (z) a Guaranty and a Guarantor Security Agreement, together with (ii) such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Initial Lender (including being sufficient to grant Initial Lender a first priority Lien (subject to Permitted Liens and the terms of the Intercreditor Agreement) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Initial Lender appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Initial Lender, and (c) provide to Initial Lender all other documentation in form and substance satisfactory to Initial Lender (including, if requested by Initial Lender, one or more opinions of counsel satisfactory to Initial Lender), which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.13 shall be a Loan Document. Notwithstanding the foregoing or anything to the contrary in any Loan Document (including Exhibit A hereto), (1) (x) no Subsidiary which is a first-tier controlled foreign corporation, (y) no direct or indirect Domestic Subsidiary of a Foreign Subsidiary or (z) no wholly-owned, Domestic Subsidiary substantially all of the assets of which constitute the equity of Foreign Subsidiaries (each a " Domestic Foreign Holding Company "), shall be required to take the actions specified in clause (a) or (b) of the preceding sentence, and (2) (A) with respect to the voting stock of any Subsidiary which is a first-tier controlled foreign corporation or a Domestic Foreign Holding Company, such requirement shall be limited to providing Initial Lender with certificates and powers and financing statements, pledging 65% of the total voting power of all outstanding voting stock of such Subsidiary and (B) 100% of the equity interests not constituting voting stock of any such Subsidiary, except that any such equity interests constituting "stock entitled to vote" within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as voting stock for purposes of this Section 6.13 .

6.14 Further Assurances. Execute any further instruments and take further action as Initial Lender reasonably requests to perfect or continue Initial Lender's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Initial Lender, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

6.15 Post-Closing. On or prior to the date that is 30 days after the Effective Date (or such later date as Initial Lender may agree in its sole discretion), Borrower and Guarantor shall have delivered duly executed signatures to one or more Control Agreements relative to all Collateral Accounts maintained with any institution (other than Initial Lender or any affiliate of Initial Lender), except to the extent expressly not required under Section 6.8(b) .

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Initial Lender's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, " Transfer "), or permit any of its Subsidiaries to Transfer, all or any part of its business or property (including, for the avoidance of doubt, Transfers of any Intellectual Property), except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; (c) the NVvault Patent Monetization Transaction and (d) consisting of Permitted Liens, Permitted Licenses and Permitted Investments.

7.2 Changes in Business, Management, Control, or Business Locations.

(a) (i) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (ii) liquidate or dissolve; or (iii) have a change in senior management; or (iv) permit or suffer any Change in Control.

(b) Without at least thirty (30) days prior written notice to Initial Lender: (1) [reserved], (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name (whether such name is in English or French or otherwise), or (5) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary). Notwithstanding the foregoing, a Subsidiary of Borrower or any Guarantor that itself is not a Borrower or a Guarantor may enter into any merger or consolidation with another Subsidiary of Borrower that itself is not a Borrower or a Guarantor.

7.4 Indebtedness.

(a) Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

(b) Without limiting the generality of Section 7.4(a) , all present and future indebtedness of Borrower to its officers, directors, and equityholders (" Inside Debt ") shall, at all times, be subordinated to the Obligations pursuant to a subordination agreement reasonably acceptable to Initial Lender. Borrower represents and warrants that there is no Inside Debt presently outstanding, except for the following: NONE. Prior to incurring any Inside Debt in the future, Borrower shall cause the person to whom such Inside Debt will be owed to execute and deliver to Initial Lender a subordination agreement acceptable to Initial Lender.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of the Collateral, or assign or convey any right to receive income, including the sale of any Accounts or any right to any litigation or settlement claims, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Initial Lender and such terms under the SVB Loan Documents) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's Intellectual Property.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.

7.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock; and (iii) Borrower may repurchase the stock of former employees or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided such repurchase does not exceed in the aggregate of Fifty Thousand Dollars ($50,000) per fiscal year; or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or the amount of any permitted payments thereof or adversely affect the subordination thereof to Obligations owed to Initial Lender.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry Margin Stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, or permit any of its Subsidiaries to do so if the violation could reasonably be expected to have a material adverse effect on Borrower's business; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

7.11 Capital Expenditures. Not permit the aggregate amount of all Capital Expenditures made by Borrower and its Subsidiaries in any Fiscal Year to exceed $1,000,000.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an " Event of Default ") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Maturity Date or Maturity Date, as applicable). During the cure period, the failure to make or pay any payment specified under clause (a) or (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.1(a) or (b), 6.2, 6.4, 6.6, 6.8, 6.9, 6.10, 6.15 or violates any covenant in Section 7; or

(b) [reserved];

(c) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified elsewhere in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time (as determined by Initial Lender in its sole but reasonable discretion), then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business;

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while of any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties (including, without limitation, under any SVB Loan Document), (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Fifty Thousand Dollars ($50,000); or (b) any default by Borrower or Guarantor, the result of which could have a material adverse effect on Borrower's or any Guarantor's business;

8.7 Judgments. One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Fifty Thousand Dollars ($50,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within ten (10) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, stay, or bonding of such judgment, order, or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Initial Lender or to induce Initial Lender to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt or Lien. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect; any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder; a default or breach occurs under any agreement between Borrower and any creditor of Borrower that signed a subordination, intercreditor, or other similar agreement with Initial Lender, or any creditor that has signed such an agreement with Initial Lender breaches any terms of such agreement; or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any such subordination, intercreditor, or other similar agreement;

8.10 Guaranty. (a) Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any guaranty of the Obligations; (c) any circumstance described in Sections 8.4 , 8.5 , 8.7 , or 8.8 occurs with respect to any Guarantor, or (d) the death, liquidation, winding up, or termination of existence of any Guarantor; or (e) (i) a material impairment in the perfection or priority of Initial Lender's Lien in the collateral provided by Guarantor or in the value of such collateral or (ii) a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise) or the prospect of repayment of the Obligations occurs with respect to any Guarantor.

8.11 Monetization Side Letter and Warrant Documents. Borrower fails to perform or observe any covenant or agreement contained in the Monetization Side Letter or any Warrant Document on its part to be performed or observed.

8.12 Collateral . Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against Borrower or any Subsidiary of Borrower party thereto or Borrower or any Subsidiary of Borrower shall so state in writing or bring an action to limit its obligations or liabilities thereunder; the performance by Borrower or Guarantor of its respective obligations under any material provision of any Loan Document shall become unlawful (other than as already expressly contemplated therein); or any Loan Document shall for any reason (other than pursuant to the terms thereof and other than in respect of Collateral sold or otherwise disposed of in accordance with the terms of this Agreement) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected (to the extent required by the Loan Documents) and first priority security interest subject only to Permitted Liens and the terms of the Intercreditor Agreement.

8.13 Event of Default under other Loan Documents. An event of default has occurred and is continuing under any other Loan Document (after giving effect to, but without duplication of, any applicable grace periods).

9 LENDER'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. If an Event of Default has occurred and is continuing, Initial Lender may, without notice or demand, do any or all of the following:

(a) declare all Obligations (including any Prepayment Premiums) immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations (including any Prepayment Premiums) are immediately due and payable without presentment, demand, protest, notice or

any action by Initial Lender, all of which are expressly waived by Borrower, anything in this Agreement or in any other Loan Document to the contrary notwithstanding) (for the avoidance of doubt, it being hereto acknowledged and agreed that any Prepayment Premiums are intended to be a reasonable calculation of the actual damages that would be suffered by the Lenders in light of the impracticality and extreme difficulty of ascertaining actual damages, and that the Prepayment Premiums are not intended to act as a penalty or to punish Borrower for any such repayment);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and the Initial Lender;

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Initial Lender requests and make it available as Initial Lender designates. Initial Lender may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Initial Lender a license to enter and occupy any of its premises, without charge, to exercise any of Initial Lender's rights or remedies;

(g) apply to the Obligations any amount held by Initial Lender owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Initial Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Initial Lender's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Initial Lender's benefit;

(i) place a "hold" on any account maintained with any Initial Lender and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Initial Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Power of Attorney. Borrower hereby irrevocably appoints Initial Lender as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Initial Lender determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance

policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (f) transfer the Collateral into the name of Initial Lender or a third party as the Code permits; and (g) subject to the terms of the Intercreditor Agreement, proceed to litigate, settle, or adjust all litigation claims of Borrower, whether then existing or arising in the future. Borrower hereby appoints Initial Lender as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Initial Lender's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Initial Lender is under no further obligation to make Credit Extensions hereunder. Initial Lender's foregoing appointment as Borrower's attorney in fact, and all of Initial Lender's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Initial Lender's obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Initial Lender may obtain such insurance or make such payment, and all amounts so paid by Initial Lender are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Initial Lender will make reasonable efforts to provide Borrower with notice of Initial Lender obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Initial Lender are deemed an agreement to make similar payments in the future or Initial Lender's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. If an Event of Default has occurred and is continuing, Initial Lender may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Initial Lender shall determine in its sole discretion. Any surplus shall be paid to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to the Lenders for any deficiency. If Initial Lender, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Initial Lender shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Initial Lender of cash therefor.

9.5 Initial Lenders' Liability for Collateral. So long as Initial Lender complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Initial Lender, Initial Lender shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Each Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of such Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Initial Lender's rights and remedies under this Agreement and the other Loan Documents are cumulative. Initial Lender has all rights and remedies provided under the Code, by law, or in equity. Initial Lender's exercise of one right or remedy is not an election and shall not preclude Initial Lender from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Initial Lender's waiver of any Event of Default is not a continuing waiver. Initial Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Lender on which Borrower is liable.

10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or email address indicated below. Initial Lender or Borrower may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:

Netlist, Inc.
51 Discovery, Suite 150
Irvine, CA 92618
Attn: Gail M. Sasaki, CFO
Email: gsasaki@netlist.com

If to Initial Lender:

c/o Fortress Credit Corp.
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
Attention: Constantine M. Dakolias

with a copy to:

Fortress Credit Corp.
One Market Plaza
Spear Tower, 42nd Floor
San Francisco, CA 94105
Attention: James K. Noble III

with a copy to:

Kirkland & Ellis LLP
333 S. Hope St.
Los Angeles, CA 90071
Attention: David Nemecek
Telephone: 213-680-8111
Telecopier: 213-808-8107
Email: david.nemecek@kirkland.com

11 CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE

The Loan Documents and the transactions contemplated thereby shall be governed by, and construed in accordance with, the law of the State of New York without regard to principles of conflicts of law. Borrower and the Lenders each submit to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; provided, however, that nothing in this Agreement shall be deemed to operate to preclude such Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of the Lenders. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any Lender, or any Related Party of a Lender in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that a Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Borrower or its properties in the courts of any jurisdiction.

12 GENERAL PROVISIONS

12.1 Termination Prior to Maturity Date. On the Revolving Maturity Date, Maturity Date or on any earlier effective date of termination, Borrower shall pay and perform in full all Obligations (other than contingent indemnity Obligations), whether evidenced by installment notes or otherwise, and whether or not all or any part of such Obligations are otherwise then due and payable **.**

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Initial Lender's prior written consent (which may be granted or withheld in Initial Lender's discretion). The Lenders (or any of their respective successors or permitted assigns) shall not, without the prior written consent of Borrower (such consent not to be unreasonably withheld or delayed), sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, such Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents; provided, that notwithstanding the foregoing, no such consent of Borrower shall be required in connection with any assignment, transfer, participation grant or the taking of such other similar actions with respect to a Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents to any Affiliate of such Lender; provided, further, that, upon the occurrence and during the continuance of any Default or Event of Default, no such consent of Borrower shall be required **.**

12.3 Indemnification. Borrower agrees to indemnify, defend and hold each Lender and its respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing such Lender (each, an "Indemnified Person") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "Claims") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; (b) any Claims against, or all losses or expenses suffered, incurred, or paid by, such Indemnified Person related to any noncompliance with, violation of, or liability, in each case by or of Borrower or with respect to any of Borrower's property, under Environmental Laws; and (c) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions contemplated under the Loan Documents between the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses determined by a court of competent jurisdiction by a final and non-appealable judgment to have been directly caused by (i) such Indemnified Person's gross negligence or willful misconduct or (ii) a material breach of such Indemnified Person's obligations under the Loan Documents which did not involve the actions or omissions of Borrower or any Affiliate of Borrower **.**

12.4 Register. Initial Lender, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices a register for the recordation of the names and addresses of the Lenders, and the Credit Extensions of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice **.**

12.5 Time of Essence; Injunctive Relief. Time is of the essence for the performance of all Obligations in this Agreement. Borrower recognize that, in the event Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Initial Lender. Therefore, Borrower agrees that Initial Lender, at its option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

12.6 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.7 Correction of Loan Documents. Initial Lender may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

12.8 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.9 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.10 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.3 to indemnify the Indemnified Persons shall survive until all statutes of limitation with respect to the Claims, losses and expenses for which indemnity is given shall have run.

12.11 Confidentiality. In handling any confidential information, the Lenders shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to a Lender’s Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, such Lender shall use its commercially reasonable efforts to obtain any prospective transferee’s or purchaser’s agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to such Lender’s regulators or as otherwise required in connection with such Lender’s examination or audit; (e) as such Lender considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of such Lender so long as such service providers have executed a confidentiality agreement with such Lender with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in such Lender’s possession when disclosed to such Lender, or becomes part of the public domain after disclosure to such Lender; or (ii) disclosed to a Lender by a third party, if such Lender does not know that the third party is prohibited from disclosing the information.

The Lenders may use confidential information for the development of databases, reporting purposes, and market analysis so long as such confidential information is aggregated and anonymized prior to distribution unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.12 Attorneys' Fees, Costs and Expenses. Any action taken by Borrower under or with respect to any Loan Document, even if required under any Loan Document or at the request of Initial Lender, shall be at the expense of Borrower, and Initial Lender shall not be required under any Loan Document to reimburse Borrower or any Affiliate of Borrower therefor. In addition, Borrower agrees to pay or reimburse within three (3) Business Days after receiving demand therefor, (a) the Initial Lender for all reasonable, documented out-of-pocket costs and expenses incurred by it or any of its Related Parties, in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, in each case including any reasonable and documented fees and disbursements of any law firm or other external counsel of the Initial Lender and, to the extent Initial Lender determines to be commercially reasonable in good faith, the cost of environmental audits, Collateral audits and appraisals, background checks and similar expenses, to the extent permitted hereunder and (b) Initial Lender and its Related Parties for all costs and expenses (including reasonable and documented fees and disbursements of any law firm or other external counsel and fees and expenses of financial advisors) incurred in connection with the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy, including any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out."

12.13 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.14 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.15 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.16 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.17 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

12.18 Reversal of Payments . To the extent Borrower makes a payment or payments to a Lender or a Lender receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other applicable law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by such Lender.

12.19 Intercreditor Agreement . Notwithstanding anything herein or in any other Loan Document to the contrary, in the event of any inconsistency between the provisions of this Agreement or any other Loan Document and the provisions of the Intercreditor Agreement with respect to the Collateral or any Lien or security interest required or created hereunder or under any other Loan Documents, or the creation, perfection or priority thereof, or matters related to the delivery of possessory Collateral, or any payment terms, or any rights and remedies with respect to the foregoing, the provisions of the Intercreditor Agreement shall govern and control.

12.20 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

13 DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

"Account" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"Account Debtor" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"Affiliate" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"Agreement" is defined in the preamble hereof.

"Bank Expenses" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Borrower" is defined in the preamble hereof

“Borrower’s Books” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrowing Resolutions” are, with respect to any Person, those resolutions adopted by such Person’s Board of Directors and delivered by such Person to Initial Lender approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its Secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth in such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Initial Lender may conclusively rely on such certificate unless and until such Person shall have delivered to Initial Lender a further certificate canceling or amending such prior certificate.

“Business Day” is any day that is not a Saturday, Sunday or a day on which Initial Lender is closed.

“Call Premium” is defined in Section 2.1.5(a).

“Capital Expenditures” means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed.

“Cash Equivalents” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) Initial Lender’s certificates of deposit issued maturing no more than one (1) year after issue.

“Cash Interest Rate” is 7.0% per annum.

“Change in Control” is any event, transaction, or occurrence as a result of which (a) any “person” (as such term is defined in Sections 3 (a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing twenty-five percent (25%) or more of the combined voting power of Borrower’s then outstanding securities; or (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors (or equivalent) of Borrower (together with any new directors whose election by the Board of Directors (or equivalent) of Borrower was approved by a vote of not less than two-thirds of the directors (or equivalent) then still in office who either were directors (or equivalent) at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors (or equivalent) then in office or (c) Borrower ceases to own, directly or indirectly, 100% of the voting securities of any Guarantor.

“Change in Law” is any occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive

(whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Initial Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Claims" is defined in Section 12.3.

"Closing Date Term Loan" is a term loan made by Initial Lender pursuant to the terms of Section 2.1.2 hereof.

"Closing Date Term Loan Amount" is an amount equal to Six Million Dollars ($6,000,000).

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Initial Lender's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"Collateral" is any and all properties, rights and assets of Borrower described on Exhibit A.

"Collateral Account" is any Deposit Account, Securities Account, or Commodity Account.

"Commodity Account" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"Compliance Certificate" is that certain certificate in the form attached hereto as Exhibit B.

"Connection Income Taxes" are Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"Control Agreement" is any control agreement entered into among (a) the depository institution at which Borrower or any Guarantor maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any Guarantor maintains a Securities Account or a Commodity Account, (b) Borrower or such Guarantor, and (c) Initial Lender, pursuant to which Initial Lender obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Credit Extension" is any advance of a Revolving Loan, a Closing Date Term Loan, an IP Monetization Milestone Term Loan, or any other extension of credit by a Lender for Borrower's benefit.

"Debtor Relief Laws" are the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" is any event which with notice or passage of time or both, would constitute an Event of Default.

"Default Rate" is defined in Section 2.3(b).

"Deposit Account" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"Designated Deposit Account" is Borrower's deposit account and account number identified to Initial Lender.

"Dollars," "dollars" or use of the sign "$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Domestic Subsidiary" is a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

"Effective Date" is defined in the preamble hereof.

"Environmental Law" is any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, permits or other Requirement of Law relating to pollution, protection of the environment, public health and safety, worker health and safety, or to emissions, discharges or releases of hazardous substances, materials or wastes into the environment.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, and its regulations.

"Event of Default" is defined in Section 8.

“Event of Loss” means, with respect to any Property with a value in excess of $50,000, any of the following: (a) any loss, destruction or damage of such Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

“Exchange Act” is the Securities Exchange Act of 1934, as amended.

“Excluded Taxes” are any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Credit Extension pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Credit Extension or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.7, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.7(e) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Extraordinary Receipts” is any cash actually received by Borrower or its Subsidiaries not in the ordinary course of business, including, but not limited to, tax refunds (excluding any amount subject to dispute), indemnity payments, and any purchase price adjustments). For the avoidance of doubt, Extraordinary Receipts shall not include the proceeds of any equity issuances by Borrower.

“Facilities” is defined in Section 2.1.1(a).

“FATCA” is Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, including any intergovernmental agreements entered into with respect of the foregoing.

“Foreign Currency” means lawful money of a country other than the United States.

“Foreign Lender” is a Lender that is not a U.S. Person.

“Foreign Subsidiary” is any Subsidiary other than a Domestic Subsidiary.

“Funding Date” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day. “

“GAAP” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“General Intangibles” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all

Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Governmental Approval" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Gross Profit" is, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination and as determined in accordance with GAAP, the gross profit (or loss) of Borrower and its Subsidiaries for such period taken as a single accounting period.

"Guarantor" is any present or future guarantor of the Obligations.

"Guarantor Security Agreement" is, with respect to each Guarantor, a security agreement (in form and substance satisfactory to Initial Lender in its good faith business judgment) by such Guarantor in favor of Initial Lender.

"Guaranty" is, with respect to each Guarantor, a continuing guaranty (in form and substance satisfactory to Initial Lender in its good faith business judgment) by such Guarantor in favor of Initial Lender, relative to Borrower.

"Indebtedness" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"Indemnified Person" is defined in Section 12.3.

"Indemnified Taxes" are (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Initial Audit" is Initial Lender's inspection of Borrower's Accounts, the Collateral, and Borrower's Books, completed most recently prior to the Effective Date.

"Initial Lender" is defined in the preamble hereof.

"Inside Debt" is defined in Section 7.4(b).

"Insolvency Proceeding" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" is, with respect to Borrower or a Guarantor, all of Borrower's or such Guarantor's right, title, and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to Borrower or such Guarantor;

(e) any and all causes of action and claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said past, present, or future infringement of the intellectual property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Intercompany Subordination Agreement" is defined in Section 6.12 .

"Intercreditor Agreement" is that certain Intercreditor agreement dated as of the date hereof between Initial Lender and SVB, as such document may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Internal Revenue Code" is the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"IP Monetization Milestones" are the earlier of (x) the occurrence of the complete lift of stay associated in respect of the ongoing intellectual property as specified to and as agreed to by Initial Lender on or prior to the Effective Date or (y) such earlier date as determined by Initial Lender.

"IP Monetization Milestone Term Loan Amount" is an aggregate amount not to exceed $4,000,000 during the term of this Agreement.

"IP Monetization Milestone Term Loan Effective Date" is defined in Section 2.1.2(b)(i) .

"IP Monetization Milestone Term Loan Tranche" is defined in Section 2.1.2(b)(i) .

"IP Monetization Milestone Term Loans" is defined in Section 2.1.2(b)(i) .

"IP Security Agreement" is, individually and collectively, (a) any one or more Intellectual Property security agreements (in form and substance satisfactory to Initial Lender in its good faith business judgment) now or hereafter executed and delivered by Borrower to Initial Lender, and (b) any one or more Intellectual Property security agreements (in form and substance satisfactory to Initial Lender in its good faith business judgment) now or hereafter executed and delivered by Guarantor to Initial Lender.

"IRS" means the United States Internal Revenue Service.

"Lender" is Initial Lender (or any successors or permitted assignees thereof).

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Liquidity Condition" is the condition that the aggregate amount of Borrower's unencumbered (except for Initial Lender's security interest and SVB's security interests under the SVB Loan Documents), unrestricted cash and Cash Equivalents (excluding cash and Cash Equivalents which cash collateralize obligations owed to SVB) is at least $500,000.

"Loan Documents" are, collectively, this Agreement, the Perfection Certificate, the Intercompany Subordination Agreement, the IP Security Agreements, any note, or notes or guaranties (including the Guaranty) or security documents (including the Guarantor Security Agreement), executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of any Lender in connection with this Agreement, all as amended, restated, or otherwise modified. For the avoidance of doubt, the Monetization Side Letter and the Warrant Documents shall not constitute Loan Documents.

"Loans" are the Term Loans and the Revolving Loans.

"Margin Stock" has the meaning set forth in Regulation U of the Board of Governors of the Federal Reserve System.

"Material Adverse Change" is: (a) a material impairment in the perfection or priority of Initial Lender's Lien in the Collateral or in the value of such Collateral; or (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower or any Guarantor; or (c) a material impairment of the prospect of repayment of any portion of the Obligations; or (d) Initial Lender determines, based upon information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 6 during the next succeeding financial reporting period.

"Maturity Date" is July 17, 2016.

"Maximum Monetization Revolver Amount" is Five Million Dollars ($5,000,000), as such amount may be reduced from time to time under the terms of this Agreement.

"Monetization Revolving Line" is a Revolving Loan or Revolving Loan in an aggregate amount of up to the Maximum Monetization Revolver Amount outstanding at any time.

"Monetization Side Letter" is defined as that certain monetization letter agreement, dated as of the date hereof, between Drawbridge Special Opportunities Fund LP and Borrower, as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Monthly Financial Statements" is defined in Section 6.2(c) .

"Net Issuance Proceeds" are, in respect of any issuance of Indebtedness, cash proceeds (including cash proceeds as and when received in respect of non-cash proceeds received or receivable in connection with such issuance), net of underwriting discounts, and reasonable out-of-pocket costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of Borrower.

"Net Proceeds" are proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Transfer, as well as insurance proceeds and condemnation and similar awards received on account of an Event of Loss, net of: (a) in the event of a Transfer (i) the direct and reasonable costs relating to such Transfer excluding amounts payable to Borrower or any Subsidiary of Borrower, (ii) sale, use or other transaction taxes paid or payable as a result thereof, (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a Lien on the asset which is the subject of such Transfer and (iv) income taxes paid or reasonably estimated to be payable as a result thereof, and (b) in the event of an Event of Loss, (i) all money actually applied to repair, replace or reconstruct the damaged Property or Property affected by the condemnation or taking, (ii) all of the costs and expenses reasonably incurred in connection with the collection of such proceeds, award or other payments and (iii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments. After netting out the items in clauses (a) and (b) of the foregoing definition, as applicable, if the amount of Net Proceeds would be less than zero, such amount shall be deemed to equal zero.

"NVvault Assets" are the patents and patent applications listed in Schedule A hereto, together with any and all (i) continuations, continuations in part, divisional, reissues, or reexaminations of any of the foregoing, (ii) present or future United States patents claiming common priority in whole or in part with any of the foregoing, and (iii) all foreign patents and/or applications for patents that are, or in the future become, counterparts of, or claim priority in whole or in part to, any of the foregoing.

"NVvault Patent Monetization Transaction" is any sale or other divestiture of, or the licensing of or other transactions with respect to, the NVvault Assets.

"Obligations" are Borrower's obligations to pay when due any debts, principal, interest, Bank Expenses and other amounts Borrower owes a Lender now or later, whether under this Agreement, the Loan Documents, including, without limitation, the Revolving Loans and the Term Loans, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to a Lender, and to perform Borrower's duties under the Loan Documents.

"Operating Documents" are, for any Person, such Person's formation documents, as certified with the Secretary of State of such Person's state of formation on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"Other Connection Taxes" are, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its

obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" are all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Overadvance" is defined in Section 2.2 .

"Patents" are all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, reexaminations, extensions and continuations-in-part of the same.

"Payment" is all checks, wire transfers and other items of payment received by a Lender (including proceeds of Accounts and payment of the Obligations in full) for credit to Borrower's outstanding Credit Extensions or, if the balance of the Credit Extensions has been reduced to zero, for credit to its deposit accounts.

"Perfection Certificate" is defined in Section 5.1 .

"Permitted Indebtedness" is:

(a) Borrower's Indebtedness to Lenders under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) unsecured Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness, in an aggregate principal amount not to exceed Five Hundred Thousand Dollars ($500,000), secured by Permitted Liens described in clause (c) of the definition of "Permitted Liens";

(g) Indebtedness under the SVB Agreement in an aggregate principal amount (including any available but undrawn amounts) not to exceed $5,000,000 at any one time outstanding; and

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"Permitted Investments" are:

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate;

(b) (i) Investments consisting of Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Initial Lender;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts in which Initial Lender has a perfected security interest; (e)Investments accepted in connection with Transfers permitted by Section 7.1;

(e) Investments (i) by Borrower in Subsidiaries not to exceed Seven Hundred Fifty Thousand Dollars ($750,000) in the aggregate in any fiscal year and (ii) by Subsidiaries in Borrower;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary; and

(i) the NVvault Patent Monetization Transaction.

"Permitted Licenses are (a) licenses of over-the-counter software that is commercially available to the public, and (b) exclusive and non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided , that, with respect to each such license described in clause (b), (i) no Event of Default has occurred or is continuing at the time of such license; and (ii) the license constitutes an arms-length transaction, the terms of which (v) do not, expressly or constructively, provide for a sale or assignment of any Intellectual Property, (w) include commercial terms, (x) do not permit any sublicensing or other granting of rights or immunities thereunder by the licensee to third parties (other than sublicenses to such licensee's customers in the ordinary course of business that are limited to the sublicense of rights under any Intellectual Property of Borrower or its Subsidiaries solely in connection with the use of any licensed products of the applicable licensee by such customers or products of Borrower or its Subsidiaries resold by such licensee), (y) do not permit the acquirer of any such licensee to exercise rights under such license except with respect to the licensed products of such licensee as the same existed at the time of the acquisition of such licensee (and any reasonably foreseeable new versions of such licensed products), and (z) do not otherwise limit Borrower from licensing or asserting rights under its Intellectual Property to or against third parties that are not a party to such license agreement; provided further that, in the case of any exclusive license, (i) Borrower obtains Initial Lender's written consent prior to entering into any such exclusive license (which

consent shall not be unreasonably withheld), and (ii) any such license is made in connection with a bona fide corporate collaboration or partnership, and is approved by Borrower's (or the applicable Subsidiary's) board of directors, but (a) may be exclusive as to a particular field of use and/or geographic territory outside of the United States; or (b) may be exclusive for a particular field of use within the geographic territory of the United States.

"Permitted Liens" are:

(a) (1) Liens existing on the Effective Date and shown on the Perfection Certificate; (2) Liens arising under this Agreement and the other Loan Documents;

(b) inchoate Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code;

(c) purchase money Liens (including the interests of lessors under capitalized leases): (i) on Equipment (and related software) acquired or held by Borrower incurred for financing the acquisition of the Equipment (and related software) securing no more than Five Hundred Thousand Dollars ($500,000) in the aggregate amount outstanding; or (ii) existing on Equipment (and related software) when acquired; in each case, only if such Lien is confined to such Equipment (and related software) and related improvements, related accessions, related replacements, and the proceeds thereof;

(d) inchoate Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA) provided that they have no priority over any of Initial Lender's Liens;

(e) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(f) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Initial Lender a security interest therein;

(g) Permitted Licenses and non-exclusive license of Intellectual Property granted to third parties in the ordinary course of business, subject to the terms and limitations of the Monetization Side Letter;

(h) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7 ;

(i) Liens securing the obligations under the SVB Agreement permitted to be outstanding under clause (g) of the definition of "Permitted Indebtedness"; and

(j) Liens in favor of other financial institutions (not securing indebtedness for borrowed money owing to such financial institutions) arising in connection with Borrower's deposit and/or securities accounts held at such institutions (if and to the extent permitted under this Agreement), provided that Initial Lender has a perfected security interest in the amounts held in such deposit and/or securities accounts.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"PIK Interest" is defined in Section 2.3(f) .

"PIK Interest Rate" means 4.0% per annum.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"Register" is defined in Section 12.4 .

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made

"Related Parties" are, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Repayment Date" is defined in Section 2.1.5(b) .

"Requirement of Law" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

"Restricted License" is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Initial Lender's right to sell any Collateral.

"Revolving Loans" is defined in Section 2.1.1 (a).

"Revolving Maturity Date" is the earlier of (x) the one year anniversary of the Effective Date (or such later date as may be determined by Initial Lender in its sole discretion) and (y) the date that the outstanding principal amount of the Term Loans are repaid in full.

"SEC" is the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"Securities Account" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"Smart Modular Proceeds" is any consideration received by Borrower in connection with a settlement, license or other agreement or undertaking with Smart Modular Inc., or an award of damages, in connection with any litigation pending between Borrower and Smart Modular Inc. and any related proceedings with Smart Modular Inc.

"Subordinated Debt" is indebtedness incurred by Borrower subordinated to all of Borrower's now or hereafter indebtedness to Initial Lender (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Initial Lender entered into between Initial Lender and the other creditor), on terms acceptable to Initial Lender.

"Subsidiary" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower or Guarantor.

"SVB" is Silicon Valley Bank.

"SVB Agreement" is that certain Loan and Security Agreement dated as of October 31, 2009 between SVB and Borrower, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance therewith, herewith and with the Intercreditor Agreement.

"SVB Loan Documents" are the Loan Documents (as such term is defined in the SVB Agreement).

"Taxes" are all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loans" are defined in Section 2.1.2(b)(i) .

"Trademarks" are any trademark, service mark, trade name and trade dress rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"Transfer" is defined in Section 7.1 .

"U.S. Person" is any Person that is a "United States Person" as defined in Section 770 1(a)(30) of the Internal Revenue Code.

"U.S. Tax Compliance Certificate" is defined in Section 2.7(e)(ii)(B)(3) .

"Warrants" are those certain warrants to purchase stock executed by Borrower in favor of Drawbridge Special Opportunities Fund LP substantially in the form of Exhibit C.

"Warrant Documents" are the Warrants and other related documents, including, as applicable, any investment agreement, executed by Borrower in favor of the Drawbridge Special Opportunities Fund LP.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

NETLIST, INC.

By /s/ Gail Sasaki
Name: Gail Sasaki
Title: Chief Financial Officer

INITIAL LENDER:

DBD CREDIT FUNDING LLC

By:	/s/ Constantine M. Dakolias
Name:	CONSTANTINE M. DAKOLIAS
Title:	PRESIDENT

Signature Page to Loan Security Agreement

EXHIBIT A

The Collateral consists of all of Borrower's right, title and interest in and to all personal property, including without limitation the following:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including, for the avoidance of doubt, Intellectual Property and any and all income or royalties paid or payable in connection with the intellectual property rights identified in the definition thereof (including in connection with the licensing thereof)), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing. Notwithstanding the foregoing, the Collateral shall not include any NVvault Assets.

{END OF EXHIBIT A}

EXHIBIT B

COMPLIANCE CERTIFICATE

TO: [DBD CREDIT FUNDING LLC] Date:
FROM:

The undersigned authorized officer of NETLIST, INC. ("Borrower") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Initial Lender (the "Agreement"), (1) Borrower is in complete compliance for the period ending with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Initial Lender. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

The following intellectual property was registered after the Effective Date (if no registrations, state "None")

Financial Covenant	**Required**	**Actual**	**Complies**
Maintain Liquidity Condition	$ 500,000		Yes No

Exhibit C

Form of Warrant

Exhibit 10.2

CONFIDENTIAL TREATMENT REQUESTED. OMITTED PORTIONS ARE MARKED WITH [*****]
AND HAVE BEEN FILED SEPARATELY WITH THE SEC.

July 18, 2013

Netlist, Inc.
51 Discovery, Suite 150
Irvine, CA 92616
Attn: Gail Sasaki, CFO

Re: Monetization Letter Agreement

Dear Gail:

This Letter Agreement (this " Letter Agreement "), entered into as of July 18, 2013 (the " Effective Date "), sets forth an understanding between Drawbridge Special Opportunities Fund LP (" Drawbridge ") and Netlist, Inc. (" Company ") with respect to the repayment of certain amounts loaned by DBD Credit Funding LLC (" Lender ") to Company under that certain Loan and Security Agreement of even date herewith by and between Lender and Company (the " Loan Agreement "). Any capitalized terms used in this Letter Agreement that are not defined herein shall have the respective definitions ascribed to them in the Loan Agreement. In consideration of the amounts extended under the Loan Agreement and the mutual covenants and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Early Repayment Options and Obligations .

(a) Early Repayment Option A . If the conditions for the Early Repayment Option A Premium are satisfied under the terms of the Loan Agreement, Drawbridge will be entitled to, and Company shall pay to Drawbridge, a five percent (5%) share of Patent Monetization Net Revenue (as defined in Section 2(b)(i) below) recognized by Company (in accordance with its generally applicable accounting principles, consistently applied) during the seven (7) year period after the Effective Date, whether collected before or after the conditions for the Early Repayment Option A Premium are satisfied under the terms of the Loan Agreement (the " Early Repayment Option A Net Revenue Share "); provided , however , that in such case Company will not be obligated to pay Drawbridge the General Net Revenue Share (as defined in Section 2(a) below).

(b) Early Repayment Option B . If (i) Company enters into a settlement, license, or other agreement or undertaking with [*****] in a transaction or series of transactions with [*****], or is awarded damages, in each case with respect to the Company Patent Portfolio (as defined in Section 2(b)(iii) below) in connection with the [*****] and (ii) Company receives one hundred percent (100%) of the proceeds of the settlement, license, or award with respect to the [*****] after the Effective Date, then Company shall pay Drawbridge a share of the [*****] Net Revenues (as defined below) as set forth in the table below (the " Early Repayment Option B Net Revenue Share "). If the conditions for payment of the Early Repayment Option B Net Revenue Share are satisfied as set forth above, Company will not be required to pay to Drawbridge the

Prepayment Premiums, nor will Company be obligated to share with Drawbridge the Early Repayment Option A Net Revenue Share or any General Net Revenue Share.

[*****]	Company Share %	Drawbridge Share %
US$0 - 10 million	65%	35%
US$10 - 20 million	75%	25%
US$20 - 30 million	80%	20%
Above US$30 million	100%	0%

The Early Repayment Option B Net Revenue Share shall be paid on each portion of the [*****] in accordance with the corresponding percentage for such portion of the [*****] such that Company shall pay thirty-five percent (35%) on the first US$10 million, twenty-five percent (25%) on the second US$10 million, twenty percent (20%) on the third US$10 million, and no additional amounts for the portion above US$30 million. By way of example and without limitation, if the [*****] are US$50 million, Company shall pay thirty five percent (35%) on the first US$10 million (for a payment of US$3.5 million), twenty five (25%) on the second US$10 million (for a payment of US$2.5 million), twenty percent (20%) on the third US$10 million (for a payment of US$2 million), and no additional amounts for the portion above US$30 million, for an aggregate Early Repayment Option B Net Revenue Share payment of US$8 million. For purposes of this Letter Agreement (but subject to Section 2(b)(iii)), "[*****]" shall mean the gross, aggregate settlement or damages amount (including lump sum amounts, whether paid on a one-time basis or installments, together with any royalties or other monetary consideration) actually paid to Company or its Subsidiaries (or its or their permitted successors or assigns) in consideration of any settlement of, or award of damages in, the [*****] or any license agreement, covenant not to sue, or other immunity with respect to the Company Patent Portfolio (in whole or in part) entered into with [*****] in resolution of the [*****], less (A) actual, reasonable legal fees and expenses (including fees payable on a contingency basis) and actual court costs paid or payable by Company or its Subsidiaries in connection with the [*****] and/or the settlement or other resolution thereof, provided that such legal fees and expenses shall be capped at forty percent (40%) of the gross, aggregate settlement or damages amount, and (B) Other Costs.

2. General Net Revenue Share .

(a) General Net Revenue Share Commitment . If neither the conditions for the Early Repayment Option A Net Revenue Share are satisfied (under the terms of the Loan Agreement) nor the conditions for the Early Repayment Option B Net Revenue Share are satisfied (as set forth in Section 1(b) above), Drawbridge will be entitled to, and Company shall pay to Drawbridge, a share of the Patent Monetization Net Revenues (as defined in Section 2(b)(i) below) that are recognized by Company (in accordance with its generally applicable accounting principles, consistently applied) during the seven (7) year period after the Effective Date, in the amounts set forth below (the " General Net Revenue Share ").

Patent Monetization Net Revenues	Netlist Share %	Drawbridge Share %
US$0 - 10 million	65%	35%
US$10 - 20 million	75%	25%
US$20 - 30 million	80%	20%
Above US$30 million	87%	13%

The General Net Revenue Share shall be paid on each portion of the Patent Monetization Net Revenues in accordance with the corresponding percentage for such portion of the Patent Monetization Net Revenue such that Company shall pay thirty-five percent (35%) on the first US$10 million of Patent Monetization Net Revenues, twenty-five (25%) on the second US$10 million of Patent Monetization Net Revenues, twenty percent (20%) on the third US$10 million of Patent Monetization Net Revenues, and thirteen percent (13%) on all additional amounts of Patent Monetization Net Revenues above $30 million in the aggregate.

(b) Certain Defined Terms .

(i) Subject to Section (iii) , " Patent Monetization Net Revenues " means the gross, aggregate amounts (whether characterized as settlement payments, license fees, royalties, damages, or otherwise) actually paid to Company or its Subsidiaries (or its or their permitted successors or assigns) in connection with any assertion of, agreement not to assert, license of, or grant of other immunity with respect to, the Company Patent Portfolio (in whole or in part) either (A) in consideration of the grant of a license or covenant not sue, or other immunity with respect to the Company Patent Portfolio, or (B) as a damages award with respect to such assertion of the Company Patent Portfolio, less (y) actual legal fees and expenses (including fees payable on a contingency basis) and actual court costs paid or payable by Company or its Subsidiaries in connection with any such assertion and/or grant of a license or covenant not to sue, or other immunity with respect to the Company Patent Portfolio (including the preparation, discussion, negotiation, or entering into of any agreement in connection therewith, and the preparation of any such assertion, and the defense of any counterclaims, challenges, review procedures, and other proceedings pertaining to the Company Patent Portfolio, in each case to the extent arising in connection with the applicable assertion and/or grant of a license, covenant not to sue, or other immunity), provided that such legal fees and expenses shall be capped at forty percent (40%) of such gross, aggregate amounts paid to Company or its Subsidiaries, and (z) Other Costs.

(ii) Notwithstanding anything to the contrary herein, "Patent Monetization Net Revenues" and "[*****]" do not include (A) any and all proceeds from the sale or other divestiture of, or the licensing of or other transactions with respect to, the NVvault Assets (as defined in Section 2(b)(v) below), (B) any consideration received by the Company in connection with a settlement, license, or other agreement or undertaking with [*****], or an award

of damages, in connection with any litigation currently pending between the Company and [*****] and any related proceedings with or initiated by [*****], (C) any consideration received by Company or its Subsidiaries with respect to intellectual property or assets of Company or its Subsidiaries other than the Company Patent Portfolio, (D) amounts received by Company or its Subsidiaries as debt, equity, or other financing that are not paid or granted to Company or its Subsidiaries in consideration of a grant of a license or covenant not sue, or other immunity with respect to the Company Patent Portfolio, or (E) any consideration received by Company or its Subsidiaries for non-exclusive licenses or other non-exclusive rights under the Company Patent Portfolio granted in the ordinary course of business in connection with the sale or provision of products or services of Company or its Subsidiaries or in connection with joint development or similar projects in support of the Company's ordinary course business operations.

(iii) If Company or any of its Subsidiaries receives publicly-traded stock of a third party in consideration of the grant of a license or covenant not sue, or other immunity with respect to the Company Patent Portfolio in lieu of or in addition to, any [*****] or Patent Monetization Net Revenues in connection with any settlement, license, award, or other agreement or undertaking with respect to the Company Patent Portfolio, then the [*****] or the Patent Monetization Net Revenues, as the case may be, shall include the cash market value of such publicly traded stock (together with any monetary consideration paid), such value being determined by the closing stock price on the day prior to which Company's payment of the respective share is due hereunder. With respect to any receipt of such publicly-traded stock of a third party, such cash market value shall be applied to the [*****] or Patent Monetization Net Revenues, as the case may be, for the first revenue share payment payable by Company to Drawbridge hereunder after such publicly-traded stock was received by the Company in connection with the applicable monetization event. For the avoidance of doubt, [*****] or Patent Monetization Net Revenues shall not include any other non-monetary consideration in consideration of the grant of a license or covenant not sue, or other immunity with respect to the Company Patent Portfolio, including, without limitation, equities or ownership interests other than publicly-traded stock, intellectual property licenses or covenants not to sue granted to Company, or assignment of intellectual property to Company.

(iv) " Company Patent Portfolio " means any and all patents and patent applications owned by Company or its Subsidiaries or exclusively licensed to Company or its Subsidiaries (in a manner such that Company has standing to sue under those patents in its own name and retain the proceeds of such suit), whether owned, issuing, applied for, licensed, or acquired before or after the Effective Date, together with (in each case if owned by or exclusively licensed to Company or its Subsidiaries) any and all (i) continuations, continuations in part, divisionals, reissues, or reexaminations of any of the foregoing, (ii) present or future United States patents claiming common priority in whole or in part with any of the foregoing, and (iii) all foreign patents and/or applications for patents that are, or in the future become, counterparts of, or claim priority in whole or in part to, any

of the foregoing. Notwithstanding the foregoing, for the avoidance of doubt, "Company Patent Portfolio" shall in no event include (A) patents or patent applications of any third party that may consummate an Acquisition of Company, (B) patents issued or applied for after the consummation of an Acquisition of the Company, (excluding, but only if there is no Revenue Share Termination pursuant to Section 3(a): (1) any patent issuing on a patent application that was included in the Company Patent Portfolio prior to the date of consummation of such Acquisition, (2) continuations, continuations in part, divisionals, reissues, or reexaminations of any patent or patent application that was included in the Company Patent Portfolio prior to the date of consummation of such Acquisition, (3) future United States patents claiming common priority in whole or in part with any patent or patent application included in the preceding (1) or (2) or that was included in the Company Patent Portfolio prior to the date of consummation of such Acquisition, and (4) all foreign patents and/or applications for patents that are, or in the future become, counterparts of, or claim priority in whole or in part to, any patent or patent application included in the preceding (1), (2) or (3) or that was included in the Company Patent Portfolio prior to the date of consummation of such Acquisition) and (C) NVvault Assets.

(v) " NVvault Assets " means (a) the patents and patent applications listed in Schedule 1 hereto, together with any and all (i) continuations, continuations in part, divisionals, reissues, or reexaminations of any of the foregoing, (ii) present or future United States patents claiming common priority in whole or in part with any of the foregoing, and (iii) all foreign patents and/or applications for patents that are, or in the future become, counterparts of, or claim priority in whole or in part to, any of the foregoing.

(vi) " Other Costs " means (A) all reasonable and actual legal fees, filing fees, maintenance fees, annuities, and other reasonable and actual costs and expenses paid or required to be paid by Company or its Subsidiaries after the Effective Date in connection with the prosecution, maintenance, and defense of any patents or patent applications within the Company Patent Portfolio (including in connection with oppositions, reexaminations, supplemental examinations, and other review procedures such as ex parte reexamination, inter partes review, post grant review, and covered business method (CBM) review), (B) reasonable and actual legal fees and reasonable and actual other costs and expenses paid or required to be paid by Company or its Subsidiaries in connection with the enforcement of any agreement, undertaking, commitment or court order that would generate [*****] or Patent Monetization Net Revenues and the collection thereof, and (C) reasonable and actual costs of acquisition (and related reasonable and actual legal fees and reasonable and actual expenses) of patents and patent applications included in the Company Patent Portfolio that are acquired by or licensed to Company or its Subsidiaries after the Effective Date. For purposes of calculating and allocating Other Costs with respect to any [*****] or Patent Monetization Net Revenues, (x) the foregoing categories of costs shall only be applied to reduce any [*****] or Patent Monetization Net Revenues to the extent that the patents or patent applications to which the Other Costs relate are asserted

or licensed (or the subject of a covenant not to assert or other immunity) in the matter or transaction giving rise to the [*****] or Patent Monetization Net Revenues, (y) if any particular portion of Other Costs is applied to reduce gross amounts received under a particular monetization event, the same portion of Other Costs shall not be applied again to reduce gross amounts received in connection with a future monetization event (*i.e.* , no double counting), and (z) the maximum amount of Other Costs in the category set forth in subpart (C) of the preceding sentence (the " Acquisition Costs ") that Company shall be entitled to set off with respect to any particular monetization event shall be twenty percent (20%) of the aggregate amount of such Acquisition Costs; provided that the remaining portion of Acquisition Costs may be set off in future monetization events (at a rate of twenty percent (20%) per monetization event).

(vii) " Acquisition " means the direct or indirect acquisition by a third party of a controlling interest in Company or any Subsidiary of Company that holds the Company Patent Portfolio or into which the Company Patent Portfolio is transferred or otherwise of Company or any such Subsidiary (by way of merger, consolidation, acquisition of stock or assets, or otherwise).

3. Sales and Acquisitions .

(a) Acquisition . If, during the term of this Letter Agreement, [*****] or any of its Affiliates consummates an Acquisition, then if the Acquisition closes within [*****] after the Effective Date and Company repays all of the Term Loans, the parties shall treat such Acquisition as if the Early Repayment Option B Net Revenue Share conditions have been met, and an imputed [*****] of US $[*****] shall apply (regardless of the purchase price), such that Company shall make payment to Drawbridge of Early Repayment Option B Net Revenue Share of US $[*****] on the date of consummation of such Acquisition. If, during the term of this Letter Agreement, any party other than [*****] or any of its Affiliates consummates an Acquisition or if, during the term of this Letter Agreement but after the [*****] after the Effective Date, [*****] or any of its Affiliates consummates an Acquisition, then (i) on the date of consummation of such Acquisition, Company shall repay all of the Term Loans in full, and (ii) the parties shall treat such Acquisition as an event leading to Patent Monetization Net Revenues and that portion of such Acquisition purchase price that is attributable to the Company Patent Portfolio shall constitute Patent Monetization Net Revenues for purposes of Section 1(a) or Section 2(a) , as applicable, provided that in no event shall the aggregate Early Repayment Option A Net Revenue Share or the General Net Revenue Share, as applicable, on account of the aggregate Patent Monetization Net Revenues attributable to such Acquisition and any prior Divestitures (as defined in Section 3(b) below) exceed an amount equal to the total, aggregate amount of all Term Loans drawn by Company under the Loan Agreement prior to the date of consummation of such Acquisition. The parties shall agree upon the portion of any Acquisition purchase price attributable to the Company Patent Portfolio promptly after signing but prior to closing of the applicable Acquisition; provided that if the parties are unable to agree upon the portion of any Acquisition purchase price attributable to the Company Patent Portfolio, then the parties shall submit the matter to a qualified, independent, third-party

appraiser mutually agreed upon by the parties (and the costs and expenses of which shall be borne equally by the parties) for valuation, which valuation shall be completed prior to the closing date of such Acquisition, and such appraiser's decision shall be final and binding on the parties. Subject to the foregoing, effective upon consummation of any Acquisition as set forth in this Section 3(a), any Early Repayment Option A Revenue Share, Early Repayment Option B Revenue Share, and General Net Revenue Share obligations shall terminate ("Revenue Share Termination"); provided that, notwithstanding the foregoing, (i) Drawbridge shall be entitled to retain all Early Repayment Option A Net Revenue Share or General Net Revenue Share paid prior to the date of consummation of such Acquisition, and (ii) Company shall continue to make payments to Drawbridge of Early Repayment Option A Net Revenue Share or General Net Revenue Share in accordance with Section 4(b) or Section 4(d), as applicable, for Patent Monetization Net Revenues recognized by Company prior to the date of consummation of such Acquisition but not received by Company as of such date or for which Company has not yet made payment to Drawbridge of the corresponding Early Repayment Option A Net Revenue Share or General Net Revenue Share prior to the date of consummation of the Acquisition.

(b) Partial Sales. If, during the term of this Letter Agreement, Company or any of its Subsidiaries consummates a sale or divestiture of any of Company's or its Subsidiaries' business (other than with respect to the NVvault Assets) that includes any portion of the Company Patent Portfolio in a transaction that is not an Acquisition (other than standalone sales of patents and/or patent applications, which shall be addressed as set forth in Section 3(c)) ("Divestiture"), then the parties shall treat such Divestiture as an event leading to Patent Monetization Net Revenues and that portion of such Divestiture purchase price that is attributable to both (i) any portion of the Company Patent Portfolio that is divested, and (ii) any license granted by Company or any of its Subsidiaries to the acquirer of such business under the portion of the Company Patent Portfolio that is retained by Company or any such Subsidiary (but only to the extent such license extends beyond the operation, including manufacture and sales of products, of the divested business), shall constitute Patent Monetization Net Revenues for purposes of Section 1(a) or Section 2(a), as applicable, provided that in no event shall the aggregate Early Repayment Option A Net Revenue Share or the General Net Revenue Share, as applicable, on account of the aggregate Patent Monetization Net Revenues attributable to all such Divestitures exceed an amount equal to the total, aggregate amount of all Term Loans drawn by Company under the Loan Agreement prior to the date of consummation of such Acquisition. If the parties are unable to agree upon the portion of any purchase price in connection with such Divestiture that is attributable to the Company Patent Portfolio and any such license, then the parties shall submit the matter to a qualified, independent, third-party appraiser mutually agreed upon by the parties (and the costs and expenses of which shall be borne equally by the parties) for valuation, and such appraiser's decision shall be final and binding on the parties.

(c) Patent Sales. In the event of a sale by Company or any of its Subsidiaries of any patents or patent applications within the Company Patent Portfolio, the proceeds received by Company or its Subsidiaries in consideration of such sale (less the costs specified in Section 2(b)(i)(y) and Section 2(b)(i)(z)) shall constitute Patent Monetization Net Revenues for purposes of Section 1(a) or Section 2(a), as applicable.

4. Payment of Premiums and Revenue Share Amounts.

(a) Prepayment Premiums. If Company meets the conditions for payment of a Prepayment Premium, Company shall pay to Lender the applicable Prepayment Premium together with its payoff of the Term Loans under the Loan Agreement.

(b) Early Repayment Option A Net Revenue Share. If the conditions for Early Repayment Option A are satisfied in accordance with the terms of the Loan Agreement, (i) Company shall pay to Lender the applicable Prepayment Premiums together with its payoff of the Term Loans under the Loan Agreement, and (ii) Company shall, within fifteen (15) days of the end of each calendar quarter during the seven (7) year period after the Effective Date and any calendar quarter thereafter in which Company or its Subsidiaries actually receives Patent Monetization Net Revenues that were recognized by Company (in accordance with its generally applicable accounting principles, consistently applied) during such seven (7) year period (A) provide to Drawbridge a report detailing the applicable Patent Monetization Net Revenues actually received by Company and its Subsidiaries in such calendar quarter, the itemized amounts used to calculate the same, and the corresponding Early Repayment Option A Net Revenue Share, and (B) pay to Drawbridge the applicable amount of such Early Repayment Option A Net Revenue Share for such calendar quarter, provided that Early Repayment Option A Net Revenue Share shall be payable only on such Patent Monetization Net Revenues actually received by Company and its Subsidiaries in such calendar quarter.

(c) Early Repayment Option B Net Revenue Share. If the conditions for the Early Repayment Option B Net Revenue Share are satisfied in accordance with Section 1(b) above, Company shall, within fifteen (15) days of the occurrence thereof (i) provide to Lender a report detailing the [*****], the itemized amounts used to calculate the same, and the corresponding Early Repayment Option B Net Revenue Share, and (ii) pay to Lender the Early Repayment Option B Net Revenue Share.

(d) General Net Revenue Share. If neither the conditions for the Early Repayment Option A Net Revenue Share are satisfied (under the terms of the Loan Agreement) nor the conditions for the Early Repayment Option B Net Revenue Share are satisfied in accordance with Section 1(b) above, Company shall, within fifteen (15) days of the end of each calendar quarter during the seven (7) year period after the Effective Date and any calendar quarter thereafter in which Company or its Subsidiaries actually receives Patent Monetization Net Revenues that were recognized by Company (in accordance with its generally applicable accounting principles, consistently applied) during such seven (7) year period, (i) provide to Lender a report detailing the applicable Patent Monetization Net Revenues actually received by Company and its Subsidiaries in such calendar quarter, the itemized amounts used to calculate the same, and the corresponding General Net Revenue Share, and (ii) pay to Lender the applicable amount of such General Net Revenue Share for such calendar quarter provided that General Net Revenue Share shall be payable only on such Patent Monetization Net Revenues actually received by Company and its Subsidiaries in such calendar quarter.

(e) Means of Payment. Company shall make all payments due to Drawbridge hereunder by wire transfer of immediately available funds to the following bank account of Drawbridge:

[*****]

(f) Late Payments. Any payments made hereunder after the due date for payment specified hereunder shall bear interest at the rate of five percent (5%) per annum (or at the highest rate permitted by applicable law, if lower).

5. Books and Records; Review.

(a) Record Keeping. Company shall keep and maintain, or cause to be kept and maintained, at all times books of account and records adequate to correctly reflect the calculation of Early Repayment Option A Net Revenue Share, [*****], Early Repayment Option B Net Revenue Share, Patent Monetization Net Revenues, and General Net Revenue Share hereunder, including copies of agreements and commitments with third parties in connection with the same, in each case as applicable in light of the applicable payment obligations of Company hereunder. Company shall provide to Drawbridge's designee reasonable access, as set forth in Section 5(b), to such books and records relating or pertaining to the calculation of the foregoing for purposes of confirmation of such amounts.

(b) Audit. Drawbridge shall have the right, at its sole expense, at any time during the term of this Letter Agreement (and for a period of twenty-four (24) months after the conclusion of the term of this Letter Agreement), to review and inspect the books, records, and agreements of Company and its Subsidiaries relating or pertaining to the calculation of Early Repayment Option A Net Revenue Share, [*****], Early Repayment Option B Net Revenue Share, Patent Monetization Net Revenues, and General Net Revenue Share hereunder (in each case, as applicable in light of the applicable payment obligations of Company hereunder) for the purpose of confirming the amounts paid and payable hereunder. Such review shall be conducted no more frequently than once in any twelve (12) month period, and only by an independent nationally recognized third party accounting firm, and shall take place during normal business hours and on at least five (5) business days prior written notice given by Drawbridge to Company. The third-party auditor conducting any review hereunder shall execute a confidentiality agreement with Company on terms that are substantially similar to those in Section 7(a) of this Letter Agreement (but permitting such auditor to share the applicable information related to amounts paid or payable and any errors or discrepancies in connection therewith identified in the course of its review with Drawbridge).

(c) Audit Results. If any audit conducted hereunder correctly reveals any underpayment of amounts due from Company to Drawbridge hereunder, (i) Company shall make payment of all underpayment amounts to Drawbridge within fifteen (15) days

of receipt of notice thereof from Drawbridge, and (ii) if the amount of underpayment is five percent (5%) or greater of the amount that should have been paid hereunder for the audited period, Company shall, together with the payment of the underpayment amount, reimburse Drawbridge for its reasonable, out-of-pocket costs incurred in connection with such audit and Drawbridge shall, notwithstanding the limitations set forth in Section 5(b) , have the right to conduct up to two (2) additional audits in the following twelve (12) month period.

6. Covenants .

(a) Disclosure of Third Party Agreements . Company shall, promptly (but in any event within five (5) days) after (i) entering into a settlement or other agreement with respect to the [*****], or (ii) entering into any other agreement, undertaking or commitment that results in or that will (with the passage of time or the satisfaction of any other condition) result in the payment of any Patent Monetization Net Revenues, provide notice thereof to Drawbridge, together with the gross, aggregate settlement or payment payable to Company or its Subsidiaries in connection therewith.

(b) Restrictions on Third Party Agreements . During the term, Company shall not enter into any agreement, undertaking or commitment that would generate [*****] or Patent Monetization Net Revenues that structure any of the same in a manner intended to frustrate the purposes of this Letter Agreement and Company's obligation to make payments of [*****] or Patent Monetization Net Revenues revenue share amounts to Drawbridge hereunder. In addition, Company shall not enter into any agreement, undertaking or commitment that would generate [*****] or Patent Monetization Net Revenues that restrict disclosure of the terms of the same (including financial terms) to Drawbridge or its advisors on a confidential basis hereunder.

(c) Enforcement of Payment Rights; Partial Payments or Recoveries . Company shall use commercially reasonable efforts to enforce all of its rights to payment under any agreement, undertaking, commitment or court order that would generate [*****] or Patent Monetization Net Revenues to ensure that all amounts payable thereunder are paid in full and in a timely manner in accordance with the terms of the applicable agreement. If Company receives only partial payment of amounts due and owing in connection with any such agreement, undertaking, commitment, or court order, the Early Repayment Option A Net Revenue Share, the Early Repayment Option B Net Revenue Share, or the General Net Revenue Share formula (as applicable) shall be applied to the partial payment amounts comprising [*****] or Patent Monetization Net Revenues (as applicable) and any subsequent payments if and when received by Company.

(d) Prohibited Encumbrances and Dispositions of Revenues . Company shall not pledge, encumber, assign or transfer any portion of the [*****] or Patent Monetization Net Revenues that is payable to Drawbridge until Company makes payment to Drawbridge of the Early Repayment Option B Net Revenue Share, Early Repayment Option B Net Revenue Share, or General Net Revenue Share, as applicable.

(e) Protection and Enforcement of Company Patent Portfolio. Company shall prosecute, protect, defend and maintain the Company Patent Portfolio in a reasonable manner consistent with its past practice. Company shall use commercially reasonable efforts during the term of this Letter Agreement to enforce and seek opportunities to monetize its Company Patent Portfolio so as to generate [*****] and Patent Monetization Net Revenues, provided that Company shall be under no obligation to pursue any such opportunities that Company does not deem to be in Company's best interest in Company's reasonable business judgment. Company shall not allow any patent or patent application within the Company Patent Portfolio to lapse (other than expiration of patent rights at the end of their statutory terms) or to be abandoned, forfeited, or dedicated to the public without first providing notice thereof to Drawbridge, in which case Company shall, after providing such notice to Drawbridge and at Drawbridge' request, assign such patent or patent application of the Company Patent Portfolio to Drawbridge or its designee.

(f) After-Applied for and After-Acquired Patents. From and after the Effective Date, Company shall provide written notice to Drawbridge of any application filed by Company or any of its Subsidiaries in the United States Patent and Trademark Office for a patent or of any issued or applied for patent acquired by Company or any of its Subsidiaries, in each case within thirty (30) days after Drawbridge's request for such information.

(g) Drawbridge Cooperation. Drawbridge shall cooperate with Company as reasonably requested by Company in connection with the enforcement of the Company Patent Portfolio, including in connection with any action brought by Company thereunder; provided that in no circumstances shall Drawbridge be required hereunder to join any action for infringement of the Company Patent Portfolio as a named party or otherwise.

7. Confidentiality.

(a) Duty of Confidentiality. Except to the extent otherwise agreed in writing, each party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as provided for in this Letter Agreement (or in connection with any enforcement of the terms hereof), (i) the existence of this Letter Agreement or the terms or conditions hereof, or (ii) any other confidential or proprietary information or materials provided by, or made available for audit by, the other party hereunder, including with respect to Early Repayment Option A Net Revenue Share, [*****], Early Repayment Option B Net Revenue Share, Patent Monetization Net Revenues, and General Net Revenue Share (collectively, "Confidential Information").

(b) Exceptions. The obligations of confidentiality and non-use set forth in Section 7(a) above shall not apply to any portion of the Confidential Information of a party that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the other party; (ii) became generally available to the public or was otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving party in breach of this Letter Agreement; or

(iii) was disclosed to a party, other than under an obligation of confidentiality, by a third party (other than any auditor) who had no obligation to the disclosing party not to disclose such information to others.

(c) Permitted Disclosures. Notwithstanding the restrictions of Section 7(a) above, either party may disclose Confidential Information of the other party that is required to be disclosed in compliance with applicable laws or order by a court or other governmental authority having competent jurisdiction; provided, that, if a party is required to make any such disclosure of any Confidential Information of the disclosing party, such party will give reasonable advance written notice to such disclosing party of such disclosure requirement and if requested by the disclosing party, shall (at the disclosing party's cost) use its reasonable efforts to secure confidential treatment of such Confidential Information required to be disclosed and will in no event disclose more Confidential Information than it in good faith believes is required to be disclosed. Furthermore, notwithstanding the foregoing or the restrictions of Section 7(a) above, (i) each party shall be entitled to (A) use the Confidential Information disclosed hereunder in connection with enforcing its rights under this Letter Agreement, and (B) disclose any Confidential Information to its advisors and attorneys for purposes of advising such party in connection with this Letter Agreement and that are under a duty of confidentiality, and (ii) Drawbridge may share Confidential Information with a potential assignee of its rights hereunder so long as such assignee executes a confidentiality agreement with confidentiality obligations substantially similar to those contained herein, and (iii) Company may disclose Confidential Information, with obligations of confidentiality comparable to those contained herein, to a third party or its legal or financial advisors in connection with a proposed merger, acquisition, spin-off, financing, or similar transaction of Company or its Subsidiaries involving such third party.

8. Term and Termination.

(a) Term of Letter Agreement. This Letter Agreement shall be in effect for a period from the Effective Date until (i) if the conditions for the Early Repayment Option B Net Revenue Share are satisfied in accordance with Section 1(b) above, the date of payment in full of the Early Repayment Option B Net Revenue Share, or (ii) in all other cases, the date that is seven (7) years after the Effective Date. The earlier expiration or termination of the Loan Agreement shall have no effect on the term and effectiveness of this Letter Agreement, which shall remain in full force in effect in accordance with its terms notwithstanding any such expiration or termination of the Loan Agreement.

(b) No Right of Termination; Remedies. This Letter Agreement shall be terminable only upon mutual agreement of the parties hereto. In no other circumstances, including in the case of a breach of this Letter Agreement, shall either party have a right to terminate this Letter Agreement. Company acknowledges and agrees that the foregoing restriction on termination is reasonable and appropriate in light of the loans extended by Drawbridge to Company under the Loan Agreement and is a necessary and valuable inducement for Drawbridge to enter into this Letter Agreement and the Loan Agreement, and that Drawbridge would not have entered into the Loan Agreement and this Letter Agreement without such restriction on termination. Upon any breach of this

Letter Agreement by a party, the other party's only remedies shall be: (i) to seek injunctive relief to enjoin the breaching party from committing such breach; (ii) to seek specific performance of the breaching party's obligations hereunder, and (iii) to seek damages hereunder in connection with such breach.

(c) Survival. Any payment obligations of Company hereunder accruing before the date of expiration of this Letter Agreement shall survive the expiration of the term of this Letter Agreement. In addition, any other terms of this Letter Agreement that have a specific period of survival or that, by their nature, would survive the expiration of the term hereof, shall survive expiration of the term of this Letter Agreement. Without limiting the foregoing, the following provisions of this Letter Agreement shall survive the expiration of the term hereof: Section 3 (with respect to payment obligations accruing prior to expiration of the term); Section 5 (as provided therein); this Section 8(c); and Section 9.

9. Notices.

All notices, consents, requests, approvals, demands, or other communication by any party to this Letter Agreement must be in writing and shall be deemed to have been validly served, given, or delivered: (i) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (ii) upon transmission, when sent by electronic mail or facsimile transmission; (iii) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (iv) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or email address indicated below. Drawbridge or Company may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 9.

If to Company: Netlist, Inc.
51 Discovery, Suite 150
Irvine, CA 92618
Attn: Gail Sasaki, CFO
Email: gsasaki@netlist.com

If to Drawbridge: DBD Credit Funding LLC
c/o Fortress Credit Corp.
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
Attention: Constantine M. Dakolias

with a copy to:

Fortress Credit Corp.
One Market Plaza
Spear Tower, 42nd Floor
San Francisco, CA 94105
Attention: James K. Noble III

with a copy to:

Kirkland & Ellis LLP
333 S. Hope St.
Los Angeles, CA 90071
Attention: David Nemecek
Telephone: 213-680-8111
Telecopier: 213-808-8107
Email: david.nemecek@kirkland.com

10. Choice of Law, Venue, Jury Trial Waiver and Judicial Reference .

(a) Choice of Law; Venue . This Letter Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York without regard to principles of conflicts of law. Company and Drawbridge each submit to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; provided , however , that nothing in this Letter Agreement shall be deemed to operate to preclude either party from bringing suit or taking other legal action in any other jurisdiction to seek equitable relief (including specific performance), or to enforce a judgment or other court order in its favor. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each party hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to it at the address set forth in, or subsequently provided by it in accordance with, Section 9 of this Letter Agreement and that service so made shall be deemed completed upon the earlier to occur of its actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

(b) WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS LETTER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE

FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS LETTER AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.

(c) WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the other party, or its Related Parties in any way relating to this Letter Agreement or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

11. Miscellaneous.

(a) Successors and Assigns. This Letter Agreement binds and is for the benefit of the successors and permitted assigns of each party. Company may not assign this Letter Agreement, or its rights and obligations under this Letter Agreement, in whole or in part, without Drawbridge's prior written consent (which may be granted or withheld in Drawbridge's discretion). Drawbridge has the right, without the consent of or notice to Company, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Drawbridge's rights and benefits under this Letter Agreement.

(b) Time of Essence; Injunctive Relief. Time is of the essence for the performance of all obligations in this Letter Agreement. Each party recognizes that, in the event it fails to perform, observe or discharge any of its obligations or liabilities under this Letter Agreement, any remedy of law may prove to be inadequate relief to the other party. Therefore, each party agrees that the other party, at the its option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

(c) Indemnification. Company agrees to indemnify, defend and hold Drawbridge and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Drawbridge (each, an "Indemnified Person") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "Claims") claimed or asserted by any other party in connection with the transactions contemplated by this Letter Agreement; and (ii) all losses or expenses in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions contemplated by this Letter Agreement between Drawbridge

and Company (including reasonable attorneys' fees and expenses), except for Claims and/or losses determined by a court of competent jurisdiction by a final and non-appealable judgment to have been directly caused by (A) such Indemnified Person's gross negligence or willful misconduct or (B) a material breach of such Indemnified Person's obligations under this Letter Agreement which did not involve the actions or omissions of Company or any Affiliate of Company.

(d) Severability of Provisions. Each provision of this Letter Agreement is severable from every other provision in determining the enforceability of any provision.

(e) Amendments in Writing; Waiver; Integration. No purported amendment or modification of the Letter Agreement, or waiver, discharge or termination of any obligation under this Letter Agreement, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on this Letter Agreement. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. This Letter Agreement and the other Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Letter Agreement merge into this Letter Agreement or the other Loan Documents. The rights, remedies, covenants, and obligations set forth in this Letter Agreement and the other Loan Documents are intended to be cumulative and complimentary, and nothing in any other Loan Document shall be deemed to limit any right, remedy, covenant or obligation arising under this Letter Agreement. In the event of any perceived conflict or ambiguity between any term or condition of this Letter Agreement, on the one hand, and any term or condition of the Loan Agreement, on the other hand, the documents shall be interpreted in a manner so as to give full force and effect to both sets of terms and conditions to the greatest extent possible and in all cases in a complimentary manner.

(f) Counterparts. This Letter Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

(g) Attorneys' Fees, Costs and Expenses. Except as expressly set forth herein to the contrary, any action taken by Company under or with respect to this Letter Agreement, even if required under any Loan Document or at the request of Drawbridge, shall be at the expense of Company, and neither Lender nor Drawbridge shall be required under any Loan Document to reimburse Company or any Affiliate of Company therefor.

(h) Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in this Letter Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be

of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

(i) Captions. The headings used in this Letter Agreement are for convenience only and shall not affect the interpretation of this Letter Agreement.

(j) Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Letter Agreement. In cases of uncertainty this Letter Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

(k) Relationship. The relationship of the parties to this Letter Agreement is determined solely by the provisions of this Letter Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

(l) Third Parties. Nothing in this Letter Agreement, whether express or implied, is intended to: (i) confer any benefits, rights or remedies under or by reason of this Letter Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (ii) relieve or discharge the obligation or liability of any person not an express party to this Letter Agreement; or (iii) give any person not an express party to this Letter Agreement any right of subrogation or action against any party to this Letter Agreement.

(m) Reversal of Payments. To the extent Company makes a payment or payments to Drawbridge which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other applicable law or equitable cause, then, to the extent such payment or proceeds are actually repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by Drawbridge.

(n) Certain Tax Matters. The parties acknowledge and agree that the Loans, the monetization revenue sharing arrangements under this Letter Agreement and Warrants are part of an "investment unit" within the meaning of Code Section 1273(c)(2). Notwithstanding anything to the contrary contained herein or in any other agreement, each party further acknowledges and agrees that for United States federal, state and local income tax purposes, (i) the aggregate fair market value of the (A) Warrants being issued to or purchased by Drawbridge or its Affiliates, (B) the monetization revenue sharing arrangements under this Letter Agreement being issued to or purchased by Drawbridge or its Affiliates and (ii) the aggregate "issue price" of the Loans, for purposes of Code Section 1273(b), will, in each case, be determined after the Effective Date by Drawbridge in good faith and the Company agrees to use such fair market values and issue price for U.S. federal income tax purposes with respect to the aforementioned transactions. The

parties agree to file all United States federal, state and local income tax returns consistent with the foregoing fair market values and issue price.

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IN WITNESS WHEREOF, the parties hereto have executed this Letter Agreement effective as of the date set forth above.

Very truly yours,

DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LP
a Delaware limited partnership

By: Drawbridge Special Opportunities GP LLC,
its general partner

By: ______________________________

Name: ______________________________

Its: ______________________________

Agreed and Accepted
as of the date first written above:

NETLIST, INC.
a Delaware corporation

By: ______________________________

Name: ______________________________

Its: ______________________________

Signature Page to Monetization Letter Agreement

CONFIDENTIAL TREATMENT REQUESTED. OMITTED PORTIONS ARE MARKED WITH [*****]
AND HAVE BEEN FILED SEPARATELY WITH THE SEC.

Schedule 1
NVvault Assets

Title	Registration/ Application Number	Registration/ Application Date
NON-VOLATILE MEMORY MODULE	60/941,586	01-Jun-2007
NON-VOLATILE MEMORY MODULE	12/131,873	02-Jun-2008
HIGH DENSITY DIMMS	61/512,871	28-Jul-2011
METHOD OF USING STANDARD FLASH CONTROLLERS TO IMPLEMENT FLASH RAID STORAGE FUNCTIONALITY	61/538,775	23-Sept-2011
DATA TRANSFER SCHEME FOR NON-VOLATILE MEMORY UPDATE	13/536,173	28-Jun-2012
FLASH-DRAM HYBRID MEMORY MODULE	13/559,476	26-Jul-2012
FLASH-DRAM HYBRID MEMORY MODULE	PCT/US12/48750	28-Jul-2012
NON-VOLATILE MEMORY MODULE	8,301,833	30-Oct-2012
ISOLATION SWITCHING FOR BACKUP MEMORY	13/905,048	29-May-2013
REDUNDANT BACKUP USING NON-VOLATILE MEMORY	13/625,563	24-Sep-2012
ISOLATION SWITCHING FOR BACKUP OF REGISTERED MEMORY	13/905,053	29-May-2013
HYBRID MEMORY SYSTEM WITH CONFIGURABLE ERROR THRESHOLD PARAMETERS	61/798,956	15-Mar-2013
A METHOD TO ACCESS INCOMPLETE BACKUPS FOR HYBRID MEMORY SYSTEMS	61/799,271	15-Mar-2013
A METHOD FOR DETERMINING HOW MUCH DATA WAS SAVED IN THE EVENT OF A BACKUP FAILURE IN A HYBRID MEMORY SYSTEM	61/799,556	15-Mar-2013
FLEXIBLE NON-VOLATILE MEMORY BACKUP	61/833848	11-Jun-2013

Exhibit 10.3

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Agreement") is entered into as of July 18, 2013 by and between DBD CREDIT FUNDING LLC ("Secured Party"), on the one hand, and NETLIST, INC., a Delaware corporation ("Debtor"), on the other hand.

RECITALS

A. Secured Party and Debtor are entering into that certain Loan and Security Agreement, dated as of an Effective Date on or about the date hereof (as amended, restated supplemented, or otherwise modified from time to time, the "Loan Agreement"), pursuant to which Secured Party has agreed to make certain advances of money and to extend certain financial accommodations (collectively, the "Loans"), subject to the terms and conditions set forth therein. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement.

B. Pursuant to the terms of the Loan Agreement, Debtor has granted to Secured Party security interests in all of Debtor's right, title and interest, whether presently existing or hereafter acquired, in, to all intellectual property and all other Collateral.

NOW, THEREFORE, as collateral security for the payment and performance when due of all of the Obligations, each Debtor hereby grants, represents, warrants, covenants and agrees as follows:

AGREEMENT

1. Grant of Security Interest. To secure all of the Obligations, each Debtor grants and pledges to Secured Party a security interest in all of such Debtor's right, title and interest in, to and under its intellectual property, including without limitation the following:

(a) All present and future United States ***registered*** copyrights and copyright registrations, including, without limitation, the registered copyrights, maskworks, software, computer programs and other works of authorship subject to United States copyright protection listed in Exhibit A to this Agreement (and including all of the exclusive rights afforded a copyright registrant in the United States under 37 U.S.C. §106 and any exclusive rights which may in the future arise by act of Congress or otherwise) and all present and future applications for copyright registrations (including applications for copyright registrations of derivative works and compilations) (collectively, the "Registered Copyrights"), and any and all royalties, payments, and other amounts payable to Debtor in connection with the Registered Copyrights, together with all renewals and extensions of the Registered Copyrights, the right to recover for all past, present, and future infringements of the Registered Copyrights, and all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating the Registered Copyrights, and all other rights of every kind whatsoever accruing thereunder or pertaining thereto.

(b) All present and future copyrights, maskworks, software, computer programs and other works of authorship subject to (or capable of becoming subject to) United States copyright protection which are not registered in the United States Copyright Office (the

"Unregistered Copyrights"), whether now owned or hereafter acquired, and any and all royalties, payments, and other amounts payable to Debtor in connection with the Unregistered Copyrights, together with all renewals and extensions of the Unregistered Copyrights, the right to recover for all past, present, and future infringements of the Unregistered Copyrights, and all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating the Unregistered Copyrights, and all other rights of every kind whatsoever accruing thereunder or pertaining thereto. The Registered Copyrights and the Unregistered Copyrights collectively are referred to herein as the "Copyrights."

(c) All right, title and interest in and to any and all present and future license agreements with respect to the Copyrights.

(d) All present and future accounts, accounts receivable, royalties, and other rights to payment arising from, in connection with or relating to the Copyrights.

(e) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(f) All trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Debtor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(g) Any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the rights identified above;

(h) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(i) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(j) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing, and all income or royalties paid or payable in connection with any of the foregoing (including in connection with the licensing thereof) and proceeds of infringement suits, and all rights corresponding to the foregoing throughout the world and all re-issues, divisions continuations, renewals, extensions and continuations-in-part of the foregoing.

2. Loan Agreement. The security interests hereunder are granted in conjunction with the security interests granted to Secured Party under the Loan Agreement. The rights and remedies of Secured Party with respect to the security interests granted hereby are in addition to those set forth in the Loan Agreement and the other Loan Documents, and those which are now

or hereafter available to Secured Party as a matter of law or equity. Each right, power and remedy of Secured Party provided for herein or in the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Secured Party of any one or more of the rights, powers or remedies provided for in this Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including Secured Party, of any or all other rights, powers or remedies.

3. Covenants and Warranties. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor shall undertake all commercially reasonable measures to cause its employees, agents and independent contractors to assign to Debtor all rights of authorship to any copyrighted material in which Debtor has or may subsequently acquire any right or interest.

(b) Debtor shall promptly advise Secured Party of any Trademark, Patent or Registered Copyright not specified in this Agreement, which is hereafter acquired by Debtor.

(c) Section 6.11 of the Loan Agreement hereby is incorporated herein as though fully set forth herein, *mutatis mutandis* .

4. General. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys fees, costs and disbursements. This Agreement may be amended only by a written instrument signed by both parties hereto. To the extent that any provision of this Agreement conflicts with any provision of the Loan Agreement, the provision giving Secured Party greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Secured Party under the Loan Agreement. This Agreement, the Loan Agreement, and the other Loan Documents comprise the entire agreement of the parties with respect to the matters addressed in this Agreement. This Agreement shall be governed by the laws of the State of New York, without regard for choice of law provisions. Debtor and Secured Party consent to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Secured Party from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Secured Party. Debtor hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Debtor at the address set forth in the Loan Agreement and that service so made shall be deemed completed upon the earlier to occur of Debtor's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

5. <u>WAIVER OF RIGHT TO JURY TRIAL; JUDICIAL REFERENCE</u>. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, Debtor irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against Secured Party, or any Related Party of Secured Party in any way relating to this Agreement or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against Debtor or its properties in the courts of any jurisdiction.

[remainder of page intentionally left blank; signature page immediately follows]

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

Address of Debtor:	Debtor:
NETLIST, INC. 51 Discovery, Suite 150 Irvine, CA 92618 Attn: Gail Sasaki, CFO Fax: 949.435.0031 Email: gsasaki@netlist.com	NETLIST, INC. By: /s/ Gail Sasaki Name: Gail Sasaki Title: Chief Financial Officer

[Signature Page to IP Security Agreement]

Address of Secured Party:

1345 Avenue of the Americas, 46th Floor

New York, NY 10105

Secured Party:

DBD CREDIT FUNDING LLC

By: /s/ Constantine M. Dakolias

Name: CONSTANTINE M. DAKOLIAS

Title: PRESIDENT

[Signature Page to IP Security Agreement]

EXHIBIT A

REGISTERED COPYRIGHTS
(including copyrights that are the subject of an application for registration)

Title	Registration/ Application Number	Registration/ Application Date
NONE		

EXHIBIT B

PATENTS

Title	Patent No./ Application Number	Issue/ Application Date
ARRANGEMENT OF INTEGRATED CIRCUITS IN A MEMORY MODULE	6,751,113	15-Jun-2004
ARRANGEMENT OF INTEGRATED CIRCUITS IN A MEMORY MODULE	6,873,534	29-Mar-2005
ARRANGEMENT OF INTEGRATED CIRCUITS IN A MEMORY MODULE	6,930,903	16-Aug-2005
ARRANGEMENT OF INTEGRATED CIRCUITS IN A MEMORY MODULE	6,930,900	16-Aug-2005
HIGH DENSITY MEMORY MODULE USING STACKED PRINTED CIRCUIT BOARDS	7,254,036	7-Aug-2007
HIGH DENSITY MEMORY MODULE USING STACKED PRINTED CIRCUIT BOARDS	7,375,970	20-May-2008
CIRCUIT CARD WITH FLEXIBLE CONNECTION FOR MEMORY MODULE WITH HEAT SPREADER	7,442,050	28-Oct-2008
HIGH DENSITY MODULE HAVING AT LEAST TWO SUBSTRATES AND AT LEAST ONE THERMALLY CONDUCTIVE LAYER THEREBETWEEN	7,630,202	8-Dec-2009
CIRCUIT WITH FLEXIBLE PORTION	7,811,097	12-Oct-2010
MODULE HAVING AT LEAST TWO SURFACES AND AT LEAST ONE THERMALLY CONDUCTIVE LAYER THEREBETWEEN	7,839,645	23-Nov-2010
CIRCUIT WITH FLEXIBLE PORTION	8,033,836	11-Oct-2011
CIRCUIT WITH FLEXIBLE PORTION	8,287,291	16-Oct-2012
MODULE HAVING AT LEAST TWO SURFACES AND AT LEAST ONE THERMALLY CONDUCTIVE LAYER THEREBETWEEN	8,345,427	1-Jan-2013
MODULE HAVING AT LEAST TWO SURFACES AND AT LEAST ONE THERMALLY CONDUCTIVE LAYER THEREBETWEEN	13/731,014	29-Dec-2012
CIRCUIT WITH FLEXIBLE PORTION	13/653254	16-Oct-2012
MEMORY MODULE WITH FLEXIBLE ELECTRICAL CONDUITS AND ELECTRICAL CONNECTORS EXTENDING THROUGH HEAT SPREADER (thin flex)	13/921,159	18-Jun-2013
A Multi-Rank Memory Module	61/682,249	11-Aug-2012
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8,001,434	16-Aug-2011
CIRCUIT PROVIDING LOAD ISOLATION AND NOISE REDUCTION	8,154,901	10-Apr-2012

Title	Patent No./ Application Number	Issue/ Application Date
SYSTEMS AND METHODS FOR REFRESHING A MEMORY MODULE	8,264,903	11-Sep-2012
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8,359,501	22-Jan-2013
SYSTEMS AND METHODS FOR HANDSHAKING WITH A MEMORY MODULE	8,489,837	16-Jul-2013
CIRCUIT PROVIDING LOAD ISOLATION AND NOISE REDUCTION	13/412243	5-Mar-2012
APPARATUS AND METHOD FOR SELF-TEST IN A MULTI-RANK MEMORY MODULE	13/745,790	19-Jan-2013
SYSTEMS AND METHODS FOR REFRESHING A MEMORY MODULE	13/584679	13-Aug-2012
METHOD AND APPARATUS FOR OPTIMIZING DRIVER LOAD IN A MEMORY PACKAGE	13/288850	3-Nov-2011
METHOD OF RESOLVING INTEROPERABILITY ISSUE AMONG MULTIPLE TYPES OF DUAL IN-LINE MEMORY MODULES IN THE SAME MEMORY SUBSYSTEM	13/411,344	2-Mar-2012
MEMORY MODULE WITH DISTRIBUTED DATA BUFFERS AND METHOD OF OPERATION	61/676,883	17-Jul-2012
CIRCUIT FOR MEMORY MODULE	13/28708 1	1-Nov-2011
SYSTEM AND METHOD UTILIZING DISTRIBUTED BYTE-WISE BUFFERS ON A MEMORY MODULE	99,123,030	13-Jul-2010
ARCHITECTURE FOR MEMORY MODULE WITH PACKAGES OF THREE-DIMENSIONAL STACKED (3DS) MEMORY CHIPS	201080039043.0	12-Mar-12
ARCHITECTURE FOR MEMORY MODULE WITH PACKAGES OF THREE-DIMENSIONAL STACKED (3DS) MEMORY CHIPS	10730021.2	7-Feb-12
ARCHITECTURE FOR MEMORY MODULE WITH PACKAGES OF THREE-DIMENSIONAL STACKED (3DS) MEMORY CHIPS	2012-520662	13-Jan-12
ARCHITECTURE FOR MEMORY MODULE WITH PACKAGES OF THREE-DIMENSIONAL STACKED (3DS) MEMORY CHIPS	2012-7004038	15-Feb-12
HIGH-DENSITY MEMORY MODULE UTILIZING LOW- DENSITY MEMORY COMPONENTS	7,286,436	23-Oct-2007
MEMORY MODULE DECODER	7,289,386	30-Oct-2007
MEMORY MODULE WITH A CIRCUIT PROVIDING LOAD ISOLATION AND MEMORY DOMAIN TRANSLATION	7,532,537	12-May-2009
MEMORY MODULE DECODER	7,619,912	17-Nov-2009
MEMORY MODULE WITH A CIRCUIT PROVIDING LOAD ISOLATION AND MEMORY DOMAIN	7,636,274	22-Dec-2009

Title	Patent No./ Application Number	Issue/ Application Date
TRANSLATION		
MEMORY MODULE DECODER	7,864,627	4-Jan-2011
CIRCUIT PROVIDING LOAD ISOLATION AND MEMORY DOMAIN TRANSLATION FOR MEMORY MODULE	7,881,150	1-Feb-2011
CIRCUIT PROVIDING LOAD ISOLATION AND MEMORY DOMAIN TRANSLATION FOR MEMORY MODULE	7,916,574	29-Mar-2011
CIRCUIT PROVIDING LOAD ISOLATION AND MEMORY DOMAIN TRANSLATION FOR MEMORY MODULE	8,072,837	6-Dec-2011
CIRCUIT FOR PROVIDING CHIP-SELECT SIGNALS TO A PLURALITY OF RANKS OF A DDR MEMORY MODULE	8,081,535	20-Dec-2011
CIRCUIT FOR PROVIDING CHIP-SELECT SIGNALS TO A PLURALITY OF RANKS OF A DDR MEMORY MODULE	8,081,537	20-Dec-2011
CIRCUIT FOR MEMORY MODULE	8,081,536	20-Dec-2011
SYSTEM AND METHOD OF INCREASING ADDRESSABLE MEMORY SPACE ON A MEMORY BOARD	12/504131	16-Jul-2009
CIRCUIT FOR PROVIDING CHIP-SELECT SIGNALS TO A PLURALITY OF RANKS OF A DDR MEMORY MODULE	13/287042	1-Nov-2011
SYSTEM AND METHOD UTILIZING DISTRIBUTED BYTE-WISE BUFFERS ON A MEMORY MODULE	12/761 179	15-Apr-2010
HEAT SPREADER FOR ELECTRONIC MODULES	7,619,893	17-Nov-2009
HEAT SPREADER FOR MEMORY MODULES	7,839,643	23-Nov-2010
HEAT DISSIPATION FOR ELECTRONIC MODULES	8,018,723	13-Sep-2011
MEMORY MODULE HAVING THERMAL CONDUITS	8,488,325	16-Jul-2013
HEAT DISSIPATION FOR ELECTRONIC MODULES	13/205477	8-Aug-2011

EXHIBIT C

TRADEMARKS

Mark	Registration/ Serial Number	Registration/ Application Date
N (DESIGN)	3502943	September 16, 2008
NETLIST	3496959	September 2, 2008
NETLIST	3624509	May 19, 2009
N (DESIGN)	3624502	May 19, 2009
HYPERCLOUD	4120406	April 3, 2012
HyperCloud, the low latency memory	85739482	September 26, 2012
HYPERSTREAM	4018527	August 30, 2011

Exhibit 10.4

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

NETLIST, INC.

STOCK PURCHASE WARRANT

Date of Issuance: July 18, 2013 Certificate No. W-1

FOR VALUE RECEIVED, Netlist, Inc., a Delaware corporation (the " Company "), hereby grants to Drawbridge Special Opportunities Fund LP, a Delaware limited partnership or its registered assigns (the " Registered Holder ") the right (this " Warrant ") to purchase from the Company 1,648,351 shares of Warrant Stock at a price per share of $1.00 (as adjusted from time to time hereunder, the " Exercise Price "). Certain capitalized terms used herein are defined in Section 5 . The amount and kind of securities obtainable pursuant to the rights granted hereunder and the purchase price for such securities are subject to adjustment pursuant to the provisions contained in this Warrant.

This Warrant is subject to the following provisions:

Section 1. Exercise of Warrant .

1A. Exercise Period . Subject to Section 9 , the Registered Holder may exercise, in whole or in part (but not as to a fractional share of Warrant Stock), the purchase rights represented by this Warrant at any time and from time to time after the Date of Issuance to and including the seventh (7th) anniversary thereof (the " Exercise Period ").

1B. Exercise Procedure .

(i) This Warrant shall be deemed to have been exercised (in whole or in part) when the Company has received all of the following items (as the case may be from time to time, the " Exercise Time "):

(a) a completed Exercise Agreement, as described in Section 1 C , executed by the Person exercising all or part of the purchase rights represented by this Warrant (the " Purchaser ");

(b) this Warrant (delivery of which shall be subject to the Company's obligations with respect to delivery of a new Warrant as provided in Section 1B(iii)) ;

(c) if this Warrant is not registered in the name of the Purchaser, an Assignment or Assignments in the form of Exhibit A attached hereto (each, an " Assignment ") evidencing the assignment of this Warrant to the Purchaser, in which case the Registered Holder shall have complied with the provisions set forth in Section 7 ; and

(d) wire transfer of immediately available funds or a check payable to the Company in an amount equal to the product of the Exercise Price multiplied by the number of shares of Warrant Stock being purchased upon such exercise (the " Aggregate Exercise Price ").

(ii) As an alternative to the exercise of this Warrant as provided in Section 1B(i) , the holder of this Warrant may exchange all or part of the purchase rights represented by this Warrant by surrendering this Warrant to the Company, together with a written notice to the Company that the holder is exchanging the Warrant (or a portion thereof) for an aggregate number of shares of Warrant Stock specified in the notice, from which the Company shall withhold and not issue to the holder a number of shares of Warrant Stock with an aggregate Market Price equal to the Aggregate Exercise Price of the number of shares of Warrant Stock specified in such notice (and such withheld shares shall no longer be issuable under this Warrant).

(iii) The Company shall cause the Transfer Agent to deliver to the Purchaser, within five (5) Business Days after the date of each Exercise Time, certificates for shares of Warrant Stock purchased upon exercise of this Warrant; provided , that no failure or delay in such delivery shall affect the issuance of any Warrant Stock as provided in Section 1B(iv) . Unless this Warrant has expired or all of the purchase rights represented hereby have been exercised, the Company shall prepare a new Warrant, substantially identical hereto, representing the rights formerly represented by this Warrant which have not expired or been exercised and shall, within such five (5) Business Day period, deliver such new Warrant to the Person designated for delivery in the Exercise Agreement.

(iv) The Warrant Stock issuable upon the exercise of this Warrant shall be deemed to have been issued to the Purchaser at the Exercise Time, and the Purchaser shall be deemed for all purposes to have become the record holder of such Warrant Stock at the Exercise Time.

(v) The issuance of certificates for shares of Warrant Stock upon exercise of this Warrant shall be made without charge to the Registered Holder or the Purchaser for any issuance tax in respect thereof or other cost incurred by the Company in connection with such exercise and the related issuance of shares of Warrant Stock. Each share of Warrant Stock issuable upon exercise of this Warrant shall, upon payment of the Exercise Price therefor, be fully paid and nonassessable and free from all liens and charges with respect to the issuance thereof.

(vi) The Company shall not close its books against the transfer of this Warrant or of any share of Warrant Stock issued or issuable upon the exercise of this Warrant in any manner which interferes with the timely exercise of this Warrant. The Company shall from time to time take all such action as may be necessary to assure that the par value per share of the unissued Warrant Stock acquirable upon exercise of this Warrant is at all times equal to or less than the Exercise Price then in effect.

(vii) The Company shall assist and cooperate with any Registered Holder or Purchaser required to make any filings with, or obtain any approvals of, any Governmental Authority prior to or in connection with any exercise of this Warrant (including making any filings required to be made by the Company).

(viii) Notwithstanding any other provision hereof, if an exercise of any portion of this Warrant is to be made in connection with a registered public offering or the sale of the Company, the exercise of any portion of this Warrant may, at the election of the holder hereof, be conditioned upon the consummation of the public offering or the sale of the Company in which case such exercise shall not be deemed to be effective until the consummation of such transaction.

(ix) The Company shall at all times reserve and keep available out of its authorized but unissued shares of Warrant Stock solely for the purpose of issuance upon the exercise of the Warrants, such number of shares of Warrant Stock issuable upon the exercise of all outstanding Warrants. The Company shall take all such actions as may be necessary to assure that all such shares of Warrant Stock may be so issued without violation by the Company of any applicable law or governmental regulation or any requirements of the Financial Industry Regulatory Authority (FINRA), the National Association of Securities Dealers Automated Quotation (" NASDAQ ") or any domestic securities exchange upon which shares of Warrant Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Company upon each such issuance). The Company shall not take any action which would cause the number of authorized but unissued shares of Warrant Stock to be less than the number of such shares required to be reserved hereunder for issuance upon exercise of the Warrants.

(x) The Company shall not take any action which would materially conflict with or frustrate the purpose of this Warrant or any adjustment or exercise thereof, including that the Company shall not adopt any rights plan or similar agreement unless the potential adverse effects of any such plan or agreement expressly exclude the Registered Holder, any Purchaser, their respective Affiliates and their respective ownership (beneficial or of record) of any securities acquirable pursuant to this Warrant.

1C. Exercise Agreement . Upon any exercise of this Warrant, the Exercise Agreement shall be substantially in the form of Exhibit B attached hereto, except that if any shares of Warrant Stock are not to be issued in the name of the Person in whose name this Warrant is registered, the Exercise Agreement shall also state the name of the Person to whom the certificates for such shares of Warrant Stock are to be issued, and if the number of shares of Warrant Stock to be issued does not include all the shares of Warrant Stock purchasable hereunder, it shall also state the name of the Person(s) to whom a new Warrant(s) for the unexercised portion of the rights hereunder is to be delivered. Such Exercise Agreement shall be dated the actual date of execution thereof.

1D. Fractional Shares . If a fractional share of Warrant Stock would, but for the provisions of Section 1 A , be issuable upon exercise of the rights represented by this Warrant, the Company shall, within five (5) Business Days after the date of the Exercise Time, deliver to the Purchaser a check payable to the Purchaser in lieu of such fractional share in an amount equal to the difference between the Market Price of such fractional share as of the date of the Exercise Time and the Exercise Price of such fractional share.

Section 2. Adjustment of Exercise Price and Number of Shares . The Exercise Price shall be subject to adjustment from time to time as provided in this Section 2 , and the number of shares of Warrant Stock obtainable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this Section 2 .

2A. Subdivision or Combination of Common Stock . If the Company at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of shares of Warrant Stock obtainable upon exercise of this Warrant shall be proportionately increased. If the Company at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the number of shares of Warrant Stock obtainable upon exercise of this Warrant shall be proportionately decreased.

2B. Reorganization, Reclassification, Consolidation, Merger or Sale . Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company’s assets or other transaction, which in each case is effected in such a way that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets (including cash) with respect to or in exchange for Common Stock is referred to herein as “ Organic Change. ” Prior to the consummation of any Organic Change, the Company shall make appropriate provision (in form and substance satisfactory to the Registered Holders of Warrants representing a majority of the shares of Warrant Stock obtainable upon exercise of such Warrants (the “ Majority Holders ”) to insure that each of the Registered Holders of the Warrants shall thereafter have the right to acquire and receive, in lieu of or addition to (as the case may be) the shares of Warrant Stock immediately theretofore acquirable and receivable upon the exercise of such holder’s Warrant, such shares of stock, securities or assets (including cash) as would have been issued or payable in such Organic Change (if the holder had exercised this Warrant immediately prior to such Organic Change) with respect to or in exchange for the number of shares of Warrant Stock immediately theretofore acquirable and receivable upon exercise of such holder’s Warrant had such Organic Change not taken place, including that if the holders of Common Stock are given any choice as to the securities or assets (including cash) to be received in such Organic Change, then the Registered Holders shall be given the same choice in respect thereof. Notwithstanding anything to the contrary, in the event of an Organic Change involving a Person whose common stock is not

traded on a national securities exchange (a " Non-Listed Company ") in which all outstanding shares of Common Stock as of immediately prior to the Organic Change are converted into or exchanged or tendered for stock, securities or assets (other than cash) or the right to receive stock, securities or assets (other than cash) of such Non-Listed Company, the Company (or as applicable, the successor entity) and the purchaser entity shall, at the Registered Holder's election, exercisable at any time prior to, concurrently with, or within 30 days after, the consummation of such Organic Change, purchase this Warrant (or any stock, securities or assets into which this Warrant or the Warrant Stock underlying this Warrant may have been converted or exchanged or for which any of them may have been tendered in such Organic Change) from the Registered Holder by paying to the Holder cash, in immediately available funds payable upon the consummation of such Organic Change (or within 10 days following notice of such election by the Registered Holder in the case of an election delivered after such consummation), in an amount equal to the value thereof reflected by the terms of such Organic Change. In the case of any Organic Change, the Company shall make appropriate provision (in form and substance satisfactory to the Majority Holders) with respect to such holders' rights and interests to insure that the provisions of this Section 2 and Sections 2D and 4 shall thereafter be applicable to the Warrants (including, in the case of any such Organic Change in which the successor entity or purchasing entity is other than the Company, an immediate adjustment of the Exercise Price to the value for the Common Stock reflected by the terms of such Organic Change and a corresponding immediate adjustment in the number of shares of Warrant Stock acquirable and receivable upon exercise of the Warrants, if the value so reflected is less than the Exercise Price in effect immediately prior to such Organic Change). The Company shall not effect any Organic Change unless prior to the consummation thereof, the successor entity (if other than the Company) and the purchasing entity assume by written instrument (in form and substance satisfactory to the Majority Holders), the obligation to deliver to each such holder such shares of stock, securities or assets (including cash) as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

2C. Notices .

(i) Promptly upon any adjustment of the Exercise Price, the Company shall give written notice thereof to the Registered Holder, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Company shall give written notice to the Registered Holder at least twenty (20) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any *pro rata* subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

(iii) The Company shall also give written notice to the Registered Holders at least twenty (20) days prior to the date on which any Organic Change, dissolution or liquidation shall take place.

2D. Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a " Distribution "), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Registered Holder would have participated therein if the Registered Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

Section 3. Liquidating Dividends. If the Company declares or pays a dividend upon the Common Stock payable otherwise than in cash out of earnings or earned surplus (determined in accordance with generally accepted accounting principles, consistently applied) except for a stock dividend payable in shares of Common Stock (a " Liquidating Dividend "), then the Company shall pay to the Registered Holder of this Warrant at the time of payment thereof the Liquidating Dividend which would have been paid to such Registered Holder on the Warrant Stock had this Warrant been fully exercised immediately prior to the date on which a record is taken for such Liquidating Dividend, or, if no record is taken, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

Section 4. Purchase Rights. If at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property *pro rata* to the record holders of any class of Common Stock (the " Purchase Rights "), then the Registered holder of this Warrant shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Warrant Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

Section 5. Definitions. The following terms have meanings set forth below:

" Affiliate " means, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

" Business Day " means any day that is not a Saturday, Sunday or a day on which banks located in the State of New York are authorized or obligated to close.

" Common Stock " means, collectively, the Company's Common Stock and any capital stock of any class of the Company hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Company.

"Convertible Securities" means any stock or securities (directly or indirectly) convertible into or exchangeable for Common Stock.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Loan Agreement" means that certain Loan and Security Agreement, dated as of date hereof, by and between DBD Credit Funding LLC, a Delaware limited liability company and the Company (as amended, restated supplemented, or otherwise modified from time to time).

"Market Price" means as to any security the volume weighted average (rounded to the nearest cent) of the closing prices of such security's sales on all domestic securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the volume weighted average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the volume weighted average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by Pink OTC Markets, Inc., or any similar successor organization, in each such case averaged over a period of ten (10) days consisting of the day as of which "Market Price" is being determined and the nine (9) consecutive Business Days prior to such day; provided that if such security is listed on any domestic securities exchange or quoted in a domestic over-the-counter market the term "Business Days" as used in this sentence means Business Days on which such exchange is open for trading. If at any time such security is not listed on any domestic securities exchange or quoted in the domestic over-the-counter market, the "Market Price" shall be the fair value thereof determined jointly by the Company and the Majority Holders (without applying any marketability, minority or other discounts); provided that if such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined (without applying any marketability, minority or other discounts) by an appraiser jointly selected by the Company and the Majority Holders. The determination of such appraiser shall be final and binding on the Company and the Registered Holders of the Warrants, and the fees and expenses of such appraiser shall be paid by the Company.

"Options" means any rights or options to subscribe for or purchase Common Stock or Convertible Securities.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

" Subsidiary " means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

" Transfer Agent " means Computershare Trust Company, N.A., the current transfer agent of the Company, with a mailing address of 330 N. Brand Blvd., Ste. 701, Glendale, CA 91203-2149 and a facsimile number of, and any successor transfer agent of the Company.

" Warrant Stock " means the Company's Common Stock, par value $0.001 per share; provided that if there is a change such that the securities issuable upon exercise of the Warrants are issued by an entity other than the Company or there is a change in the type or class of securities so issuable, then the term "Warrant Stock" shall mean one share of the security issuable upon exercise of the Warrants if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

Section 6. No Voting Rights; Limitations of Liability . This Warrant shall not entitle the holder hereof to any voting rights or other rights as a stockholder of the Company. No provision hereof, in the absence of affirmative action by the Registered Holder to purchase Warrant Stock, and no enumeration herein of the rights or privileges of the Registered Holder shall give rise to any liability of such holder for the Exercise Price of Warrant Stock acquirable by exercise hereof or as a stockholder of the Company.

Section 7. Warrant Transferable . Subject to compliance with applicable securities laws and the transfer conditions referred to in the legend endorsed hereon, this Warrant and all rights hereunder are transferable, in whole or in part, without charge to the Registered Holder, upon surrender of this Warrant with a properly executed Assignment (in the form of Exhibit A attached hereto) at the principal office of the Company.

Section 8. Warrant Exchangeable for Different Denominations . This Warrant is exchangeable, upon the surrender hereof by the Registered Holder at the principal office of the Company, for new Warrants of like tenor representing in the aggregate the purchase rights hereunder, and each of such new Warrants shall represent such portion of such rights as is designated by the Registered Holder at the time of such surrender. The date the Company initially issues this Warrant shall be deemed to be the " Date of Issuance " hereof regardless of the number of times new certificates representing the unexpired and unexercised rights formerly represented by this Warrant shall be issued. All Warrants representing portions of the rights hereunder are referred to herein as the " Warrants ."

Section 9. Warrant Vesting.

9A. Solely with respect to the issuance of 329,670 shares of Warrant Stock issuable pursuant to this Warrant (as adjusted from time to time hereunder, the " First Tranche Deferred Warrant Stock "), this Warrant shall not be exercisable unless and until the IP Monetization Milestones (as such term is defined in the Loan Agreement) have been achieved, it being understood that this Section 9A shall cease to be effective, and this Warrant shall become exercisable with respect to all shares of Warrant Stock issuable hereunder, other than the Second Tranche Deferred Warrant Stock (as defined below), immediately and automatically upon achievement of the IP Monetization Milestones. Following such time as the IP Monetization Milestones have been achieved, the Company shall, upon request by the Registered Holder, issue to the Registered Holder, in replacement of this Warrant, a new warrant certificate in form and substance identical to this Warrant, but with this Section 99A having been removed.

9B. Solely with respect to the issuance of 329,670 shares of Warrant Stock issuable pursuant to this Warrant (as adjusted from time to time hereunder, the " Second Tranche Deferred Warrant Stock "), this Warrant shall not be exercisable unless and until the Company borrows any amounts under the IP Monetization Milestone Term Loan (as such term is defined in the Loan Agreement), it being understood that this Section 9 shall cease to be effective, and this Warrant shall become exercisable with respect to all shares of Warrant Stock issuable hereunder, (including the First Tranche Deferred Warrant Stock and the Second Tranche Deferred Warrant Stock), immediately and automatically upon a borrowing by the Company of any amount under the IP Monetization Milestone Term Loan. From and after such time as the Company borrows any amounts under the IP Monetization Milestone Term Loan, the Company shall, upon request by the Registered Holder, issue to the Registered Holder, in replacement of this Warrant, a new warrant certificate in form and substance identical to this Warrant, but with this Section 9 having been removed.

Section 10. Replacement. Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the Registered Holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing this Warrant, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company, or, in the case of any such mutilation upon surrender of such certificate, the Company shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the same rights represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

Section 11. Notices. Except as otherwise expressly provided herein, all notices, demands or other communications referred to in this Warrant shall be in writing and shall be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent to the recipient by confirmed electronic mail or facsimile if delivered prior to 5:00 p.m. local time of the recipient on a Business Day or otherwise on the next Business Day, (iii) one business day after it is sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested, and shall be addressed (a) to the Company, at its principal executive offices and (b) to the Registered Holder of this Warrant, to Drawbridge Special Opportunities Fund LP, 1345

Avenue of the Americas, 46th Floor, New York, New York 10105, Attention: James K. Noble, III - General Counsel, Telephone: (212) 798-6100, Telecopier: (646) 224-8716, Email: dbsoloanops@fortress.com, with a copy (which shall not constitute notice) to Kirkland & Ellis LLP, 333 South Hope Street, Los Angeles, California 90071, Attention: Hamed Meshki, Telephone: (213) 680-8360, Telecopier: (213) 808-8145, Email: hamed.meshki@kirkland.com.

Section 12. Investment Representations. By accepting this Warrant from the Company, Drawbridge Special Opportunities Fund LP represents and warrants to the Company that it (a) is an “accredited investor” as such term is defined in Regulation D promulgated under the Securities Act of 1933, as amended (the “Act”), (b) it is acquiring this Warrant with the present intention of holding this Warrant for purposes of investment and not with a view to the public resale or distribution within the meaning of the Act, and (c) understands that this Warrant and the securities issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Drawbridge Special Opportunities Fund LP’s investment intent as expressed herein.

Section 13. Amendment and Waiver. Except as otherwise provided herein, the provisions of the Warrants may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Majority Holders.

Section 14. Descriptive Headings; Governing Law. The descriptive headings of the several Sections and paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant. The corporation laws of the State of New York shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by the internal law of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

* * * *

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed and attested by its duly authorized officers and to be dated the Date of Issuance hereof.

NETLIST, INC.

By: /s/ Gail Sasaki
Name: Gail Sasaki
Title: CFO

[Signature Page - Netlist Warrant]

EXHIBIT A

ASSIGNMENT

FOR VALUE RECEIVED, hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant (Certificate No. W-) with respect to the number of shares of the Warrant Stock covered thereby set forth below, unto:

Names of Assignee	Address	No. of Shares

[Assignor]

By: ____________________
Name: ____________________
Title: ____________________

EXHIBIT B

EXERCISE AGREEMENT

To: Dated:

The undersigned, pursuant to the provisions set forth in the attached Warrant (Certificate No. W-), hereby agrees to subscribe for the purchase of shares of the Warrant Stock covered by such Warrant and makes payment herewith in full therefor at the price per share provided by such Warrant.

Check one box :

☐ I am attaching a cashier's, personal or certified check, or have arranged for a wire transfer of immediately available funds to the Company, in an amount equal to the Aggregate Exercise Price.

☐ In lieu of paying cash, I have elected to receive such lesser number of shares of Common Stock as determined pursuant to Section 1B(ii) of the attached Warrant.

By: ____________________
Name: ____________________
Title: ____________________

Exhibit 10.5

Subordination Agreement

Creditor(s):	**Borrower(s):**
NETLIST, INC., a Delaware corporation **51 Discovery, Suite 150** **Irvine, CA 92618** **Attn: Gail Sasaki, CFO** **Fax: 949.435.0031** **Email: gsasaki@netlist.com**	**NETLIST, INC., a Delaware corporation**
NETLIST ELECTRONICS (SUZHOU) CO., LTD. **Building A1, EPZ district B,** **#288 Shengpu Road,** **Suzhou Industrial Park,** **China 215121**	
NETLIST HK LIMITED **c/o Reed Smith Richards Butler** **20 th floor, Alexandra House** **18 Chater Road, Central** **Hong Kong**	

Dated as of July 18, 2013

This Subordination Agreement is entered into between DBD CREDIT FUNDING LLC ("Lender"), whose address is 1345 Avenue of the Americas, 46th Floor, New York, NY 10105, and the creditor(s) named above (individually and collectively, and jointly and severally, the "Creditor").

1. Subordination . To induce Lender in its discretion to extend credit to the above-named borrower ("Borrower") pursuant to that Loan and Security Agreement, dated as of an Effective Date on or about the date hereof (as amended, restated supplemented, or otherwise modified from time to time, the "Loan Agreement"), which credit is guarantied by any present or future guarantor of the Obligations ("Guarantor"; the Borrower and the Guarantor are referred to herein, individually and collectively, as the "Obligor"), the Creditor hereby agrees to subordinate and does hereby subordinate payment by the Obligor of any and all indebtedness of the Obligor, now or hereafter incurred, created or evidenced, to the Creditor, however such indebtedness may be hereafter extended, renewed or evidenced (together with all collateral, security and guarantees, if any, for the payment of any such indebtedness) (collectively, the "Junior Debt"), to the payment in full in cash to Lender of any and all present and future indebtedness, liabilities, guarantees and other obligations, of every kind and description (including without limitation any interest, charges and other sums accruing after the filing of a petition by or against Obligor under the Bankruptcy Code (or equivalent statute)), of the Obligor to Lender under or in connection with the Loan Agreement or any other Loan Document (as such term is defined in the Loan Agreement) (collectively, the "Senior Debt"), and the

Creditor agrees not to ask for, demand, sue for, take or receive any payments with respect to all or any part of the Junior Debt or any security therefor, unless and until all of the Senior Debt have been paid and performed in full, except that if no default or event of default and no event which, with notice or passage of time or both, would constitute a default or event of default, has occurred under any documents or instruments evidencing or relating to the Senior Debt, both before and after giving effect to the following payments, then intercompany trading obligations and other regularly scheduled payments with respect to the Junior Debt may be made in the ordinary course of business; provided, further, that non-cash accruals in respect of the Junior Debt may be reflected in the respective books and records of Obligor and Creditor irrespective of the existence of any such default or event of default.

The word “indebtedness” is used herein in its most comprehensive sense and includes without limitation any and all present and future loans, advances, credit, debts, obligations, liabilities, representations, warranties, and guarantees, of any kind and nature, absolute or contingent, liquidated or unliquidated, and individual or joint. Creditor represents and warrants to Lender that the Obligor is now indebted to the Creditor in the amounts set forth on Schedule 1 attached hereto and under the notes and/or documents (if any) described on Schedule 1 attached hereto and that the same is all outstanding indebtedness owing from the Obligor to the Creditor (but the subordination set forth herein shall not be affected by any lack of any such attached Schedule 1).

2. Distribution of Assets . The Creditor further agrees that upon any distribution of the assets or readjustment of the indebtedness of the Obligor whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the Junior Debt, or the application of the assets of the Obligor to the payment or liquidation thereof, Lender shall be entitled to receive payment in full in cash of all of the Senior Debt prior to the payment of all or any part of the Junior Debt, and in order to enable Lender to enforce its rights hereunder in any such action or proceeding, Lender is hereby irrevocably authorized and empowered in its discretion (but without any obligation on Lender’s part) to make and present for and on behalf of the Creditor such proofs of claim against the Obligor on account of the Junior Debt as Lender may deem expedient or proper and to vote such proofs of claim in any such proceeding and to receive and collect any and all dividends or other payments or disbursements made thereon in whatever form the same may be paid or issued and to apply same on account of the Senior Debt. The Creditor further agrees to execute and deliver to Lender such assignments or other instruments as may be required by Lender in order to enable Lender to enforce any and all such claims and to collect any and all dividends or other payments or disbursements which may be made at any time on account of all and any of the Junior Debt.

3. Transfer of Subordinated Debt . The Creditor shall not sell, pledge, assign or otherwise transfer, at any time while this Agreement remains in effect, any rights, claim or interest of any kind in or to any of the Junior Debt, either principal or interest, without first notifying Lender and making such transfer expressly subject to this Subordination Agreement in form and substance satisfactory to Lender. The Creditor represents and warrants to Lender that the Creditor has not sold, pledged, assigned or otherwise transferred any of the Junior Debt, or any interest therein or collateral or security therefor to any other person. The Creditor will concurrently endorse all notes and other written evidence of the Junior Debt with a statement that they are subordinated to the Senior Debt pursuant to the terms of this Agreement, in such form as

Lender shall require, and the Creditor will exhibit the originals of such notes and other written evidence of the Junior Debt to Lender so that Lender can confirm that such endorsement has been made (but no failure to do any of the foregoing shall affect the subordination of the Junior Debt provided for herein, which shall be fully effective upon execution of this Agreement).

4. Lender's Rights . This is a continuing agreement of subordination and Lender may continue, without notice to the Creditor, to extend credit or other accommodation or benefit and loan monies to or for the account of the Obligor in reliance hereon. Lender may at any time, in its discretion, renew or extend the time of payment of all or any Senior Debt, modify the Senior Debt and any terms or provisions thereof or of any agreement relating thereto, waive or release any collateral which may be held therefor at any time, and make and enter into any such agreement or agreements as Lender may deem proper or desirable relating to the Senior Debt, without notice to or further consent from the Creditor and without any manner impairing or affecting this Agreement or any of Lender's rights hereunder. The Creditor waives notice of acceptance hereof, notice of the creation of any Senior Debt, the giving or extension of any credit by Lender to the Obligor, or the taking, waiving or releasing of any security therefor, or the making of any modifications, and the Creditor waives presentment, demand, protest, notice of protest, notice of default, and all other notices to which the Creditor might otherwise be entitled. This Section 4 applies to each Creditor in its capacity as a creditor of the Obligor, and not in such Creditor's direct capacity as an Obligor.

5. Revivor . If, after payment of the Senior Debt, the Obligor thereafter becomes liable to Lender on account of the Senior Debt, or any payment made on the Senior Debt shall for any reason be returned by Lender, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated Senior Debt, without the necessity of any further act or agreement between Lender and the Creditor.

6. General . This Agreement sets forth in full all of the representations and agreements of the parties with respect to the subject matter hereof and supersedes all prior discussions, representations, agreements and understandings between the parties. This Agreement may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by the parties hereto. In the event of any litigation between the parties based upon, arising out of, or in any way relating to this Agreement, the prevailing party shall be entitled to recover all of his costs and expenses (including without limitation attorneys' fees) from the non-prevailing party. The parties agree to cooperate fully with each other and take all further actions and execute all further documents from time to time as may be reasonably necessary to carry out the purposes of this Agreement. This Agreement shall be governed by the laws of the State of New York, without regard for choice of law provisions. Each Creditor and Lender consent to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Lender. Each Creditor hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to a Creditor at the address set forth in the Loan Agreement and that service so made shall be deemed completed upon the

earlier to occur of such Creditor's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid. Each Creditor represents and warrants that all actions on the part of such Creditor, its officers, directors, partners, managers, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of such Creditor hereunder have been taken, and that the execution, delivery and performance of and compliance with this Agreement will not result in any material violation or default of any term of any of its charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc., as applicable). This Agreement shall be binding upon the Creditor and its successors and assigns and shall inure to the benefit of Lender and Lender's successors and assigns.

7. WAIVER OF RIGHT TO JURY TRIAL; JUDICIAL REFERENCE . EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, each Creditor irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against Lender, or any Related Party of Lender in any way relating to this Agreement or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Lender may otherwise have to bring any action or proceeding relating to this Agreement against a Creditor or its properties in the courts of any jurisdiction.

[remainder of column and page intentionally left blank; signature page immediately follows]

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

Creditor:

NETLIST, INC.

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

Creditor:

NETLIST ELECTRONICS (SUZHOU) CO., LTD.

By: /s/ Gail Sasaki
Name: Gail Sasaki
Title: Director

NETLIST HK LIMITED

By: /s/ Gail Sasaki
Name: Gail Sasaki
Title: Director

Lender:

DBD CREDIT FUND ING LLC

By: **/s/ Constantine M. Dakolias**

Name: **CONSTANTINE M. DAKOLIAS**

Title: **PRESIDENT**

Signature Page to Intercompany Subordination Agreement

OBLIGOR'S AGREEMENT

The undersigned Obligor hereby acknowledges receipt of a copy of the foregoing Subordination Agreement and agrees not to pay any Junior Debt, except as provided therein. In the event Obligor breaches this Agreement or any of the provisions of the foregoing Subordination Agreement, Obligor agrees that, in addition to all other rights and remedies Lender has, all of the Senior Debt shall, at Lender's option and without notice or demand, become immediately due and payable, unless Lender expressly agrees in writing to waive such breach. No waiver by Lender of any breach shall be effective unless in writing signed by one of Lender's authorized officers, and no such waiver shall be deemed to extend to or waive any other or subsequent breach. Obligor further agrees that, at any time and from time to time, the foregoing Subordination Agreement may be altered, modified or amended by Lender and the Creditor without notice to Obligor and without further consent by Obligor.

Obligor:

NETLIST, INC.

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

SCHEDULE 1

As of June 29, 2013, Netlist Electronics (Suzhou) Co., Ltd. owed $2,466, 225 to Netlist, Inc.

As of June 29, 2013, Netlist HK Limited owed $0.00 to Netlist, Inc.

AMENDMENT TO LOAN DOCUMENTS

THIS **AMENDMENT TO LOAN DOCUMENTS** (this "Amendment") is entered into as of July 17, 2013, 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. 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. Subject to the terms of Section 8 below and any other conditions precedent set forth below, the Loan Agreement is amended as follows, effective on the date hereof (except where a different effective date is specified below):

2.1 Limited Waiver Regarding TNW Defaults. Borrower has advised Bank that Borrower has failed to comply with the Tangible Net Worth Financial Covenant set forth in Section 6.9(b) of the Loan Agreement for the compliance periods ending October 31, 2012, November 30, 2012, December 31, 2012, January 31, 2013, February 28, 2013, March 31, 2013, April 30, 2013 and May, 31, 2013 (collectively, the "Existing TNW Covenant Defaults"). Borrower has advised Bank that Borrower anticipates failing to comply with the Tangible Net Worth Financial Covenant set forth in Section 6.9(b) of the Loan Agreement for the compliance period ending June 30, 2013 (the "Anticipated Default" and together with the Existing TNW Covenant Defaults, the "TNW Defaults"). Borrower hereby acknowledges the TNW Defaults. Bank and Borrower agree that the Borrower's TNW Defaults are hereby irrevocably waived. It is understood by the parties hereto, however, that such waiver does not constitute a waiver of any other provision or term of the Loan Agreement or any related document, nor an agreement to waive in the future these covenants or any other provision or term of the Loan Agreement or any related document.

2.2 Modification Regarding Availability Due to Deletion of BB Blocked Amount. Section 2.1.1(a) of the Loan Agreement that currently reads as follows:

> (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.

is hereby amended 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.

2.3 Modified Streamline Provision. Section 2.1.1(b) of the Loan Agreement is hereby amended in its entirety to read as follows:

> (b) Streamline Period. [Omitted].

2.4 Deletion of Term Loan Provision. Section 2.1.6 of the Loan Agreement is hereby amended in its entirety to read as follows:

> **2.1.6 Term Loan.** [Omitted].

2.5 Modified Interest Rate. Section 2.3(a) of the Loan Agreement is hereby amended in its entirety to read as follows:

> (a) Interest Rate.
>
> (i) Advances. Subject to Section 2.3(b), the principal amount outstanding under the Revolving Line shall accrue interest at a per annum rate equal to two and three-quarters of one percentage points (2.75%) above the Prime Rate; which interest shall be payable monthly in accordance with Section 2.3(f) below.
>
> (ii) Term Loan. [Omitted].

2.6 **Modified Collateral Monitoring Fee.** Section 2.4(e) of the Loan Agreement is hereby amended in its entirety to read as follows:

(e) Collateral Monitoring Fee . A monthly collateral monitoring fee of $1,500.00, payable in arrears on the last day of each month (prorated for any partial month at the beginning and upon termination of this Agreement); provided , however , for any month during which at all times there are no Credit Extensions outstanding, then such fee shall be $0.00; and

2.7 **Modified Use of Proceeds.** Section 5.10 of the Loan Agreement is hereby amended in its entirety to read as follows:

5.10 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes or to directly pay down any obligations owed Fortress Credit Corp.

2.8 **Modified Submission of Transaction Reports.** Section 6.2(a) of the Loan Agreement is hereby amended in its entirety to read as follows:

(a) a Transaction Report (and any schedules related thereto): (i) when no Credit Extension is outstanding, monthly (within twenty (20) days after the end of each month) and at the time of each request for an Advance; and (ii) at all times when a Credit Extension is outstanding, weekly and at the time of each request for an Advance;

2.9 **Modified Collections.** Section 6.3(c) of the Loan Agreement is hereby amended in its entirety to read as follows:

(c) Collection of Accounts . Until payment in full in cash of all Advances and all other Obligations relating to the Revolving Line (other than inchoate indemnity obligations) and Bank's obligations to make Advances and any other Credit Extensions relating to the Revolving Line have terminated (provided that Borrower's obligation under this sentence shall not end at a time when any Event of Default exists), Borrower shall be a party to a lockbox agreement in such form as Bank may specify in its good faith business judgment (the " **Lockbox Agreement** ") with Bank and a lockbox provider (the " **Lockbox Provider** "). The Lockbox Agreement and Lockbox Provider shall be acceptable to Bank. Borrower shall use the lockbox address as the payment address on all invoices issued by

Borrower and shall direct all its Account Debtors to remit their payments to the lockbox address. The Lockbox Agreement shall provide that the Lockbox Provider shall remit all collections received in the lockbox to Bank. Upon Bank's receipt of such collections, Bank shall apply the same as follows:

(ii) Bank shall apply such proceeds to the outstanding Advances, and if all outstanding Advances have been paid in full, Bank shall deposit the remainder into the operating account of Borrower at Bank that is designated by Borrower; and

(iii) If a Default or Event of Default has occurred and is continuing, without limiting Bank's other rights and remedies, Bank shall have the right to apply such proceeds pursuant to the terms of Section 9.4 hereof.

It is understood and agreed by Borrower that this Section does not impose any affirmative duty on Bank to do any act other than to turn over such amounts. Without limitation on the foregoing, whether or not an Event of Default has occurred and is continuing, Borrower shall hold all payments on, and proceeds of, Accounts that Borrower receives, in trust for Bank, and Borrower shall immediately deliver all such payments and proceeds to Bank in their original form, duly endorsed, to be applied to the Obligations pursuant to the terms of Sections 2.5(b) and 9.4 hereof.

2.10 Modified Tangible Net Worth Financial Covenant. Section 6.9(b) of the Loan Agreement is hereby amended in its entirety to read as follows:

(b) Tangible Net Worth . A Tangible Net Worth of at least the following **("Minimum Tangible Net Worth")** :

(i) For each of the months ending July 31, 2013, August 31, 2013 and September 30, 2013: **$5,000,000** plus (i) 50% of all consideration received after the date hereof for equity securities and subordinated debt of the Borrower, plus (ii) 50% of the Borrower's net income in each fiscal quarter ending after the date hereof; and

(ii) For each of the months ending October 31, 2013, November 30, 2013 and December 31, 2013: **$4,000,000** plus (i) 50% of all consideration received after the date hereof for equity securities and subordinated debt of the Borrower, plus (ii) 50% of the Borrower's net income in each fiscal quarter ending after the date hereof; and

(iii) For the month ending January 31, 2014 and for each month ending thereafter: **$3,000,000** plus (i) 50% of all consideration received after the date hereof for equity securities and subordinated debt of the Borrower, plus (ii) 50% of the Borrower's net income in each fiscal quarter ending after the date hereof.

The anticipated $1,000,000 to be received by Borrower from MidSummer Capital on or about July 15, 2013 for the issuance of equity securities to MidSummer Capital shall not be included in the aforementioned 50% provision. Increases in the Minimum Tangible Net Worth based on consideration received for equity securities and subordinated debt of the Borrower shall be effective as of the end of the month in which such consideration is received, and shall continue effective thereafter. Increases in the Minimum Tangible Net Worth based on net income shall be effective on the last day of the fiscal quarter in which said net income is realized, and shall continue effective thereafter. In no event shall the Minimum Tangible Net Worth be decreased.

2.11 Modified Dispositions Covenant. Section 7.1 of the Loan Agreement is hereby amended by deleting the phrase "and (c) consisting of Permitted Liens and Permitted Investments." and substituting in lieu thereof the phrase "(c) the NVvault Patent Monetization Transaction and (d) consisting of Permitted Liens, Permitted Licenses and Permitted Investments."

2.12 Intercreditor Provision. The following language is hereby added to the Loan Agreement as Section 12.17 and shall read as follows:

12.17 Intercreditor Agreement . Notwithstanding anything herein or in any other Loan Document to the contrary, in the event of any inconsistency between the provisions of this Agreement or any other Loan Document and the provisions of the Intercreditor Agreement with respect to the Collateral or any Lien or security interest required or created hereunder or under any other Loan Documents, or the creation, perfection or priority thereof, or matters related to the delivery of possessory Collateral, or any payment terms, or any rights and remedies with respect to the foregoing, the provisions of the Intercreditor Agreement shall govern and control.

2.13 Modified Definition of BB Blocked Amount. The definition of BB Blocked Amount set forth in Section 13.1 of the Loan Agreement that currently reads as follows:

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

is hereby amended in its entirety to read as follows:

"**BB Blocked Amount**" [Omitted].

2.14 Modified Definition of Borrowing Base. The definition of Borrowing Base set forth in Section 13.1 of the Loan Agreement that currently reads as follows:

"**Borrowing Base**" is (a) 80% (the "**A/R Advance Rate**" and also an "**Advance Rate**") of Eligible Accounts minus (b) the amount of Two Million Dollars ($2,000,000) (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.

is hereby amended 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.

2.15 Modified Definition of Permitted Indebtedness. The definition of Permitted Indebtedness set forth in Section 13.1 of the Loan Agreement is hereby amended by (i) deleting the phrase "(a) through (f)" in the existing clause (g) thereof and substituting in lieu thereof the phrase "(a) through (g)", (ii) renumbering the existing

clause “(g)” to be clause “(h)” and (iii) inserting the following new clause (g) that shall read as follows:

(g) the Fortress Financing; and

2.16 Modified Definition of Permitted Liens. The definition of Permitted Liens set forth in Section 13.1 of the Loan Agreement is hereby amended by (i) inserting the following phrase at the beginning of clause (g) thereof: “(i) Permitted Licenses and (ii) any” and (ii) deleting the “and” at the end of clause (h) thereof, deleting the period at the end of clause (i) thereof and substituting in lieu thereof the phrase “; and” and inserting the new clause (j) at the end thereof that shall read as follows:

(j) the Fortress Security Interest.

2.17 Additional Definitions. Section 13.1 of the Loan Agreement is hereby amended to add following definitions in proper alphanumeric order:

“ **Fortress Financing** ” has the meaning given to such term in the Consent, dated on or about July 17, 2013, by and between Borrower and Bank.

“ **Fortress Security Interest** ” is the Lien securing the Fortress Financing (or any permitted refinancing thereof).

“Intercreditor Agreement” is that certain Intercreditor Agreement dated on or about July 17, 2013 between DBD Credit Funding LLC and Bank, as such document may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“ **NVvault Assets** ” are the patents and patent applications listed in Schedule A hereto, together with any and all (i) continuations, continuations in part, divisionals, reissues, or reexaminations of any of the foregoing, (ii) present or future United States patents claiming common priority in whole or in part with any of the foregoing, and (iii) all foreign patents and/or applications for patents that are, or in the future become, counterparts of, or claim priority in whole or in part to, any of the foregoing.

“ **NVvault Patent Monetization Transaction** ” is any sale or other divestiture of, or the licensing of or other transactions with respect to, the NVvault Assets.

“ **Permitted Licenses** ” are (a) licenses of over-the-counter software that is commercially available to the public, and (b) exclusive and non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided , that, with respect to each such license described in clause

(b), (i) no Event of Default has occurred or is continuing at the time of such license; and (ii) the license constitutes an arms-length transaction, the terms of which (v) do not, expressly or constructively, provide for a sale or assignment or legal transfer of title of any Intellectual Property, (w) include commercially reasonable terms, (x) do not permit any sublicensing or other granting of rights or immunities thereunder by the licensee to third parties (other than sublicenses to such licensee's customers in the ordinary course of business that are limited to the sublicense of rights under any Intellectual Property of Borrower or its Subsidiaries solely in connection with the use of any licensed products of the applicable licensee by such customers or products of Borrower or its Subsidiaries resold by such licensee), (y) do not permit the acquirer of any such licensee to exercise rights under such license except with respect to the licensed products of such licensee as the same existed at the time of the acquisition of such licensee (and any reasonably foreseeable new versions of such licensed products), and (z) do not otherwise limit Borrower from licensing or asserting rights under its Intellectual Property to or against third parties that are not a party to such license agreement; provided further that, in the case of any exclusive license, (i) Borrower obtains Bank's written consent prior to entering into any such exclusive license (which consent shall not be unreasonably withheld), and (ii) any such license is made in connection with a bona fide corporate collaboration or partnership, and is approved by Borrower's (or the applicable Subsidiary's) board of directors, but (a) may be exclusive as to a particular field of use and/or geographic territory outside of the United States; or (b) may be exclusive for a particular field of use within the geographic territory of the United States.

2.18 Deletion of Definition of Streamline Period. The definition of Streamline Period set forth in Section 13.1 of the Loan Agreement is hereby amended in its entirety to read as follows:

"Streamline Period" [Omitted].

2.19 Deletion of Definition of Streamline Requirements. The definition of Streamline Requirements set forth in Section 13.1 of the Loan Agreement is hereby amended in its entirety to read as follows:

"Streamline Requirements" [Omitted].

2.20 Covenant Regarding Notice of Prepayment of Fortress Debt. Borrower covenants and agrees that it shall provide Bank with at least five (5) Business Days' prior written notice of any proposed payment of Borrower's obligations owed to Fortress (as herein defined) other than regularly scheduled payments of principal and interest with respect to any term loan made by Fortress to Borrower.

2.21 Collateral; Exhibit A. Exhibit A to the Loan Agreement is hereby amended by adding the following sentence to the end thereof:

Notwithstanding the foregoing, the Collateral shall not include any NVvault Assets.

2.22 Condition Precedent — Cash Secure Letters of Credit. As a condition precedent to the effectiveness of this Amendment, Borrower shall cash secure all outstanding issued Letters of Credit issued by Bank for the benefit of Borrower in form and substance satisfactory to Bank in its discretion.

2.23 Condition Precedent — Fortress. As a condition precedent to the effectiveness of this Amendment, each of the following shall have occurred:

(a) The proposed financing from DBD Credit Funding LLC ("Fortress") to Borrower, as previously disclosed to Bank in writing, shall have closed and funded;

(b) The Term Loan shall have been indefeasibly paid in full; and

(c) Bank shall have received the Intercreditor Agreement by and between Fortress and Bank, in form and substance satisfactory to Bank in its discretion, duly executed by each of Fortress and Borrower.

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 as of the date hereof (as of the Effective Date with respect to Borrower's certificate of incorporation) 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 . Borrower hereby agree as follows:

5.1 FOR GOOD AND VALUABLE CONSIDERATION , Borrower 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, Borrower 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, Borrower 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 Borrower hereby to fully, finally and forever settle and release all matters, disputes and differences, known or unknown, suspected or unsuspected; accordingly, if Borrower 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, Borrower 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. Borrower 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. Borrower 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 Borrower 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 Borrower regarding any fact relied upon by Borrower in entering into this Amendment.

(b) Borrower 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 Borrower, the contents hereof are known and understood by Borrower, and this Amendment is signed freely, and without duress, by Borrower.

(e) Borrower 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. Borrower 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. **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.

7. **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.

8. **Effectiveness** . This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto and (b) Borrower's payment of an amendment fee in an amount equal to $10,000. The above-mentioned fee shall be fully earned and payable concurrently with the execution and delivery of this Amendment and 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 fees to Borrower's loan account.

[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	______________________	By	______________________
Name	______________________	Name	______________________
Title	______________________	Title	______________________

Schedule A

NVvault Assets

[See Attached]

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.

November 12, 2013

/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.

November 12, 2013

/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 September 28, 2013 (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.

November 12, 2013

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

November 12, 2013

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