

STRATEGIC PRODUCT SUPPLY AND LICENSE AGREEMENT

This Strategic Product Supply and License Agreement (this “Agreement”) is made and entered into as of April 5th 2021 (“Effective Date”) by and between Netlist, Inc., a Delaware Corporation, having its principal place of business at 175 Technology, Suite 150, Irvine, CA 92618 (hereinafter referred to as “Netlist”) and SK hynix Inc., a corporation formed and existing under the laws of the Republic of Korea, having its principal place of business at 2091, Gyeongchung-daero, Bubal-eup, Icheon-si, Gyeonggi-do, Korea (hereinafter referred to as “SK hynix”). (Each of Netlist and SK hynix is referred to individually as a “Party” and collectively as the “Parties”).

Section 1. DEFINITIONS

“**Patents**” means all classes or types of patents, including utility patents, utility models, design patents, as well as continuations, continuations-in-part, divisionals, extensions, renewals, reissues and reexaminations and applications therefor, of all countries or jurisdictions of the world.

“**Licensed Patents**” means Netlist Licensed Patents and SK hynix Licensed Patents, as applicable.

“**Netlist Term-Licensed Patents**” means any and all valid Patents owned or controlled by Netlist or any of its Subsidiaries at any time during the Term License Period excluding the Netlist Perpetual-Licensed Patents.

“**SK hynix Licensed Patents**” means any and all valid Patents owned or controlled by SK hynix or any of its Subsidiaries at any time during the Term License Period.

“**Supply Term**” means a period of five (5) years beginning on the Effective Date.

“**Term License Period**” means, subject to Section 12, a period of five (5) years beginning on the Effective Date plus any Renewal Term.

Section 5. SUPPLY OF PRODUCTS

5.1 Supply by SK hynix. During the Supply Term, subject to the terms set forth in the Product Purchase and Supply Agreement, attached hereto as Appendix B, SK hynix will supply, or cause its Subsidiaries to supply, OEM-grade (or any other grade agreed by the Parties) DRAM and NAND wafers, components, and finished products, as well as associated technical support, to Netlist.

5.2 No Other Restrictions. Nothing in this Agreement shall prevent either Party from making semiconductor components using its own technology and from selling such components to any third party, as long as no Confidential Information or proprietary technology of the other Party is used or referenced in such components or the development or manufacture thereof.

Section 7. GRANT OF PATENT LICENSE

7.1 License to Netlist. SK hynix, on its own behalf and on behalf of its Subsidiaries, hereby grants, and shall grant, to Netlist and its Subsidiaries, for the duration of the Term License Period (subject to Section 12), a paid-up, worldwide, non-exclusive, non-transferable (except as provided in Section 15.1), non-sublicensable license under SK hynix Licensed Patents to make and have made (subject to Section 7.7) Netlist Licensed Products, and to use, sell, offer to sell, import and otherwise transfer or dispose of such Netlist Licensed Products.

7.2 Term License to SK hynix. Subject to the receipt of the Settlement Payment in Section 8, Netlist, on its own behalf and on behalf of its Subsidiaries, hereby grants, and shall grant, to SK hynix and its Subsidiaries, for the duration of the Term License Period (subject to Section 12), a paid-up, worldwide, non-exclusive, non-transferable (except as provided in Section 15.1), non-sublicensable license under Netlist Term-Licensed Patents to make and have made (subject to Section 7.7) SK hynix Licensed Products, and to use, sell, offer to sell, import and otherwise transfer or dispose of such SK hynix Licensed Products.

7.3 Perpetual License to SK hynix. Subject to the receipt of the Settlement Payment, Netlist, on its own behalf and on behalf of its Subsidiaries, hereby grants, and shall grant, to SK hynix and its Subsidiaries a perpetual (subject to Section 12), fully paid-up, worldwide, non-exclusive, non-transferable (except as provided in Section 15.1), non-sublicensable license under Netlist Perpetual-Licensed Patents to make and have made (subject to Section 7.7) SK hynix Licensed Products, and to use, sell, offer to sell, import and otherwise transfer or dispose of such SK hynix Licensed Products.

Section 8. FEES

8.1 Fees. In consideration of the licenses and covenant set forth in this Agreement, SK hynix shall pay to Netlist a payment of Forty Million U.S. Dollars (\$40,000,000 USD) (the