

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

## FORM 10-K

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

For fiscal year ended December 31, 2000

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED)

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

COMMISSION FILE NUMBER: 0-31659

NOVATEL WIRELESS, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(State or other jurisdiction  
or incorporation or organization)

86-0824673  
(I.R.S. Employer  
Identification No.)

9360 TOWNE CENTRE DRIVE, SAN DIEGO, CALIFORNIA  
(Address of principal executive offices)

92121  
(zip code)

Registrant's telephone number, including area code: (858) 320-8800

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:  
COMMON STOCK, PAR VALUE \$.001 PER SHARE

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K .

The number of shares of the Registrant's common stock outstanding as of March 13, 2001 was 54,230,717.

The aggregate market value of the voting common stock held by non-affiliates of the registrant, based on the closing price of the Common Stock on March 13, 2001 as reported by the Nasdaq National Market, was approximately \$105,517,000. For the purposes of this calculation, shares owned by officers, directors (and their affiliates) and 5% or greater shareholders, based on Schedule 13G filings, have been excluded. This exclusion is not intended, nor shall it be deemed, to be an admission that such persons are affiliates of the Registrant. The Registrant has not issued any non-voting stock.

#### DOCUMENTS INCORPORATED BY REFERENCE

The Registrant's Definitive Proxy Statement for the 2001 Annual Meeting of Stockholders (the "Proxy Statement") is incorporated by reference into Part III of this Form 10-K to the extent stated herein.

Certain exhibits filed with the Registrant's prior registration statements on Form S-1.

Portions of the Company's prospectus dated November 15, 2000, and filed with the Securities and Exchange Commission pursuant to Rule 424(b) on November 16, 2000 are incorporated by reference into Part I, Item 4 of this Form 10-K.

## TABLE OF CONTENTS

Part I:	
Item 1. Business.....	1
Item 2. Properties.....	21
Item 3. Legal Proceedings.....	21
Item 4. Submission of Matters to a Vote of Security Holders.....	21
Part II:	
Item 5. Market for Registrant's Common equity and Related Stockholder Matters.....	22
Item 6. Selected Financial Data.....	23
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	24
Item 7A. Quantitative and Qualitative Disclosures about Market Risk .....	30
Item 8. Financial Statements and Supplementary Data.....	30
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.....	30
Part III:	
Item 10. Directors and Executive Officers of the Registrant.....	31
Item 11. Executive Compensation.....	31
Item 12. Security Ownership of Certain Beneficial Owners and Management.....	31
Item 13. Certain Relationships and Related Transactions.....	31
Part IV:	
Item 14. Exhibits, Financial Statement Schedules and reports on Form 8-K.....	32
Exhibit Index.....	32
Signatures.....	34
Schedule II.....	55

As used in this report on Form 10-K, unless the context otherwise requires, the terms "we," "us," "our," "the Company" and "Novatel Wireless" refer to Novatel Wireless Inc., a Delaware corporation and its wholly owned subsidiaries.

## FORWARD LOOKING STATEMENTS

This report contains forward-looking statements based on our current expectations, assumptions, estimates and projections about Novatel Wireless and our industry. These forward-looking statements involve risks and uncertainties. Novatel Wireless' actual results could differ materially from those anticipated in such forward-looking statements as a result of certain factors, as more fully described in this section and elsewhere in this report. For a detailed discussion of these risks and uncertainties, see "Business -- Business Risks and Uncertainties" section of this Form 10-K. Novatel Wireless undertakes no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

## TRADEMARK

The Novatel Wireless logo, Minstrel(R), Minstrel III(TM), Minstrel IIIc(TM), Minstrel V(TM), Minstrel Plus(TM), Minstrel S(TM), Minstrel 540(TM), Merlin(TM), Sage(R), Lancer(TM), Lancer 3W(TM), Contact(R), Expedite(TM), MissionONE(TM) and Viking(TM) are trademarks of Novatel Wireless Minstrel and Sage are registered with the U.S. Patent and Trademark Office. All other brands, products and company names mentioned herein are trademarks of their respective holders

## ITEM 1. BUSINESS

## OVERVIEW

We are a provider of wireless data communications access solutions. We provide wireless data modems and software for use with handheld computing devices and portable personal computers. Our products enable professional and consumers to access enterprise networks and the Internet "anytime, anywhere." We also provide wireless data modems which can be integrated into other devices for a wide range of vertical applications. We also offer provisioning, activation and systems integration services to our customers to facilitate use of our products.

We have a strong history of designing innovative wireless access products. We designed and delivered the first products to enable wireless connectivity for the Palm Family of handheld computing devices. We have successfully developed and are continuing to develop solutions that enable our customers to wirelessly access data utilizing a wide range of mobile computing devices across a broad range of wireless data network technologies. Our current product portfolio includes the following:

- The Minstrel Family of Wireless Handheld Modems, for the Palm Family of handheld computing devices, the Handspring Family of handheld computing devices and the Hewlett-Packard Jornada 500 series Family of handheld computing devices;
- The Merlin Family of Wireless Type II PC Card Modems for portable and desktop PCs;
- The Sage Wireless Modems for portable and desktop PCs;
- The NRM-6812 and Expedite Family of Wireless OEM Modems for custom integration with computers and other devices;
- The Lancer 3W Family of Ruggedized Wireless Modems for vehicle-mounted applications; and
- The Merlin for Ricochet Wireless PC Card for the Metricom 128 kbps Ricochet Network.

Our core modem technology is easily customized to address a broad range of vertical applications. Our customers include wireless telecommunications operators such as Verizon Wireless and Voicestream, as well as wireless data content and service providers such as OmniSky, GoAmerica and Yada Yada. We also have OEM customers such as Hewlett-Packard, @Road and Airlink and we have entered into strategic technology and development relationships within the wireless communications industry with Nortel Networks, Sprint PCS, Intel Corporation, Hewlett-Packard, Metricom, OmniSky, Symbol, VoiceStream and Verizon Wireless. We also sell our products through domestic and international distributors such as Ingram Micro, Brightpoint and Cellcom.

## PRODUCT BENEFITS

## Breadth of Wireless Access Products

Our products enable both handheld computing devices and portable PCs to access the Internet and enterprise networks wirelessly. We also provide wireless modems which enable connections to a broad range of appliances for vertical applications. We are developing additional capabilities for emerging wireless networks in order to afford our customers maximum flexibility in choosing their wireless data access solutions.

## Price Performance Leadership

We have designed our products to provide high levels of performance and functionality at an attractive price to drive widespread adoption among users. We use software solutions where others still use hardware and we build our products around a core common hardware and software platform. As a result, we are able to offer products which present a substantially better value proposition than do other wireless data access products with similar functionality.

## Convenience

Our products provide users with a wireless connection to the Internet and enterprise networks with a focus on ease-of-use and real-time access to e-mail, messaging, online content and critical personal and professional information. We have designed our products to reduce their size and weight without sacrificing performance. For example, our Minstrel modems for handheld computing devices are lightweight and slip easily into a suit pocket or purse. We have also designed our products to enhance range and functionality with low power requirements, so that they can be used for extended periods of time without needing to recharge.

## Productivity

Our products improve productivity by enabling handheld computing devices and portable PCs to be continuously connected to the Internet and enterprise networks. Our products for handheld computing devices also enable wireless synchronization so users can backup and access personal and professional data from remote locations. These features allow mobile professionals to access and manage data and information even while they are away from traditional work settings, thereby significantly increasing their productivity.

## Customized Solutions

Our technology platform enables us to provide wireless data solutions for a wide range of specialized applications and to adapt our products to specific customer needs. We enable our OEM customers to provide their clients with tailored solutions for vertical market applications such as securities trading, public safety, transportation, retail and point-of-sale terminals. Our engineering group assists with the integration of our wireless products to provide comprehensive solutions to our customers.

## OUR STRATEGY

Our objective is to be the leading global provider of wireless data access products. The key elements of our strategy are to:

### Extend Our Technology Leadership

We intend to continue developing higher speed integrated wireless data access solutions to capitalize on the expansion of global wireless data access technologies. We plan to develop new modem technologies based on evolving wireless data standards and to offer customers a comprehensive range of wireless access products for mobile computing devices. We also intend to continue to apply our technological expertise to reduce the overall size, weight, cost and power consumption of our products, while increasing their capabilities and performance.

### Drive Widespread Adoption of Our Products and Increased Market Penetration

We intend to drive widespread adoption of our products through increased global marketing activities, strategic pricing and expansion of our international and direct sales distribution networks. We believe these efforts will increase our revenue and our brand recognition. Our product pricing is an important part of this strategy and we will continue to adjust our prices to ensure market penetration by offering value to our customers. We also intend to promote and extend our technology integration services which, in simplifying customer use, will help ensure the widespread adoption of our products.

### Expand and Develop Strategic Relationships

We plan to build and expand on strategic relationships to improve the design and functionality of our wireless access products and gain market share. We intend to establish and maintain relationships with a strategic focus on:

- Wireless computing communications companies, such as our existing relationships with Hewlett-Packard, Symbol and VoiceStream, to extend our platform and expand distribution of our products;

- Software applications companies, such as our existing relationships with Certicom, FusionOne, Inc. AvantGo, Inc., Puma Technologies, Inc., JP Systems, Inc. and Infowave Software, Inc. to offer a wide array of value-added applications for our customers; and
- Technology companies, such as our existing relationships with Metricom, Inc. and TPP Communications Ltd. to accelerate the time to market and expand the capabilities of our new products.

#### Continue to Target Key Vertical Markets

We market our products to key vertical industry segments by offering them products that increase productivity, reduce costs and create operational efficiencies. We are currently working with, among others, Marconi in vending system monitoring, KeyCorp in retail/point of sale, @Road in vehicle tracking and Symbol in inventory control. We believe that continuing improvements in wireless computing technologies will create additional vertical markets and more applications for our products.

#### Focus on Developing Value-added Applications

Developing value-added applications to expand the capabilities of our products will be an important factor in increasing the overall demand for and the use of our products. As competition in our marketplace intensifies, we believe that developing proprietary value-added applications for our products in vertical enterprise markets will give us a competitive advantage and differentiate us from our competitors. To this end, we may pursue acquisition opportunities to extend our product lines and provide additional solutions to our customers.

#### PRODUCTS

We currently offer a variety of wireless data access solutions to OEMs, VARs, systems integrators, wireless telecommunications operators, enterprise, mobile professionals and consumers. We delivered the first wireless cradle modem for the Palm Family of handheld computing devices and currently provide the only commercially available CDPD wireless cradle modem for the Palm III and Palm V product families. We also offer a Type II PC Card modem for portable personal computers and Windows Pocket PC mobile computing devices.

The following table lists our principal product lines and applications:

PRODUCT - - - - -	APPLICATION - - - - -
<b>WIRELESS CRADLE DEVICES</b>	
- - Minstrel III(TM) Wireless Handheld Modem	- Palm III handheld device
- - Minstrel V(TM) Wireless Handheld Modem	- Palm V handheld device
- - Minstrel S(TM) Wireless Springboard(TM) Modem	- Handspring handheld device
- - Minstrel 540(TM) Wireless Handheld Modem	- HP Jornada 500 Series Pocket PC
<b>WIRELESS PC CARDS AND MODEMS</b>	
- - Merlin Wireless PC Card Modem for CDPD	- Portable and desktop PCs
- - Merlin Wireless PC Card Modem for Richochet(R) 128 kbps	- Portable and desktop PCs
- - Sage(R) Wireless Serial Modem	- Portable and desktop PCs
<b>OEM PRODUCTS</b>	
- - Expedite(TM) Wireless Embedded Modem	- point of sale terminals, automated teller machines, vehicle tracking
- - NRM-6812 Wireless Embedded Modem	- utility monitoring, vending system monitoring
<b>LANCER(TM) FAMILY OF WIRELESS RUGGEDIZED MODEMS</b>	
- - Lancer 3W(TM) Wireless 3Watt Modem	- public safety vehicle mounted applications
- - Lancer 3W GPS(TM) public safety vehicle mounted applications Wireless 3 Watt Modem with GPS	- public safety vehicle mounted applications
- - Lancer(TM) GPS Module	- public safety vehicle mounted applications

## Wireless Cradle Devices

Our Minstrel Family of wireless data modems adds two-way communications capability to the Palm Family of handheld computing devices, the Handspring Family of handheld computing devices, the HP Jornada Family of handheld devices and private labeled derivatives. The Minstrel wireless "cradles" maintain the key advantages of these devices: size, ease-of-use, synchronization and customization. Minstrel provides users with complete portable access to enterprise networks, e-mail and the Internet without the limitation of wired connections. The Minstrel/Palm handheld computing device integrated product is lightweight and slips easily into a suit pocket or purse. Minstrel can also be used with most third-party software developed for the Palm Family of handheld computing devices.

The Minstrel III Wireless Handheld Modem offers two-way wireless data communications on the Palm III connected organizers. Improvements to prior versions include a smaller and thinner form factor, lighter weight and improved battery life. The Minstrel V Wireless Handheld Modem, which is designed for the Palm V connected organizer and is currently branded by OmniSky for sales and distribution, also offers two-way wireless data communications. The Minstrel S Wireless Springboard Modem offers two-way wireless data communications on the Handspring family of handheld devices. The Minstrel 540 Wireless Springboard Modem for the HP Jornada Pocket PC delivers wireless access to email, the Internet and corporate LAN's to users on the go and on the road.

## Wireless PC Cards and Modems

Our Merlin Wireless PC Card Modem, which was designed for Windows 95/98/2000/NT/Pocket PC computers, allows mobile professionals and consumers to send and receive e-mail, and to connect wirelessly to their enterprise networks and to the Internet.

Our Sage Wireless Modem is a self-powered, external, wireless modem for desktop PCs. The key strengths of Sage include its low price, extended battery life and versatility. Sage provides its users with wireless access to e-mail, enterprise networks and the Internet. Sage is also well suited for fixed installations, particularly in situations where telephone lines are unavailable or inconvenient.

Our Merlin Wireless PC Card Modem for Ricochet 128 kbps connects to the high-speed 128 kbps Ricochet network, which offers wireless access to full Internet browsing, private intranets, local-area networks, email and other online services. The modem has a robust removable antenna enabling maximum network connectivity with the highest mobile wireless data throughput available. The Merlin for Ricochet has a Type II PC Card interface and is compatible with Windows(R) 98/NT/2000/Pocket PC and Macintosh laptops.

## OEM Products

The Expedite Wireless Embedded Modem offers 0.6-watt full-duplex wireless CDPD modem capabilities with minimal power requirements and a form factor almost four times smaller than its predecessor. The Expedite's 3.6 volt power supply has an extended battery life and is compatible with more integrated products. The Expedite is currently used in numerous applications, including wireless telemetry monitoring, inventory monitoring, point-of-sale terminals, automated teller machines and automated vehicle location and tracking. The Expedite is also priced below comparable products offered by our competitors, making it extremely attractive to OEMs, VARs and systems integrators that require wireless CDPD solutions. The Expedite's small form factor, standards-based interfaces and adherence to specifications, together with its simple design, make it easy for OEM customers to incorporate a wireless CDPD solution into their existing or new product lines.

The forerunner of the Expedite, the NRM-6812 Wireless Embedded Modem, remains an industry leader in terms of size, performance and cost. The NRM-6812 has a wider temperature range and differing voltage levels than the Expedite, making it preferable for certain types of wireless applications such as oil and gas telemetry and vehicle tracking.

## Lancer Family of Wireless Ruggedized Modems

The Lancer 3W is a wireless CDPD modem with extreme temperature tolerance capabilities, high vibration tolerance and a ruggedized form factor which, with input power voltage capabilities from 9 to 30 volts, is ideally suited for a variety of applications ranging from public safety vehicle mounted applications to field service and wireless telemetry monitoring. In addition, the Lancer 3W has power saving capabilities offered by the "sleep mode," which maintains network connection at low battery levels and reduces battery drainage. The Lancer 3W is equipped with modem manager software and remote diagnostics which allow users to monitor and control the modem remotely.

## OUR TECHNOLOGY FOCUS

In addition to developing products based on the technology standards mentioned above, we have developed and continue to build on the following key technology areas:

**Advanced Radio Frequency Design.** Advanced Radio Frequency (RF) design is the key technology that determines the performance of wireless devices. We have specialized in the 800/900 MHz designs for analog and digital cellular, packet data and spread spectrum systems. Our proprietary RF technology contributes to the performance, small size and low cost of products. We are currently developing the 900, 1800 and 1900 MHz RF technology for future high speed wireless systems including GPRS, CDMA, 1XRTT and 3G technologies.

**Miniaturization and System Integration.** Small systems integration is the integration of application specific integrated circuits, RF, baseband and packaging technologies. The complete wireless modem is packaged into a sub-credit card module with the advent of proprietary integrated circuit design, embedded software modem and multi-layer RF stripline technologies. We have one of the smallest wireless modems available, the only pocket-sized wireless modem for the Palm family of personal computing devices, and a Type II PC card modem. We will continue to augment the miniaturization technology, working to reduce the size and cost of current and future products.

## CUSTOMERS

Our customers include wireless telecommunications operators, distributors, wireless data content and service providers, OEM customers, professionals and consumers. The following is a representative selection of our customers:

WIRELESS TELECOMMUNICATIONS OPERATOR CUSTOMERS -----	DISTRIBUTORS -----	WIRELESS DATA CONTENT AND SERVICE PROVIDERS AND RESELLER CUSTOMERS -----	OEM CUSTOMERS -----
Verizon Wireless VoiceStream Cellcom (Middle East) Metricom Sprint	Ingram Micro Brightpoint Tech Data Chinatron Global Wireless	GoAmerica Communications Corp. OmniSky Yada Yada	Hewlett-Packard Symbol (inventory control) AirLink @Road (vehicle tracking) IVI Checkmate KeyCorp (mobile point of sale) Pivot International (voting booths) Thales e-Transactions (Formerly Dassault) Marconi

OmniSky, @Road and Go America accounted for 45.4%, 8.7% and 5.6% of our revenue, respectively, for the year ended December 31, 2000. Omnisky, Hewlett-Packard and GoAmerica accounted for 61.1%, 10.6% and 5.5% of our revenue, respectively, for the fourth quarter ended December 31, 2000. @Road, OmniSky and Global Wireless Data accounted for 23.1%, 14.3% and 8.2% of our revenue, respectively, for the year ended December 31, 1999.

Many of our customer relationships provide us with the opportunity to expand our customer base and market reach. Among those mutually beneficial relationships that augment our sales opportunities are the following:



Wireless Telecommunications Operators. We work closely with our carrier customers to generate demand for our products. Our carrier customers serve as an important sales channel for our products. Verizon Wireless, which was formed by AirTouch Communications, Bell Atlantic Mobile, GTE Wireless and PrimeCo, sources our products directly through Global Wireless Data. Verizon Wireless maintains large sales forces that develop sales opportunities for us. These sales leads are either consummated directly by the carrier or jointly with our account executives. This approach allows us to combine our wireless data expertise with the carriers' vast end-customer relationships and broad sales reach. Our carrier customers also provide us and our customers with important services, including field trial participation, first-tier technical support, wireless data marketing and access to additional indirect distribution channels. To leverage these services, we provide carriers with early access to new products, technical training and co-marketing resources. Examples of our other wireless telecommunications operators include VoiceStream, Sprint and Metricom.

Distributors. In North America, we sell our products through dedicated distributors, which include D&H Distributing Company, Global Wireless Data, Ingram Micro, Tech Data and Brightpoint. Our international distributors include Bismark, Chinatron, Insite, Cellcom and Brightpoint-Latin America.

Wireless Data Content and Service Providers and Resellers. Wireless data content and service providers purchase our products either directly from us or from a distributor and resell them to end-users. These providers typically integrate our products with other elements and provide an overall wireless access solution to the end-user in a particular field or vertical market. These solutions include hardware, software and ongoing service components. Examples of our content and service-provider customers include OmniSky and GoAmerica.

OEM Customers. Our OEM customers integrate our products into devices that they manufacture and sell to end-users through their own direct sales forces and indirect distribution channels. Our products are integrated into a broad range of devices, including but not limited to, handheld computing devices, laptops, vehicle location devices (AVLs), electric meters, vending machines, industrial equipment, wireless credit processing and point of sale (POS). Examples of our OEM customers include Symbol @Road, AirLink, Marconi and KeyCorp. We build strong relationships with our OEM customers because they rely heavily on our application engineering support during the process of integrating our products into theirs.

#### STRATEGIC ALLIANCES

We intend to develop and maintain strategic relationships within the wireless communications industry which complement and expand our existing distribution network and extend our technology and market reach. These arrangements include strategic technology and marketing relationships with providers of next generation wireless technology, application software developers focused on wireless products, OEM customers which integrate our products into other devices, value-added resellers, distributors, systems integrators and cellular carriers. These strategic relationships allow us to develop the most compelling wireless data products and provide us with access to additional markets, channels of distribution and increased sales opportunities. Our principal strategic alliances to date include the following:

Nortel Networks. Nortel Networks is a global Internet and communications leader that serves carrier, service provider and enterprise customers globally. In March, 2001, we entered into a three-year agreement to jointly develop, market and offer PC Cards, cradles an OEM modules together with Nortel's software product and service offerings across all wireless technology standards, including General Packet Radio Service (GPRS) and CDMA 2000 Phase 1, or 1xRTT. We will jointly offer these solutions to telecommunications operators and corporate customers, with a geographic focus on Europe and the Pacific Rim.

Sprint PCS. Sprint PCS operates the largest all-digital, all-PCS, voice and data nationwide wireless network in the United States. In March 2001, we entered into a two-year agreement under which we will develop and provide Sprint PCS with a wireless PC Card modem and sleeve for the Palm handhelds that run on the CDMA 1XRTT network. The agreement also includes providing a PC Card modem that runs on the IS95A network.

Verizon Wireless, Inc. Verizon Wireless is the largest wireless communications provider in the U.S. with 27.5 million wireless voice and data customers. In March 2001, we entered into a two-year agreement to jointly develop,

market and offer a co-branded Merlin Special Edition Wireless PC Card for Verizon's CDPD network and a Merlin dual band 800/1900 CDMA IS95A network.

Intel Corporation. In October 2000, we entered into a five-year product purchase and license agreement with Intel Corporation. Under the agreement we will sell to Intel a variety of wireless modem modules for use in Intel's future products and provide related technical support. We will also collaborate with Intel on technology development and system architecture relating to the agreement. The agreement also grants Intel the option to license from us a manufacturing package relating to certain modems for a royalty fee, and a design package relating to certain modems and PC Card modules for a fixed fee. The agreement contains no volume commitment from Intel, and Intel is not currently selling products that require our modems.

Symbol Technologies, Inc. Symbol is a manufacturer of bar code-driven data transaction systems and is engaged in the design, manufacture and marketing of bar code reading equipment, handheld computers and radio frequency (RF) data communications systems. In March 2000, we entered into a two-year agreement with Symbol to integrate our Merlin OEM CDPD modems into Symbol's radio frequency data communications systems.

VoiceStream Wireless Corporation. VoiceStream is a leading provider of digital wireless communications. Through a license from the FCC, VoiceStream constructs and operates Personal Communication Service (PCS) networks. In March 2000, we entered into an agreement with VoiceStream, under which we will develop three types of wireless GPRS-PCS PC card modems for wireless mobile computing devices. The modems may be co-branded by VoiceStream. VoiceStream will also purchase our modems during the term of the agreement, which lasts until March 2003.

Metricom, Inc. Metricom designs, provisions and operates networks and services for mobile users. Metricom operates a Ricochet wireless network, which is a system that broadcasts signals back and forth from transceivers mounted on utility poles to small external radio modems or wireless PC card modems connected to subscribers' computers. The Ricochet network coverage is currently available at speeds of 128 Kbps in 13 markets and two markets with the original 28.8 Kbps, for a total of 15 markets with a population under coverage of 48 million people. In October 1999, we entered into a two-year license, manufacturing and purchase agreement with Metricom under which we will custom develop a wireless radio modem compatible with Metricom's Ricochet network. Metricom and its Ricochet Authorized Service Providers will also purchase modems during the term of the agreement, which lasts until October 2001. We started shipping our Merlin Wireless PC Card Modem for Ricochet in December 2000.

Hewlett-Packard Company. Hewlett-Packard is a leading global provider of computing and imaging solutions and services and focuses on capitalizing on the opportunities of the Internet and the proliferation of electronic services. In March 2000, we entered into a one-year supply agreement under which we will sell the Minstrel 540 modem and provide technical support for its use with the HP Jornada 540 Series Color Pocket PC. We started shipping our Minstrel 540 Wireless Modem for the HP Jornada 540 Series Pocket PC in November 2000.

Novatel Wireless Developer Program. Because of our commitment to mobile computing platforms such as the Palm family of handheld computing devices, Microsoft Windows Pocket PC, and Microsoft Windows 9x/NT, we formed the Novatel Wireless Developer Program, which is a forum for us to work with application software developers to develop wireless data products and markets. The mission of the Developer Program is to encourage development of the best wireless data solutions using our products, and successfully to market those solutions to our customers. There are currently over 100 software developers enrolled in the Novatel Wireless Developer Program. We have established a partner community working together to create, deliver and support the best and most compelling wireless data applications. Once these companies have a commercial software package or service available, they are listed and promoted in the Wireless Solutions Guide. This guide is available on our Web site and is frequently used as a resource by internal sales personnel as well as carrier staff.

#### SALES AND MARKETING

As of December 31, 2000, our sales and marketing organization consisted of 72 employees, including those located in eight sales offices throughout the United States.

We sell our products using a multi-channel distribution model which includes both direct and indirect sales. In order to maintain strong sales relationships, we provide co-marketing, trade show, low-cost sales demo unit and joint press release support. In addition to our direct sales relationships with carriers and service providers, OEMs and VARs, we sell our products through the following channels:

- Domestic Distributors. In the North America, we sell our products through domestic distributors. As of December 31, 2000, our domestic distributors include D&H Distributing Company, Global Wireless Data, Ingram Micro, Tech Data and Brightpoint.
- International Distributors. We sell our products through international distributors in Latin America, Israel, the Far East and New Zealand. As of December 31, 2000, our international distributors include Bismark, Insite, Cellcom and Brightpoint-Latin America.
- Mail-Order and Internet Catalogs. We sell our products to mail-order and Internet catalogues, including CDW, Mobile Planet, Multiple Zone, Outpost.com, PC Connection and PC Mall.
- Direct End-User Sales. Some end-users purchase products directly from us. Direct sales are facilitated through our Web site and our toll-free telephone number.

#### Marketing

We support our sales efforts through a variety of marketing initiatives. Our marketing organization focuses on creating market awareness of and promoting our products, generating sales leads, maintaining strong customer relationships, and developing interest in and demand for our products in new market segments.

We engage in a wide variety of marketing initiatives, which include:

- conducting marketing programs in conjunction with industry, business and trade publications;
- building awareness for our products and the Novatel Wireless brand through a wide variety of media;
- participating in industry and technology related trade shows, associations and conferences; and
- engaging in cooperative marketing programs, partnerships and co-branding.

We also conduct extensive market research through our end-users, third-party developer community and channel customers. We use this information on a continuous basis to refine our product development and the position and assortment of our products in our sales channels.

#### PRODUCT DEVELOPMENT

Our product development efforts are focused on developing innovative products and improving the functionality, design and performance of our existing products. We intend to continue to identify and respond to our customers' needs by introducing new product designs with an emphasis on innovations in the ease-of-use, performance, size, weight, cost and power consumption of our products. We are also currently developing technology and products for high bandwidth wireless applications to address opportunities presented by the next generation of public and private wireless networks.

Our product development effort is driven by a highly skilled and experienced team. While we have developed most new products and enhancements to existing products internally, we have also licensed technology from third parties.

We manage our products through a structured life cycle process, from identifying customer requirements through development and commercial introduction to eventual phase-out. Product development emphasis is placed on time-to-market, meeting industry standards and end-item product specifications, ease of integration, cost reduction, manufacturability, quality and reliability.

We believe that our future success will depend, in part, on our ability to identify and respond to emerging technological trends in our target markets, develop and maintain competitive products, enhance our existing products by adding features and functionality that differentiate them from those of our competitors, and bring products to market on a timely basis. As a result, we have devoted a significant portion of our resources to product development, and we intend to continue making substantial investments in research and development.

For the year ended December 31, 2000, our research and development expense totaled \$13.5 million. Our research and development expense totaled approximately \$3.7 million for the year ended December 31, 1999 and \$2.3 million for the year ended December 31, 1998, excluding amortization of deferred compensation. As of December 31, 2000, we had 172 engineering and technical professionals in product development and manufacturing, which includes purchasing, fulfillment, quality assurance, quality control, reliability, technical documentation and technical publication.

#### MANUFACTURING

We currently have agreements to outsource our manufacturing operation with Sanmina Corporation, GVC Corporation, Solectron de Mexico, S.A. de C.V. and Electronics Manufacturing Group. The Sanmina and GVC agreements are for a term of two years expiring in September 2001 and April 2002, respectively, and the Solectron agreement is for a term of one year, expiring in August 2001, each with automatic successive one-year renewals. The Electronics Manufacturing Group contract is for a term of one year, expiring in November 2001, with automatic successive quarterly renewals. Under the agreements, Sanmina, GVC, Solectron and Electronics Manufacturing Group provide component procurement, product manufacturing, final assembly, testing, quality control and delivery services for us. Under each of these agreements, we are required to provide each manufacturer with firm purchase orders covering a minimum period of three months.

Our outsourced manufacturing activity allows us to:

- focus on our core competencies;
- minimize our capital expenditures;
- participate in contract manufacturer economies of scale and achieve production scalability by adjusting to manufacturing volumes quickly to meet changes in demand;
- access best-in-class manufacturing resources; and
- operate without dedicating space to manufacturing operations.

We believe that additional assembly line efficiencies are realized due to our product architecture and our commitment to process design. The components that make up our products are supplied by a number of vendors. Direct materials for our products consist of tooled parts such as printed circuit boards, molded plastic components, unique metal components and application-specific integrated circuits (ASICs), as well as industry-standard components such as transistors, integrated circuits, piezo-electric filters, duplexers, inductors, resistors and capacitors, many of which are similar to components used in cellular telephone handsets. Although we generally use standard components for our products and try to maintain alternative sources of supply, some components, such as printed-circuit boards, molded plastic components, unique metal components and ASICs, are purchased from suppliers for which alternative sources are not currently available in the quantities and at the prices we require.

We employ our own manufacturing staff that focuses on managing the relationship with our third-party manufacturers and particularly on design-for-manufacturing, test procedures, quality, procurement and cost optimization, production scheduling and continuous improvement. We also perform certain manufacturing related

functions internally, including manufacturing engineering, quality assurance and the development of manufacturing test procedures and fixtures.

#### GOVERNMENT REGULATION

Our products are subject to certain mandatory regulatory approvals. In the United States, the FCC regulates many aspects of communications devices, including radiation of electromagnetic energy, biological safety and rules for devices to be connected to the telephone networks. Radio frequency devices, which includes our modems, must be approved under the above regulations by obtaining FCC equipment authorization prior to being offered for sale. FCC equipment authorization is obtained by submitting a technical description of the product and report showing compliance with FCC technical standards. We have obtained from the FCC all necessary equipment authorization for all products we currently manufacture and sell.

#### COMPETITION

The wireless data communications market is intense, rapidly evolving and highly competitive. It is subject to technological changes and is significantly affected by new product introductions and the market activities of industry participants. We compete in this market on the basis of price, form factor, time to market, functionality, quality and variety of product offerings. Moreover, we expect that this market will experience several new entrants in the future. To maintain and improve our competitive position, we must continue to develop new products, expand our customer base, grow our distribution network and leverage our strategic partnerships.

Our current and prospective competitors generally fall within the following categories:

- Wireless modem manufacturers, such as Sierra Wireless, Uniden, Wavecom, NextCell and Tellus;
- Traditional wired modem manufacturers, such as 3Com and Xircom;
- Wireless device manufacturers, such as Handspring, Palm and Research In Motion;
- Wireless handset manufacturers and next generation wireless technology providers, such as Ericsson, Motorola, and Nokia; and
- Non-CDPD private communications network providers, such as Emotiant, Bell South and Metricom.

We believe the principal competitive factors impacting the market for our products are functionality, features, performance, convenience, availability, brand and price. We believe that we compete better than many of our current competitors with respect to some or all of these factors due to the broad range of products we offer, the ease-of-use in design and engineering of our products, our ability to adapt our products to specific customer needs and our price leadership.

There can be no assurance that our current or potential competitors will not develop products comparable or superior to those developed by us or adapt more quickly to new technologies, evolving industry standards, new product introductions, or changing customer requirements. As a result, we must continuously introduce new products and educate existing and prospective customers as to the advantages of our products versus those of our competitors.

Many of our current and potential competitors have had longer operating histories and significantly greater financial, manufacturing, technical, sales, customer support, marketing and other resources, as well as greater name recognition and a larger installed products and technologies base. In addition, the global acceptance of our products could lead to increased competition as third parties develop products competitive with our own. Any of these competitors may be able to respond faster than we can to new or emerging technologies and changes in customer requirements and to devote greater resources to the development, promotion and sale of their products than we can. We cannot assure you that our current or potential competitors will not develop products comparable or superior to those that we develop or adapt more quickly than we do to new technologies, evolving industry trends or changing customer requirements.

In addition, as the wireless data communications product market develops, a number of companies with significantly greater resources than we have could attempt to increase their presence in the market by acquiring or forming strategic alliances with our competitors, resulting in increased competition.

#### PROPRIETARY TECHNOLOGY

Our software, hardware and operations rely on and benefit from an extensive portfolio of intellectual property. We currently hold 12 United States patents issued for our technology and have 15 United States patent applications pending. We also have four foreign patents issued and four foreign patent applications pending.

We own a number of trademarks and servicemarks, including Contact(R), Expedite(TM), Lancer(TM), Lancer 3W(TM), Merlin(TM), Minstrel(R), Minstrel III(TM), Minstrel IIIC(TM), Minstrel V(TM), Minstrel Plus(TM), Minstrel S(TM), Minstrel 540(TM), MissionONE(TM), Sage(R) and Viking(TM), each with its accompanying designs, and the Novatel Wireless logo.

We license CDMA technology from QUALCOMM, Incorporated for integration into our products. This license allows us to manufacture CDMA-based wireless modems and sell or distribute them worldwide. The license does not have a specified term and may be terminated by us or by QUALCOMM for cause or upon the occurrence of other specified events. In addition, we may terminate the license for any reason upon 60 days' prior written notice. We have also granted to QUALCOMM a nontransferable, worldwide, nonexclusive, fully paid and royalty-free license to use, in connection with wireless communications applications, certain intellectual property of ours that is used in our products which incorporate the CDMA technology licensed to us by QUALCOMM. This license allows QUALCOMM to make, use, sell or dispose of such products and the components therein.

In October 2000, we entered into a five-year product purchase and license agreement with Intel Corporation. In connection with the agreement, under certain circumstances we will not assert our patent rights against certain Intel products which do not involve our core technology and, if we assign or sell any of our patents that pertain to certain Intel products which do not involve our core technology, we will grant Intel a nontransferable, worldwide, royalty-free license to those patents.

We primarily rely on a combination of copyright, trade secret and trademark laws, and nondisclosure and other contractual restrictions on copying and distribution to protect our proprietary technology. In addition, as part of our confidentiality procedures, we generally enter into nondisclosure agreements with our employees, consultants, distributors and corporate partners and limit access to and distribution of our software, documentation and other proprietary information. It may be possible for a third party to copy or otherwise obtain and use our products or technology without authorization, or to develop similar technology. In addition, our products are licensed in foreign countries and the laws of such countries may treat the protection of proprietary rights differently from and may not protect our proprietary rights to the same extent as do laws in the United States.

#### EMPLOYEES

As of December 31, 2000, we had a total of approximately 286 employees, including 72 in sales and marketing, 172 in engineering, manufacturing, research and development and 42 in general and administrative functions. Our future performance depends, in significant part, upon our ability to attract new personnel and retain existing personnel in key areas including engineering, technical support and sales. Competition for qualified technical personnel is intense, especially in the San Diego area where we are headquartered, and we cannot be sure that we will be successful in attracting or retaining qualified technical personnel in the future. Our employees are not represented by any collective bargaining unit, and we consider our relationship with our employees to be good.

#### BUSINESS RISKS AND UNCERTAINTIES

WE HAVE INCURRED SIGNIFICANT OPERATING LOSSES SINCE OUR INCEPTION AND WE EXPECT TO CONTINUE TO INCUR SIGNIFICANT NET LOSSES AND NEGATIVE CASH FLOWS FOR THE FORESEEABLE FUTURE.

We have experienced operating losses and net losses in each quarterly and annual period since our inception, and we expect to continue to incur significant losses for the foreseeable future. We incurred net losses of \$5.5 million for the year ended December 31, 1998, \$18.5 million for the year ended December 31, 1999 and \$46.9 million for the

year ended December 31, 2000. In addition, we had negative cash flows from operations of, \$5.0 million for the year ended December 31, 1998, \$5.2 million for the year ended December 31, 1999 and \$41.0 million for the year ended December 31, 2000. As of December 31, 2000, we had an accumulated deficit of \$85.9 million. We expect our operating expenses and negative cash flows to increase as we continue to attempt to expand our business. We also expect to significantly increase our product development, sales and marketing, research and development, manufacturing, and general and administrative expenses in future periods. We have entered into and expect to continue to enter into significant customer contracts for the development and supply of our products. These contracts may place significant demands on our resources. If we are unable to increase our revenue sufficiently to offset these expected increases in our expenses, we will not achieve profitability and our operating losses, net losses and negative cash flows will increase.

WE HAVE BEEN OPERATING ONLY SINCE 1996 AND OUR HISTORIC OPERATING RESULTS MAY NOT BE AN INDICATION OF FUTURE OPERATIONS.

We launched our first wireless modem in 1996. We have a limited operating history. We are subject to risks, expenses and uncertainties that young and growing companies like ours face, particularly in the rapidly evolving wireless communications market. These considerations include our ability to continue to expand our customer base, maintain our current strategic-relationships and develop new ones, deliver products associated with our key contracts in a profitable and timely manner, attract and retain qualified personnel and manage our growth. Because we have only recently commenced commercial sales of our products, our past results and rates of growth may not be meaningful, and they should not be relied upon as an indication of our future performance.

IF WE DO NOT CORRECTLY ANTICIPATE DEMAND FOR OUR PRODUCTS, WE MAY NOT BE ABLE TO ARRANGE COST-EFFECTIVE PRODUCTION OF OUR PRODUCTS OR WE COULD HAVE COSTLY EXCESS INVENTORIES OR PRODUCTION.

Historically, we have experienced steady increases in demand for our products and generally have been able to arrange for increased production to meet that demand. However, the demand for our products depends on many factors and is difficult to predict. It has become more difficult to predict demand for specific products as we introduce and support multiple wireless communications products and as competition in the market intensifies. Significant unanticipated fluctuations in demand could cause the following problems in our operations:

- If demand increases beyond what we anticipate, we would have to rapidly arrange for increased production at our third-party manufacturers. Our manufacturers depend on suppliers to provide additional volumes of components. If these suppliers cannot provide the additional volumes of components, our manufacturers may not be able to increase production rapidly enough to meet the unexpected demand. Even if our manufacturers are able to procure enough components, they may not be able to produce enough of our products to allow us to deliver them in a timely manner to our customers. The inability of our suppliers to provide material components or of our manufacturers to increase production rapidly enough or to sufficient levels could cause us to fail to meet customer demand.
- Rapid increases in production levels to meet unanticipated demand could result in higher costs for manufacturing and supply of components and other expenses. These higher costs could lower our profit margins. Further, if production is increased rapidly, manufacturing yields could decline, which may also lower our profit margins.
- If anticipated demand does not develop or decrease unexpectedly, we could have excess inventories of finished products and components, which would reduce our cash flow and could lead to write-offs of some or all of the excess inventories. Lower than anticipated demand could also result in manufacturing activity at our third-party manufacturers below the minimum manufacturing activity level for which we are financially committed, which could result in higher costs of goods sold and lower profit margins.

IF WE CANNOT DELIVER PRODUCTS ASSOCIATED WITH OUR SIGNIFICANT CONTRACTS IN A PROFITABLE AND TIMELY MANNER, OUR REPUTATION COULD BE HARMED AND OUR REVENUE AND PROFIT MARGINS MAY DECREASE.

Our ability to generate future revenue under many of our significant supply contracts depends upon our ability to manufacture and supply products that meet defined specifications. To realize the benefits of these agreements, we will have to manage the following risks successfully:

- We have priced these contracts on our estimate of future production costs. If we incur higher costs than anticipated, our gross margins on these contracts will decrease and these contracts may not be as profitable as they otherwise may have been.
- If we are unable to commit the necessary resources or are unable to deliver our products as required by the terms of these contracts, our customers may cancel the contracts. In that event, we might not recover any costs that we incurred for research and development, sales and marketing, production and otherwise and we may incur additional costs as contractual penalties.
- If we fail to meet a delivery deadline, or a customer determines that the products we delivered do not meet the agreed-upon specifications, we may have to reduce the price we can charge for our products, or we may be liable to pay damages to the customer.

If we are unable to successfully manage these risks or meet required deadlines in connection with one or more of our key contracts, our reputation could be harmed and our business, financial condition, results of operations and liquidity could be materially adversely affected.

IF THE MARKET FOR WIRELESS ACCESS TO THE INTERNET DOES NOT CONTINUE TO GROW OR GROWS MORE SLOWLY THAN ANTICIPATED, OUR REVENUE WILL NOT GROW AND MAY DECLINE.

The market for wireless access to the Internet has experienced significant growth in recent years. However, we cannot assure you that the market for our existing products will continue to grow, that potential customers within the industry will adopt our products for integration with their wireless data communications solutions, or that we will be successful in independently establishing markets for our products. If the wireless data communications market fails to grow, or grows more slowly than we currently anticipate, or if we are unable to establish markets for our new products, our business, financial condition, results of operations and liquidity could be materially adversely affected.

THE MARKETABILITY OF OUR PRODUCTS MAY SUFFER IF WIRELESS TELECOMMUNICATIONS OPERATORS DO NOT DELIVER ACCEPTABLE WIRELESS SERVICES.

The success of our business depends on the capacity, affordability and reliability of wireless data access provided by various wireless telecommunications operators. Currently, various wireless telecommunications operators such as Verizon Wireless and Metricom, either directly or jointly with us, sell our products in connection with the sale of their wireless data access services to their customers. Growth in demand for wireless data access may be limited if wireless telecommunications operators, including Metricom, fail to offer services which customers consider valuable, fail to maintain sufficient capacity to meet demand for wireless data access, delay the deployment or expansion of their wireless networks and services, fail to offer and maintain reliable wireless network services or fail to market their services effectively. If any of these occurs, or if for any other reason the demand for wireless data access fails to grow, sales of our products will decline and our business, financial condition and results of operations could be materially adversely affected.

In addition, our future growth depends on the successful deployment of next generation wireless data networks by third parties, including those networks for which we currently are developing products. If these next generation networks are not deployed or widely accepted, or if deployment is delayed, there will be no market for the products we are developing to operate on these networks. As a result, we will not be able to recover our research and development expenses and our financial condition and results of operations and liquidity could be materially adversely affected.



OUR SUCCESS DEPENDS ON OUR ABILITY TO MANAGE ADDITIONAL GROWTH SUCCESSFULLY.

Our ability to successfully offer our products and implement our business plan in a rapidly evolving market requires an effective planning and management process. We have continued to increase the scope of our operations domestically and have grown our shipments and headcount substantially. At December 31, 2000, we had a total of 286 employees, representing an increase from 56 employees on December 31, 1998. Our growth has resulted, and any future growth will result, in increased responsibilities for our management and increased demands on our resources. To be successful, we will need to:

- implement additional management information systems;
- improve our operating, administrative, financial and accounting systems, procedures and controls;
- maintain and expand our manufacturing capacity;
- continue to train, motivate, manage and retain our existing employees and attract and integrate new employees; and
- maintain close coordination among our executive, engineering, professional services, accounting, finance, marketing, sales and operations organizations.

We may not adequately anticipate all the demands that growth may impose on our systems, procedures and structure. If we fail to anticipate and respond adequately to these demands or if we are otherwise unable to manage our growth effectively, we may not be able to compete effectively and our business, financial condition, results of operations and liquidity could be materially adversely affected.

WE CURRENTLY RELY EXCLUSIVELY ON THIRD-PARTY MANUFACTURERS TO PRODUCE OUR PRODUCTS, AND OUR ABILITY TO CONTROL THEIR OPERATIONS IS LIMITED.

We currently outsource all our manufacturing to Sanmina Corporation, GVC Corporation, Solectron de Mexico, S.A. de C.V and Electronics Manufacturing Group. Because we only recently entered into our agreements with GVC, Solectron and Electronics Manufacturing Group, we have not had any significant working experience with either of these manufacturers. In November 2000, we began manufacturing some of our products at Electronics Manufacturing Group. In December 2000, we began manufacturing some of our products at GVC's and Solectron's facilities in Taiwan and Mexico, respectively. We expect to continue to depend exclusively on third-party manufacturers to produce our products in a timely fashion and at satisfactory quality levels. None of these third-party manufactures are obligated to supply products to us for any specific quantity, except as may be provided in particular purchase orders, which we submit to them from time to time. If our third-party manufacturers experience delays, disruptions, capacity constraints or quality control problems in their manufacturing operations, then product shipments to our customers could be delayed, which would negatively impact our revenues and our competitive position and reputation. The cost, quality and availability of third-party manufacturing operations are essential to the successful production and sale of our products. Our reliance on our third-party manufacturers exposes us to a number of risks which are outside our control:

- unexpected increases in manufacturing costs;
- interruptions in shipments if our third-party manufacturers are unable to complete production in a timely manner;
- inability to control quality of finished products;
- inability to control delivery schedules;
- inability to control production levels and to meet minimum volume commitments to our customers;
- inability to control manufacturing yield;

- inability to maintain adequate manufacturing capacity; and
- inability to secure adequate volumes of components.

If we are unable to manage successfully our relationships with these third-party manufacturers, the quality and availability of our products may be harmed. If any of our third-party manufacturers stopped manufacturing our products or reduced its manufacturing capacity, we may be unable to replace the lost manufacturing capacity on a timely basis. In addition, if any of our third-party manufacturers changed the terms under which they manufacture for us, our manufacturing costs could significantly increase. We generally place orders with our third-party manufacturers at least three months prior to scheduled delivery of products to our customers. Accordingly, if we inaccurately anticipate demand for our products, we may be unable to obtain adequate quantities of components to meet our customers' delivery requirements or we may accumulate excess inventories. If one or more of these events were to occur, our business, financial condition and results of operations could be materially adversely affected by increased costs, reduced revenue and lower profit margins.

IF WE FAIL TO ADOPT NEW TECHNOLOGY AND FAIL TO DEVELOP AND INTRODUCE NEW PRODUCTS SUCCESSFULLY, WE MAY NOT BE ABLE TO COMPETE EFFECTIVELY.

We operate in a highly competitive environment, characterized by rapidly changing technology and industry standards. New products based on emerging technologies or evolving industry standards may quickly render an existing product obsolete and unmarketable. Our growth and future operating results depend in part upon our ability to enhance existing products and introduce newly developed products that conform to prevailing and evolving industry standards, meet or exceed technological advances in the marketplace, meet changing customer requirements, achieve market acceptance and respond to our competitors' products.

The development of new products can be very difficult and requires technological innovation. The development process is also lengthy and costly. In addition, wireless communications service providers require that wireless data systems deployed on their networks comply with their own standards, which may differ from the standards of other providers. If we fail to anticipate our customers' needs and technological trends accurately or are otherwise unable to complete the development of products on time and within budgeted amounts, we will be unable to introduce new products into the market on a timely basis, if at all. If we are unsuccessful at developing and introducing new products that are appealing to consumers, we may be unable to recover our significant research and development costs and our business, financial condition and results of operations could be materially adversely affected. In addition, as we introduce new versions of our products or new products, our current customers may not require the technological innovations of our new products and may not purchase them.

To grow our revenue and achieve profitability, we must retain our current customers and develop new ones. If consumers view our competitors' products as superior to ours, or if our products are unable to meet their expectations or requirements, we may be unable to retain our existing customers or to develop new customers which would materially and adversely effect our business, financial condition and results of operations.

THE FLUCTUATION OF OUR QUARTERLY OPERATING RESULTS MAY CAUSE OUR STOCK PRICE TO DECLINE.

Our future quarterly operating results may fluctuate significantly and may not meet the expectations of securities analysts or investors. If this occurs, the market price of our stock would likely decline. The following factors may cause fluctuations in our operating results:

- DECREASES IN REVENUE OR INCREASES IN OPERATING EXPENSES. We expect that our operating expenses, particularly our sales and marketing, and our research and development costs, will increase. We budget our operating expenses based on anticipated sales, and a significant portion of our sales and marketing, research and development and general and administrative costs are fixed, at least in the short term. If revenue decreases and we are unable to reduce our operating costs quickly and sufficiently, our operating results could be materially adversely affected. We have entered into and expect to continue to enter into significant customer contracts for the development and supply of our products. We expect to incur significant research and

development, sales and marketing and other costs relating to the development, manufacture and sale of these products prior to receiving revenue from these contracts.

- **PRODUCT MIX.** The product mix of our sales affects profit margins in any given quarter. As our business evolves and the revenue from the product mix of our sales varies from quarter to quarter, our operating results will likely fluctuate.
- **NEW PRODUCT INTRODUCTIONS.** As we introduce new products, the timing of these introductions will affect our quarterly operating results. We may have difficulty predicting the timing of new product introductions and the market acceptance of these new products. If products and services are introduced earlier or later than anticipated, or if market acceptance is unexpectedly high or low, our quarterly operating results may fluctuate unexpectedly. Our quarterly operating results also fluctuate because we incur substantial upfront research and development, sales and marketing, production and other costs to support new product introductions prior to the periods in which we will recognize revenue from new products.
- **USE OF SUPPLY CONTRACTS WITH CUSTOMERS.** We rely on long-term supply contracts with our distributor customers. These contracts typically have minimum purchase volumes, and also typically include a non-binding, forward-looking rolling forecast and allow the customer to make certain volume changes within specified periods of time in advance of scheduled production dates. We use these forecasts for internal planning of material procurement and required manufacturing capacity, but cannot predict with certainty incoming orders or changes in forecasts. Our operating results may fluctuate as a result of deviations from forecasted amounts, the timing of substantial orders, decreases in orders, failure to fulfill orders, possible delays or shortages in component supplies, or possible delays in the manufacture or shipment of current or new products.
- **LENGTHY SALES CYCLE.** In addition, the length of time between the date of initial contact with a potential customer and the execution of a contract may take several months, and is subject to delays over which we have little or no control. The sale of our products is subject to delays from our customers' budgeting, approval and competitive evaluation processes that typically accompany significant information technology purchasing decisions. For example, customers frequently begin by evaluating our products on a limited basis and devote time and resources to testing our products before they decide whether or not to purchase a product. We commit substantial time and resources to educate potential customers on the use and benefits of our products. Customers may also defer orders as a result of anticipated releases of newer or enhanced products by us or our competitors. As a result, our ability to anticipate the timing and volume of sales to specific customers is limited, and the delay or failure to complete one or more large transactions could cause our operating results to vary significantly from quarter to quarter.

We believe that quarter-to-quarter comparisons of our operating results will not necessarily be meaningful in predicting our future performance. If we do not achieve our expected revenue, it is possible that our operating results will fall below the expectations of market analysts or investors in some future quarter or quarters. Our failure to meet these expectations would likely adversely affect the trading price of our common stock.

**WE DEPEND UPON A SMALL NUMBER OF OUR CUSTOMERS FOR A SUBSTANTIAL PORTION OF OUR REVENUE.**

A significant portion of our revenue comes from a small number of customers. Our top ten customers for the year ended December 31, 2000 accounted for approximately 78.7% of our revenue. OmniSky, @ Road and GoAmerica accounted for 45.4%, 8.7% and 5.6% of our revenue, respectively, for the year ended December 31, 2000. Omnisky, Hewlett-Packard and GoAmerica accounted for 61.1%, 10.6% and 5.5% of our revenue, respectively, for the fourth quarter ended December 31, 2000. We expect that a small number of customers will continue to account for a substantial portion of our revenue for the foreseeable future. If there is a downturn in the business of any of these customers, if we are unable to continue to retain their business, or if we are unable to diversify our customer base, our revenue may decline.

The term of our agreement with OmniSky expired on May 1, 2000. Although we are currently negotiating a new agreement, there can be no assurance that we will arrive at a new agreement with OmniSky or that we will arrive at a new agreement with terms substantially similar to those contained in the expired agreement. Also, although we have

been shipping and provisioning modems to OmniSky pursuant to an open purchase order while observing the same terms as those contained in the expired agreement (with the exception of the per unit activation services fee), there can be no assurance that we will continue to do so. If we fail to negotiate a new agreement with OmniSky or if we discontinue shipping and provisioning to OmniSky, our revenue may decline. As of June 30, 2000, Omnisky became affiliated with us as the result of an investment in our capital stock by Mr. David Oros and by Aether Capital, LLC for which Mr. Oros serves as a Chairman and Chief Executive Officer of Aether Systems, Inc., its sole managing member. Mr. Oros is a director of OmniSky Corporation, which Aether Systems, Inc. is a stockholder.

WE DEPEND ON SOLE SOURCE SUPPLIERS FOR SOME OF OUR COMPONENTS, AND OUR PRODUCT AVAILABILITY AND SALES WOULD BE HARMED IF THESE SUPPLIERS ARE NOT ABLE TO MEET OUR DEMAND AND ALTERNATIVE SOURCES ARE NOT AVAILABLE.

Our products contain a variety of components that are procured from a variety of suppliers. These components include both tooled parts and industry-standard parts, many of which are used in cellular telephone handsets. Currently, some components and certain integrated circuits are in short supply world-wide due to the explosive growth in demand for cellular-telephone handsets. If the shortage of such components or any other key component persists or worsens, we may not be able to deliver sufficient quantities of our products to satisfy demand. The cost, quality and availability of components are essential to the successful production and sale of our products. Some of these components come from sole or single source suppliers for which alternative sources may not be available. If suppliers are unable to meet our demand for sole source components and if we are unable to obtain an alternative source or if the price for a substitute is prohibitive, our ability to maintain timely and cost-effective production of our products would be seriously harmed.

IF WE FAIL TO DEVELOP AND MAINTAIN STRATEGIC ALLIANCES, WE MAY NOT BE ABLE TO PENETRATE NEW MARKETS.

A key element of our business strategy is to penetrate new markets by developing new products through strategic alliances with leading companies. We are currently investing, and plan to continue to invest, significant resources to develop these relationships. We believe that our success in penetrating new markets for our products will depend in part on our ability to maintain these relationships and to cultivate additional or alternative relationships. We cannot assure you that we will be able to develop additional strategic alliances, that existing relationships will continue or be successful in achieving their purposes or that strategic partners will not form competing arrangements.

ANY SIGNIFICANT REDUCTION IN DEMAND FOR HANDHELD COMPUTING DEVICES OR FOR OUR PRODUCTS DESIGNED FOR THOSE DEVICES MAY HARM OUR BUSINESS.

A significant amount of our revenue is generated by our products for handheld computing devices and portable PCs. Although the demand for handheld computing devices and portable PCs has historically increased at a steady rate, we cannot assure you that the demand for those devices will continue to grow in the future. In addition, certain recent models of handheld computing devices and portable PCs include internal wireless modems installed by the manufacturer which reduce the need for consumers to purchase our wireless modem products. If demand for handheld computing devices and portable PCs and the demand for wireless application for them declines or as more consumers purchase handheld computing devices and PCs with internal wireless modems, the demand for our products would materially decrease and our revenue would decline.

WE MAY NOT BE ABLE TO MAINTAIN AND EXPAND OUR BUSINESS IF WE ARE NOT ABLE TO INTEGRATE OUR MANAGEMENT TEAM AND HIRE, RETAIN, INTEGRATE AND MANAGE ADDITIONAL QUALIFIED PERSONNEL.

Many members of our senior management have joined our company within the last year. In particular, John Major, our chief executive officer, joined us in July 2000. Melvin Flowers, our chief financial officer, and Steven Schlieff, our vice president of operations, joined us in February 2000 and July 2000, respectively. Peter Leparulo, our senior vice president of corporate and strategic development, joined us in September 2000. Ron Plachno, our senior vice president of Manufacturing, joined us in January 2001. As a result, our current management has worked together for only a relatively short time and is in the process of integrating as a team. Our ability to execute our strategies will depend upon our ability to integrate these and future managers into our operations, and there can be no assurance that we will be able to achieve the rapid execution necessary to fully exploit the market opportunity for our products.

Our success in the future depends in part on the continued contribution of our executive, technical, engineering, sales, marketing, manufacturing and administrative personnel. Recruiting and retaining skilled personnel, including software and hardware engineers, is highly competitive, especially in the San Diego area. Cash compensation is likely to increase for employees with these skills whom we hire because prospective employees may perceive that the stock option component of our compensation package is not as valuable as it was prior to our initial public offering or that they may choose to minimize the equity component of their compensation package because of the risks inherent in stock-based compensation. In addition, most of our senior management and other key personnel are not bound by employment agreements. If we are not able to attract or retain qualified personnel in the future, or if we experience delays in hiring required personnel, particularly qualified engineers, we will not be able to maintain and expand our business.

Over the past year, we have rapidly expanded our direct sales force and expect to hire additional sales personnel commensurate with our sales objectives. We may experience difficulty in integrating the new members of our sales team into our operations. We have limited experience in managing a large, expanding, geographically dispersed sales force. We cannot be certain that we will be able to effectively manage the growing sales force in the future or that newly-hired employees will achieve levels of productivity necessary to sustain our sales and revenue growth.

ANY ACQUISITIONS WE MAKE, OR STRATEGIC ALLIANCES OR JOINT VENTURES THAT ARE ENTERED INTO, COULD DISRUPT OUR BUSINESS AND HARM OUR FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

As part of our business strategy, we intend to review on an ongoing basis acquisition, strategic alliance and joint venture opportunities that we believe would be advantageous to the development of our business. While we have no current agreements or current discussions with respect to any acquisitions, we may acquire businesses, products, or technologies in the future. If we make any acquisitions, or enter into strategic alliances and joint ventures, we could take any or all of the following actions, any one of which could adversely affect our business, financial condition, results of operations and the price of our common stock:

- issue equity securities that would dilute existing stockholders' percentage ownership;
- use a substantial portion of our available cash;
- incur substantial debt, which may not be available to us on favorable terms and may adversely affect our liquidity;
- assume contingent liabilities; and
- take substantial charges in connection with the amortization of goodwill and other intangible assets.

Acquisitions and joint ventures, also entail numerous risks, including: difficulties in assimilating acquired operations, products and personnel; unanticipated costs; diversion of management's attention from other business concerns; adverse effects on existing business relationships with suppliers and customers; risks of entering markets in which we have limited or no prior experience; and potential loss of key employees from either our preexisting business or the acquired organization. We may not be able to successfully integrate any businesses, products, technologies or personnel that we might acquire or co-develop in the future, and our failure to do so could harm our business and operating results.

OUR FUTURE RESULTS COULD BE HARMED BY RISKS ASSOCIATED WITH INTERNATIONAL SALES AND OPERATIONS.

We plan to expand our international sales and marketing activities in the future. We have limited experience in marketing, selling, distributing and manufacturing our products and services internationally. For the year ended December 31, 2000, only approximately 7% of our revenue was derived from international accounts. As we expand international sales, we expect to become subject to a number of risks which may increase our costs, lengthen our sales cycle and require significant management attention. These risks associated with doing business internationally generally include:

- changes in foreign currency exchange rates;

- changes in a specific country's or region's political or economic conditions, particularly in emerging markets, and changes in diplomatic and trade relationships;
- less effective protection of intellectual property;
- trade protection measures and import or export licensing requirements;
- potentially negative consequences from changes in tax laws;
- increased expenses associated with customizing products for foreign countries;
- unexpected changes in regulatory requirements resulting in unanticipated costs and delays;
- longer collection cycles and difficulties in collecting accounts receivable; and
- difficulty in managing widespread sales and research and development operations.

Our sales and invoices are currently denominated in U.S. dollars. In the future, however, we may record sales and invoice customers in the applicable local foreign currency. If that occurs, we may be exposed to international currency fluctuations.

THE WIRELESS COMMUNICATIONS MARKETS ARE HIGHLY COMPETITIVE AND WE MAY BE UNABLE TO COMPETE EFFECTIVELY.

We compete in the wireless communications markets. The markets for wireless data access products are highly competitive and we expect competition to increase. Many of our competitors or potential competitors have significantly greater financial, technical and marketing resources than we do. These competitors may be able to respond more rapidly than we can to new or emerging technologies or changes in customer requirements. They also may devote greater resources than we do to the development, promotion and sale of their products.

Many of our competitors have more extensive customer bases and broader customer relationships and industry alliances that they could leverage to establish relationships with many of our current and potential customers. These companies also have significantly more established customer support and professional services organizations. In addition, these companies may adopt aggressive pricing policies or offer more attractive terms to customers, may bundle their competitive products with broader product offerings and may introduce new products and enhancements. Current and potential competitors may establish cooperative relationships among themselves or with third parties to enhance their products. As a result, it is possible that new competitors or alliances among competitors may emerge and rapidly acquire significant market share.

Our wireless communications products compete with a variety of devices, including wireless modems, traditional wired modems, wireless handsets, wireless handheld computing devices and other wireless devices. Our current and potential competitors include:

- Wireless modem manufacturers, such as Sierra Wireless, Uniden, Wavecom, NextCell and Tellus;
- Traditional wired modem manufacturers, such as 3Com and Xircom;
- Wireless device manufacturers, such as Handspring, Palm and Research in Motion;
- Wireless handset manufacturers and next generation wireless technology providers, such as Ericsson, Motorola and Nokia; and
- Non-CDPD private communications network providers, such as Emotiant, Bell South and Metricom.

We expect our competitors to continue to improve the performance of their current products and to introduce new products, services and technologies. Successful new product introductions or enhancements by our competitors could

reduce our sales and the market acceptance of our products, cause intense price competition and make our products obsolete. To be competitive, we must continue to invest significant resources in research and development, sales and marketing, and customer support. We cannot be sure that we will have sufficient resources to make these investments or that we will be able to make the technological advances necessary to remain competitive. Increased competition could result in price reductions, fewer customer orders, reduced margins and loss of our market share. Our failure to compete successfully could seriously harm our business, financial condition and results of operations.

OUR PRODUCTS MAY CONTAIN ERRORS OR DEFECTS WHICH COULD DECREASE THEIR MARKET ACCEPTANCE.

Our products are technologically complex and must meet stringent user requirements. We must develop our software and hardware products quickly to keep pace with the rapidly changing and technologically advanced wireless communications market. Products as sophisticated as ours may contain undetected errors or defects, especially when first introduced or when new models or versions are released. Our products may not be free from errors or defects after commercial shipments have begun, which could result in the rejection of our products, damage to our reputation, lost revenues, diverted development resources, and increased customer service and support costs and warranty claims.

WE COULD INCUR SUBSTANTIAL COSTS DEFENDING OUR INTELLECTUAL PROPERTY FROM INFRINGEMENT OR A CLAIM OF INFRINGEMENT.

Our success depends in large part on our proprietary technology. We rely on a combination of patents, copyrights, trademarks and trade secrets, confidentiality provisions and licensing arrangements to establish and protect our proprietary rights. We may be required to spend significant resources to monitor and police our intellectual property rights. Before we do so, we may not be able to detect infringement and we may lose competitive position in the market. Intellectual property rights also may be unavailable or limited in some foreign countries, which could make it easier for competitors to capture market share. The unauthorized use of our technology by competitors could have a material adverse effect on our ability to sell our products in some markets.

Although we are not currently involved in any other intellectual property litigation, we may be a party to litigation in the future either to protect our intellectual property or as a result of an alleged infringement of others' intellectual property. These claims and any resulting litigation could subject us to significant liability for damages and could cause our proprietary rights to be invalidated. Litigation, regardless of the merits of the claim or outcome, would likely be time-consuming and expensive to resolve and would divert management time and attention. Any potential intellectual property litigation could also force us to do one or more of the following:

- stop using the challenged intellectual property and refrain from selling our products or services that incorporate it;
- obtain a license to use the challenged intellectual property or to sell products or services that incorporate it, which license may not be available on reasonable terms, or at all; and
- redesign those products or services that are based on or incorporate the challenged intellectual property.

If we are forced to take any of the foregoing actions, we may be unable to manufacture and sell our products, and our business, financial condition and results of operations may be materially adversely affected.

WE MAY NOT BE ABLE TO DEVELOP PRODUCTS THAT COMPLY WITH APPLICABLE GOVERNMENT REGULATIONS.

Our products must comply with government regulations. For example, in the United States, the Federal Communications Commission ("FCC") regulates many aspects of communications devices, including radiation of electromagnetic energy, biological safety and rules for devices to be connected to the telephone networks. Radio frequency devices, which include our modems, must be approved under the above regulations by obtaining equipment authorization from the FCC prior to being offered for sale. Additionally, we cannot anticipate the effect that changes in government regulations may have on our ability to develop products in the future. Failure to comply with existing or evolving government regulations or to obtain timely regulatory approvals or certificates for our products could materially adversely affect our business, financial condition and results of operations. An inability or delay in obtaining FCC authorization could result in a decline in future revenue.

## ITEM 2. PROPERTIES

Our principal executive offices are located in San Diego, California where we lease approximately 20,000 square feet under a lease that expires in July 2005. We also lease approximately 10,000 square feet in San Diego under a lease that expires in March of 2005. In addition, we lease approximately 42,500 square feet in Calgary, Alberta, Canada for our research and development organization under a lease that expires in September 2007, and 24,000 square feet in Carlsbad, California utilized for distribution purposes under a lease that expires in August 2003. We also lease space in various geographic locations primarily for sales and support personnel or for temporary facilities.

## ITEM 3. LEGAL PROCEEDINGS

We are from time to time party to various legal proceedings arising in the ordinary course of business. We are not a party to any legal proceedings, which, if adversely determined, would have a material adverse affect on our business, financial condition and results of operations.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

In the quarter ended December 31, 2000, prior to the completion of the our initial public offering, our stockholders took action by written consent in connection with the Company's initial public offering to (i) amend and restate the Company's charter and bylaws and (ii) approve the Company's 2000 Stock Incentive Plan. The Company's charter, as amended and restated, is described in the Company's prospectus dated November 15, 2000 under the caption "Description of Securities," and the Company's 2000 Stock Incentive Plan is also described in the Company's prospectus under the caption "Management--Compensation Plans." The Company's prospectus was filed pursuant to Rule 424(b) under the Securities Act and is incorporated by reference into this annual report.



## PART II

## ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock is traded on the Nasdaq National Market under the symbol "NVTL." The following table sets forth the high and low sale prices of our common stock as reported on Nasdaq, without retail mark-up, mark-down or commissions, since November 16 2000, the date the shares of our common stock commenced trading:

	HIGH	LOW
	-----	-----
2000		
Fourth quarter, since November 16, 2000 (the date our shares commenced trading on Nasdaq)	\$ 16.250	\$ 7.938

On March 13, 2001 the closing price per share of our common stock was \$6.06, as reported by Nasdaq. At March 13, 2001 there were approximately 4,174 holders of record of our common stock. No cash dividends were declared or paid in 2000.

We currently intend to retain all available funds for use in our business, and do not anticipate paying any cash dividends in the foreseeable future. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial condition and future prospects and other factors the board of directors may deem relevant.

## ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with our consolidated Financial Statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this annual report. The selected consolidated statement of operations data presented below for each of the years ended December 31, 2000, 1999 and 1998, and the balance sheet data at December 31, 2000 and 1999 are derived from our consolidated financial statements that have been included elsewhere in this annual report. The consolidated statements of operations data for the year ended December 31, 1997 and the period from inception to December 31, 1996 and the balance sheet data at December 31, 1998, 1997 and 1996 are derived from audited consolidated financial statements not included in this annual report.

	PERIOD FROM APRIL 26, 1996 (INCEPTION) TO DECEMBER 31, 1996 -----	YEARS ENDED DECEMBER 31, -----			
		1997	1998	1999	2000
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)					
CONSOLIDATED STATEMENT					
OF OPERATIONS DATA:					
Revenue .....	\$ 277	\$ 3,354	\$ 5,378	\$ 9,556	\$ 61,154
Cost of revenue .....	168	1,856	3,433	11,955	59,588
Gross margin .....	109	1,498	1,945	(2,399)	1,566
Operating expenses:					
Research and development .....	2,650	1,995	2,333	3,717	13,488
Sales and marketing .....	256	2,058	2,685	4,480	18,262
General and administrative .....	656	1,944	2,496	4,443	5,027
Amortization of deferred stock compensation .....			115	220	12,833
Total operating expenses .....	3,562	5,997	7,629	12,860	49,610
Loss from operations .....	(3,453)	(4,499)	(5,684)	(15,259)	(48,044)
Other income (expense) net .....	(9)	23	178	(3,210)	1,120
Net loss .....	\$ (3,462)	\$ (4,476)	\$ (5,506)	\$ (18,469)	\$ (46,924)
Net loss per common share:					
Basic and diluted .....	\$ (0.37)	\$ (0.51)	\$ (0.69)	\$ (2.04)	\$ (3.24)
Weighted average shares outstanding ..	9,711,630	9,711,630	9,711,630	9,728,421	15,654,079

	DECEMBER 31, -----				
	1996	1997	1998	1999	2000
(IN THOUSANDS)					
CONSOLIDATED BALANCE SHEET DATA:					
Cash and cash equivalents .....	\$ 1,262	\$ 1,927	\$ 3,497	\$ 25,455	\$ 66,826
Working capital .....	274	937	3,383	15,769	67,479
Total assets .....	3,065	3,879	6,184	38,118	110,824
Long-term obligations, net of current portion .....				106	205
Convertible and redeemable preferred stock .....	2,258	6,724	14,812	43,805	
Stockholders' equity (deficit) .....	(752)	(1,100)	(14,625)	(31,128)	79,222

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following comments should be read in conjunction with the consolidated financial statements and notes contained elsewhere in this annual report. See "Business Risks and Uncertainties" for trends and uncertainties known to us that could cause reported financial information not to be necessarily indicative of future results.

## OVERVIEW

We are a provider of wireless data access solutions. Since our inception in April 1996, we have been focused on the development and commercialization of two-way wireless data communications technologies. We launched our NRM-6812 OEM module in September 1996, our Sage and first Minstrel products in 1997, our Minstrel III Wireless Modem and Expedite Wireless Modem in April 1999 and our Merlin Type II Wireless Modem in August 1999. In addition, we announced our Minstrel V Wireless Modem for the Palm V handheld computing device in October 1999, our Lancer 3W Modem in April 2000, the Minstrel 540 for the HP Jornada Pocket PC in October 2000, the Minstrel S for the Handspring (TM) Visor (TM) in October 2000 and the Merlin Wireless PC Card for Metricom's 128 kbps Ricochet network in November 2000.

Since our inception, we have incurred substantial costs to develop our technology and products, to recruit and train personnel for our product development, sales and marketing and professional services departments, and to establish our administrative infrastructure. Historically, our operating expenses have exceeded the revenue generated by our products and services. As a result, we have incurred net operating losses in each quarter since inception and have an accumulated deficit of \$85.9 million as of December 31, 2000. In addition, we have increased our number of employees from 56 as of December 31, 1998 to 286 as of December 31, 2000.

We have entered into, and expect to continue to enter into, significant customer contracts for the development and supply of our products. These contracts may place significant demands on our resources. As a result, we expect research and development, sales and marketing and other costs relating to the development, manufacture and sale of our products to increase. We also expect to continue to incur these expenses in periods prior to recognizing revenue from these contracts.

Revenue. Our revenue has been generated from the sale of wireless modems to wireless telecommunications operators, wireless data content and service providers, resellers and OEM customers. We also generate revenue from product activation services we provide prior to shipping, although this source of revenue has not been significant through December 31, 2000. Revenue from product sales and services, which includes product activation, is recognized upon the later of transfer of title or upon shipment of the product to the customer or upon rendering product activation services, if applicable. Revenue from long-term supply contracts is recognized as products are shipped to customers over the period of the contract. We record deferred revenue for cash payments received from customers in advance of product shipment. We grant price protection provisions to certain customers and we track pricing and other terms offered to customers buying similar products to assess compliance with these provisions. To date, the Company has not incurred material price protection expenses. We establish reserves for estimated product returns and warranty allowances in the period in which revenue is recognized.

During 1998, we generated revenue of \$650,000 under a license agreement. Revenue on this agreement was recognized under the contractual terms, which included successful manufacturing of the product by the customer. Costs of revenue incurred under the agreement totaled approximately \$294,000. We did not generate such license revenue in 1999 or 2000.

Cost of Revenue. Our cost of revenue typically consists of material components, labor for system assembly and testing, product activations, technical support, warranty costs, royalties and overhead expenses. We currently outsource our manufacturing operations to third parties to minimize our capital expenditures and to benefit from contract manufacturer economies of scale.

Gross Margin. Our overall gross margin, or revenue less cost of revenue, may fluctuate from quarter to quarter as a result of the availability and costs of components, shifts in product mix, the proportion of direct and indirect sales, anticipated decreases in average selling prices and our ability to manage manufacturing costs.

We have reported negative gross margins for 1999 and the first half of 2000, since our margins were at or near break-even levels based on contracted purchase and sales prices, and our cost of revenue includes costs to support operations well in excess of our revenue and units processed in anticipation of future growth. We consider these excess capacity costs to be a period expense rather than a capitalizable inventory cost, and we account for them accordingly. We had positive gross margins during the second half of 2000 and anticipate this trend to continue. This is primarily due to increased sales volume and changes in product mix and the introduction of additional contract manufacturers with lower costs.

**Research and Development.** Our research and development expenses consist of employee compensation, related personnel expenses, consultant fees and prototype expenses related to the design, development, testing and enhancement of our products. Our research and development costs are expensed as incurred. We believe that continued investment in research and development is critical to achieving our strategic product development and cost reduction objectives and, as a result, expect these expenses to continue to increase in absolute dollars in the future.

**Sales and Marketing.** Our sales and marketing expenses consist of employee compensation, sales commissions and related expenses for personnel engaged in marketing, sales and field service support and advertising and promotional materials. We anticipate that sales and marketing expenses will increase in future quarters as we increase sales and marketing operations, expand distribution channels, increase the number of sales and marketing personnel and increase our international sales efforts.

**General and Administrative.** Our general and administrative expenses consist of employee compensation and related personnel expenses, recruiting and relocation expenses, professional and consulting fees, and other general corporate expenses.

**Stock-Based Compensation Expense.** We recorded cumulative deferred compensation expense of \$31.4 million as a result of stock options granted below fair value for accounting purposes through December 31, 2000. This amount represents the difference between the exercise price of these stock option grants and the estimated fair value of the underlying common stock at the time of grant. Of this amount, we have amortized approximately \$13.2 million through December 31, 2000. The remaining \$18.2 million will be amortized in future periods over the vesting period of the options, which is generally four years. We currently estimate that our stock compensation expense from options granted or issued from our inception in April 1996 through December 31, 2000 will be \$10.7 million in 2001, \$4.7 million in 2002, \$2.1 million in 2003 and \$700,000 in 2004, assuming no cancellations or additional stock option grants below fair market value. This expense has no impact on our cash flows. With respect to the amortization of stock-based compensation, we are using the attribute method prescribed by FASB Interpretation No. 28 and SFAS 123.

#### INDUSTRY TRENDS AND OTHER FACTORS INFLUENCING FUTURE RESULTS OF OPERATIONS

Our consolidated results of operations may be adversely affected in 2001 and in future years by various factors outside of our control, including decreases in the demand for wireless technology products and decreases in demand for wireless access services for the transmission of data.

**Revenue.** Our consolidated results of operations depends upon, among other things:

- our ability to maintain and increase our sales volumes with existing customers;
- our ability to attract new customers for our product offerings; and
- the demand for wireless technology access services and wireless technology products, including PDAs.

We cannot predict with any certainty whether we will be able to maintain or improve upon our historical sales volumes with our existing customers, or whether we will be able to attract new customers for our wireless technology products. The decrease in demand for the services of our wireless service customers, could lead to a decrease in the demand for our wireless products used by these customers, ultimately adversely impacting our revenue and results of operations.

Operating Costs and Expenses. As discussed in Item I, "Business--Manufacturing," through calendar 2000, we experienced relatively tight supply of various components, including printed circuit boards, molded plastic components, unique metal components and ASICs. We purchase these components from suppliers for which alternative sources have not been currently available in the quantities and at the prices that we require. We cannot predict whether we will continue to experience limited supplies of certain components used in our manufacturing process. If the availability of these or other components used in the manufacture of our products was to decrease, or if the prices for these components was to increase significantly, our operating costs and expenses could be adversely affected.

#### RESULTS OF OPERATIONS

The following table sets forth our consolidated statements of operations expressed as a percentage of revenue for the periods indicated.

	YEARS ENDED DECEMBER 31,		
	1998	1999	2000
	-----		
	1998	1999	2000
	-----		
	(AS A PERCENT OF REVENUE)		
Revenue .....	100.0%	100.0%	100.0%
Cost of revenue .....	63.8	125.1	97.4
	-----		
Gross margin .....	36.2	(25.1)	2.6
	-----		
Operating expenses:			
Research and development .....	43.4	38.9	22.1
Sales and marketing .....	49.9	46.9	29.9
General and administrative .....	46.4	46.5	8.2
Amortization of deferred stock compensation ....	2.1	2.3	21.0
	-----		
Total operating expenses .....	141.8	134.6	81.2
	-----		
Loss from operations .....	(105.6)	(159.7)	(78.6)
	-----		
Interest income .....	3.3	0.5	1.9
Interest expense .....		(34.2)	(0.1)
Other, net .....		0.1	
	-----		
Net loss .....	(102.3)%	(193.3)%	(76.8)%
	=====	=====	=====

#### YEAR ENDED DECEMBER 31, 2000 COMPARED TO YEAR ENDED DECEMBER 31, 1999

Revenue. Revenue for 2000 increased \$51.6 million, or 540%, to \$61.2 million compared to \$9.6 million for 1999. As more fully described in Footnote 12 to the Consolidated Financial Statements, on June 30, 2000, Omnisky Corporation became one of our related parties. Included in this increase is revenue from OmniSky Corporation of \$27.8 million and \$24.2 million for the year and six months ended December 31, 2000, respectively. In 2000, sales of our cradle products increased by \$38.8 million, OEM product sales increased by \$11.3 million and PC card sales increased by \$1.5 million. Sales of existing products, including the Minstrel V Wireless Modem introduced in October 1999, increased by \$39.8 million. The overall increase in product sales is due to the increase in the demand for wireless products. New products contributed to the overall sales increases by \$11.8 million with the introduction of the Minstrel 540 Wireless Modem for the HP Jornada Pocket PC in October 2000, the Minstrel S for the Handspring (TM) Visor (TM) in October 2000 and the Merlin Wireless PC Card for Metricom's 128 kbps Ricochet network in November 2000.

Cost of Revenue. Our cost of revenue for 2000 increased \$47.6 million, or 398%, to \$59.6 million compared to \$12.0 million in 1999. The increase in cost of revenue was primarily the result of increased sales of existing products (approximately \$33.1 million), costs associated with the production and sales of new products (approximately \$8.9 million) and costs associated with increasing our operating capacity (approximately \$5.6 million).

Gross Margin. Our gross margin for 2000 increased by \$4.0 million, or 166%, to \$1.6 million compared to negative \$2.4 million in 1999.

Research and Development. Our research and development expenses for 2000 increased \$9.8 million, or 263%, to \$13.5 million compared to \$3.7 million in 1999. The increase was due to an increase in personnel expenses of \$4.9

million, an increase in depreciation and facility overhead expenses of \$1.7 million, an increase in research supplies and expendable equipment of approximately \$1.3 million, an increase in outside consulting services of approximately \$900,000 and an increase in other expenses relating to projects in development of \$1.0 million.

**Sales and Marketing.** Sales and marketing expenses for 2000 increased \$13.8 million, or 308%, to \$18.3 million compared to \$4.5 million in 1999. The increase was the result of additional personnel expenses of \$3.9 million, expanded advertising and marketing expenses of \$2.7 million, a \$2.0 million increase in spending for participation in trade shows and \$2.9 million to support new products and expand distribution channels. In addition, included in sales and marketing expense in 2000 is a one-time non-cash charge of approximately \$2.3 million for the beneficial conversion feature relating to preferred stock issued to a qualified institutional buyer in a private offering. Concurrent with this private offering, the Company entered into a product purchase and licensing agreement with the same investor.

**General and Administrative.** General and administrative expenses for 2000 increased \$600,000, or 13%, to \$5.0 million compared to \$4.4 million in 1999. This increase was primarily due to an increase in personnel expense of approximately \$1.3 million and an increase in legal and accounting expenses of approximately \$500,000, offset by a change in foreign currency translation of approximately \$1.2 million. This change in foreign currency translation was the result of a gain of approximately \$660,000 in 2000 compared to a loss of approximately \$540,000 in 1999.

**Amortization of deferred stock compensation.** Amortization of deferred stock compensation for 2000 increased \$12.6 million to \$12.8 million compared to \$220,000 in 1999. This increase is due to significant stock options issued during 2000, resulting in gross deferred compensation of \$30.3 million. Refer to Footnote 9 for a complete discussion of stock option activity.

**Interest Income.** Interest income for 2000 increased \$1.1 million to \$1.2 million compared to \$47,000 in 1999. The increase was due to income on the proceeds from the Series C financing which closed on December 31, 1999, the proceeds from the Series D financing which closed in June and July of 2000 and the proceeds from our initial public offering.

**Interest Expense.** Interest expense amounted to \$3.3 million for 1999 due to the non-cash charges we incurred in connection with the convertible subordinated debentures that we issued and sold in 1999 and the related common stock warrants issued in connection with those debentures. Interest expense of \$43,000 for 2000 relates to the interest charges on capital leases.

**Net Loss.** The net loss for 2000 increased \$28.4 million, or 154%, to \$46.9 million compared to \$18.5 million in 1999.

#### YEAR ENDED DECEMBER 31, 1999 COMPARED TO THE YEAR ENDED DECEMBER 31, 1998

**Revenue.** Revenue for 1999 increased \$4.2 million, or 78%, to \$9.6 million compared to \$5.4 million in 1998. In 1999, sales of existing products increased by \$1.5 million due to the overall increase in demand for wireless products. New products also contributed to the overall sales by \$3.3 million with the introduction of the Expedite Wireless Modem in April 1999 and the Merlin Type II Wireless Modem in August 1999. This increase is partially offset by a decrease of \$650,000 in contract research revenue during 1999 compared to 1998 as the Company did not have any research contracts.

**Cost of Revenue.** Our cost of revenue for 1999 increased \$8.5 million, or 248%, to \$12.0 million compared to \$3.4 million in 1998. The increase in cost of revenue was primarily the result of increased sales of existing products (approximately \$1.4 million), costs associated with the production and sales of new products (approximately \$2.8 million) and costs associated with changing manufacturers and moving production during the year (approximately \$1.0 million) offset in part by a decrease in contract research costs of \$720,000 as the Company did not have any research contracts. Prior to 1999, we used offshore contract manufacturers. In the first quarter of 1999, our principal manufacturer experienced financial difficulties as a result of the general downturn in the Asian economies and, as a result, ceased production of our finished goods. To maintain production levels in the short-term, we and our new manufacturer were forced to purchase raw materials for immediate delivery at premium prices.

**Gross Margin.** Gross margin for 1999 decreased by \$4.3 million, or 223%, to negative \$2.4 million compared to \$1.9 million in 1998.

**Research and Development.** Research and development expenses for 1999 increased \$1.4 million, or 59%, to \$3.7 million compared to \$2.3 million in 1998. The increase was primarily due to an increase in personnel expenses of \$703,000 and an increase in expenses relating to projects in development of \$697,000.

**Sales and Marketing.** Sales and marketing expenses for 1999 increased \$1.8 million, or 67%, to \$4.5 million compared to \$2.7 million in 1998. The increase was the result of increased personnel expenses of \$1.1 million, expanded advertising expenses of \$388,000 and expenditures to support new products and to expand our distribution channels resulting in a \$171,000 increase.

**General and Administrative.** General and administrative expenses for 1999 increased \$1.9 million, or 78%, to \$4.4 million compared to \$2.5 million in 1998. This increase was due to an increase in the number of personnel from 1998 to 1999 resulting in a \$434,000 increase, our relocation of the administrative functions from Calgary to San Diego which amounted to an increase of \$750,000 and an increase in professional fees of \$440,000.

**Amortization of deferred stock compensation.** Amortization of deferred stock compensation for 1999 increased \$105,000, or 91% to \$220,000 compared to \$115,000 in 1998. This increase is due to stock options issued towards the end of 1998, which were amortized for a full year in 1999, in addition to deferred compensation expense recorded as a result of stock options issued in 1999 at a price below fair value.

**Interest Expense.** Interest expense amounted to \$3.3 million for 1999 due to the non-cash charges we incurred in connection with the convertible subordinated debentures that we issued and sold in 1999 and the related common stock warrants issued in connection with these debentures. We did not incur any interest expense during 1998.

**Interest Income.** Interest income for 1999 decreased \$131,000, or 74%, to \$47,000 compared to \$178,000 in 1998. The decrease was due to lower average cash invested in 1999 compared to 1998.

**Net Loss.** The net loss for 1999 increased \$13.0 million, or 235%, to \$18.5 million compared to \$5.5 million in 1998.

YEAR ENDED DECEMBER 31, 1998 COMPARED TO THE YEAR ENDED DECEMBER 31, 1997

**Revenue.** Revenue for 1998 increased \$2.0 million, or 60%, to \$5.4 million compared to \$3.4 million in 1997. In 1998, sales of existing products increased by \$800,000 due to the overall increase in demand for wireless products. New products also contributed to the overall sales by \$2.5 million with the introduction of the original Minstrel, Sage and Contact products in late 1997. This increase was partially offset by a decrease of \$750,000 in license and research contract revenue during 1998 compared to 1997.

**Cost of Revenue.** Our cost of revenue for 1998 increased \$1.5 million, or 85%, to \$3.4 million compared to \$1.9 million in 1997. The increase in cost of revenue was the result of the costs of increased units sold and the start-up costs associated with the production of new products, offset by a decrease in costs related to research contact of approximately \$426,000.

**Gross Margin.** Gross margin for 1998 increased by \$400,000, or 30%, to \$1.9 million compared to \$1.5 million in 1997.

**Research and Development.** Research and development expenses for 1998 increased \$300,000, or 17%, to \$2.3 million compared to \$2.0 million in 1997. Fiscal year 1997 included approximately \$500,000 for research and development costs to further projects we commenced in 1996.

**Sales and Marketing.** Sales and marketing expenses for 1998 increased \$600,000, or 30%, to \$2.7 million compared to \$2.1 million in 1997. The increase was the result of increased headcount. During 1998, we also increased marketing expenditures to support new products and expand our distribution channels.

General and Administrative. General and administrative expenses for 1998 increased \$600,000, or 28%, to \$2.5 million compared to \$1.9 million in 1997. This increase was due to additions to our senior management team and administrative personnel.

Amortization of deferred stock compensation. Amortization of deferred stock compensation amounted to \$115,000 for 1998 compared to none in 1997. During 1997, the Company did not issue any stock options at a price below fair value and therefore did not record deferred compensation expense. In 1998, the Company issued stock options at a price below fair value and therefore recorded deferred compensation expense associated with those options.

Interest Income. Interest income for 1998 increased \$155,000, or 674%, to \$178,000 compared to \$23,000 in 1997. This increase was due to additional interest income earned on our increased average cash and short-term investment balances.

Net Loss. The net loss for 1998 increased \$1.0 million or 23% to \$5.5 million compared to \$4.5 million in 1997.

#### LIQUIDITY AND CAPITAL RESOURCES

Prior to the completion of our initial public offering in November 2000, we funded our operations primarily through private sales of our equity securities and the issuance of debt instruments, and to a lesser extent, capital lease arrangements and borrowings under our line of credit. To date, gross proceeds from these transactions have totaled approximately \$149.3 million, including gross proceeds from our initial public offering of \$56 million and the exercise of the underwriters over-allotment option in December 2000 of \$8.2 million. At December 31, 2000 we had approximately \$66.8 million in cash and cash equivalents.

For the years ended December 31, 1998, 1999 and 2000, we used net cash in operating activities of \$5.0 million, \$5.2 million and \$41.0 million, respectively. Our operating activities included major uses of cash to fund our 2000 net loss of \$46.9 million which included a \$12.8 million non-cash charge for deferred compensation expenses related to stock options issued to employees during the year and a one-time \$2.3 million non-cash beneficial conversion charge recorded during 2000. During 2000, we used cash by increasing accounts receivable by \$14.3 million, inventories by \$3.1 million, prepaid expenses and other assets by \$2.9 million and decreased deferred revenues by \$6.1 million, and generated cash flows by increasing accounts payable and accrued expenses by approximately \$16.5 million.

Our net cash used in investing activities in 2000 was \$11.4 million, which was for purchases of property and equipment of approximately \$9.2 million and purchases of intangibles of approximately \$2.3 million. Our net cash used in investing activities in 1998 and 1999 was \$300,000 and \$600,000, respectively, and was also primarily for purchases of property and equipment. These capital expenditures were primarily investments for equipment to test our products and to support our business.

Cash provided from financing activities, consisting primarily of net proceeds from the sale of our equity securities, was \$93.8 million for the year ending December 31, 2000, including net proceeds from our initial public offering of approximately \$57.2 million and net proceeds from the issuance of our Series D Preferred Stock of approximately \$35.8 million. For the years ended December 31, 1999 and 1998, net proceeds from equity issuances amounted to \$27.7 million and \$7.7 million, respectively.

In December 2000, we entered into a credit facility with a bank, which allows the Company to borrow up to the lesser of \$10 million or 80% of eligible accounts receivable balances. This credit facility bears interest at prime plus 1% (9.5% at December 31, 2000), is secured by substantially all assets of the Company and expires in June 2001.

We believe that our available cash reserves, which include proceeds from our initial public offering in November 2000, will be sufficient to fund operations and to meet our working capital needs and anticipated capital expenditures for at least the next twelve months. We anticipate capital expenditures of between \$10 million and \$20 million over the course of the next twelve months. We may also use a portion of our working capital to invest in complementary products, to license other technology or to make acquisitions. We may raise additional funds to finance the further expansion of our business, finance unexpected expenditures, continue to develop new products and enhancements to



our current products, or acquire technologies or businesses, including strategic alliances and joint ventures. Additional financing may not be available when needed, on favorable terms, or at all.

#### ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not currently use derivative financial instruments. We generally place our cash and short-term investments in high-credit quality instruments, primarily U.S. Government obligations and corporate obligations with contractual maturities of less than one year. These investments are not held for trading or other speculative purposes. Changes in interest rates affect the investment income we earn on our investments and therefore, impact our cash flows and results of operations. We do not expect any material loss from our marketable security investments and therefore believe that our potential interest rate exposure is not material; however, these investments are subject to interest rate risk. We do not currently enter into foreign currency hedge transactions. For the year ending December 31, 2000, we had a foreign currency gain of approximately \$660,000 recorded in general and administrative expenses as a result of translating the accounts of our Canadian subsidiary. Revenues generated outside the United States, as a percentage of total revenues were 7% in 2000 and 12% in 1999. Fluctuations in foreign exchange rates could impact future operating results.

#### ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The index to our Consolidated Financial Statements and the Report of Independent Public Accountants appears in Part IV of this annual report.

#### ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

(a) Identification of Directors. The information under the caption "Election of Directors," appearing in the Proxy Statement to be filed for the 2001 Annual Meeting of Shareholders is incorporated herein by reference.

(b) Identification of Executive Officers. The information under the caption "Certain Information with Request to Executive Officers," appearing in the Proxy Statement to be filed for the 2001 Annual Meeting of Shareholders is incorporated herein by reference.

(c) Compliance with Section 16(a) of the Exchange Act. The information under the caption "Compliance with Federal Securities Laws," appearing in the Proxy Statement to be filed for the 2001 Annual Meeting of Shareholders is incorporated herein by reference.

## ITEM 11. EXECUTIVE COMPENSATION

The information under the heading "Executive Compensation and Other Information" appearing in the Proxy Statement to be filed for the 2001 Annual Meeting of Shareholders is incorporated herein by reference.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information under the headings "Principal Stockholders" appearing in the Proxy Statement to be filed for the 2001 Annual Meeting of Shareholders is incorporated herein by reference.

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information under the headings "Principal Stockholder Certain Relationships and Related Transactions," appearing in the Proxy Statement to be filed for the 2001 Annual Meeting of Shareholders is incorporated herein by reference.

## ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

## (a) 1. Index to Consolidated Financial Statements

See Index to Consolidated Financial Statements and financial statement schedules.

## (a) 2. Index to Financial Statement Schedules

The following Financial Statement Schedules for the years ended December 31, 2000, 1999 and 1998 should be read in conjunction with the Consolidated Financial Statements, and related notes thereto.

Schedule - - - - -	Page - - - -
Schedule II - Valuation and Qualifying Accounts	55

Schedules not listed above have been omitted because they are not applicable or are not required or the information required to be set forth therein is included in the Consolidated Financial Statements or notes thereto.

## (a) 3. Exhibits

The following Exhibits are filed as part of, or incorporated by reference into, this Report on Form 10-K:

3.1	Certificate of Incorporation
3.2	Bylaws
4.1(1)	Specimen Common Stock Certificate.
10.1(2)	1997 Stock Option Plan, as Amended and Restated.
10.2(2)	2000 Stock Incentive Plan.
10.3(2)	2000 Employee Stock Purchase Plan.
10.4(1)	Amended and Restated Registration Rights Agreement, dated as of June 15, 1999, by and among Novatel Wireless, Inc. and some of its stockholders.
10.5(1)	Amended and Restated Investors' Rights Agreement, dated as of June 30, 2000, by and among Novatel Wireless, Inc. and some of its stockholders.
10.6(1)	Form of Indemnification Agreement between Novatel Wireless, Inc. and each of its officers and directors.
10.7	Loan and Security Agreement, dated as of December 21, 2000, by and between Novatel Wireless, Inc. and Venture Banking Group, a division of Cupertino National Bank, as amended.
10.8(1)	Real Property Sublease dated as of July 7, 2000, by and between Sicom Inc. (formerly Gensia Sicom, Inc.) and Novatel Wireless, Inc., for 9360 Towne Centre Drive, San Diego, California.
10.9(1)	Real Property Lease, dated as of February 1, 1997, by and between Novatel Wireless Technologies Ltd. and Sun Life Assurance Company of Canada, for 6715 8th St., N.E., Calgary, Alberta.
*10.10(1)	Supply Agreement, dated as of March 31, 2000, by and between Novatel Wireless, Inc. and Hewlett-Packard Company.
*10.11(1)	Technology License, Manufacturing and Purchase Agreement, dated as of October 13, 1999, by and between Novatel Wireless, Inc. and Metricom, Inc.
*10.12(1)	Supply Agreement, dated as of August 12, 1999, by and between Novatel Wireless, Inc. and OpenSky Corporation (currently known as OmniSky Corporation).
*10.13(1)	Electronic Manufacturing Services, dated as of September 3, 1999, by and between Novatel Wireless, Inc.

and Sanmina (Canada) ULC.

- \*10.14(1) Letter Agreement, dated as of March 15, 2000, by and between Novatel Wireless, Inc. and Symbol Technologies, Inc.
- \*10.15(1) Agreement for Purchase and Sale of Novatel Wireless, Inc. Mobile Terminal Units dated as March 2000 by and between Novatel Wireless, Inc. and VoiceStream Wireless Corporation.
- \*10.16(1) Agreement for Electronic Manufacturing Services, dated as of April 8, 2000, by and between Novatel Wireless, Inc. and GVC Corporation.
- \*\*10.17(1) Employment Agreement, dated as of July 24, 2000, by and between Novatel Wireless, Inc. and John Major.
- \*\*10.18(1) Employment Agreement, dated as of August 21, 1996, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
- 10.19(1) Standard Manufacturing Agreement, dated as of August 8, 2000, by and between Novatel Wireless, Inc. and Solelectron de Mexico, S.A. de C.V.
- 10.20(1) First Amendment to Employment Agreement, dated as of September 22, 2000, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
- \*10.21(1) Product Purchase and License Agreement, dated as of October 23, 2000, by and between Novatel Wireless Inc. and Intel Corporation.
- 21 Subsidiaries of Novatel Wireless, Inc.
- 23.1 Consent of Arthur Andersen LLP, Independent Public Accountants
- 23.2 Consent of Arthur Andersen LLP, Independent Public Accountants
- 24 Power of Attorney (See signature page)

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- 1) Incorporated by reference to the Company's Registration Statement on Form S-1 (No. 333-42570), filed November 14, 2000, as amended.
- 2) Incorporated by reference to the Company's Registration Statement on Form S-8 (No. 333-53692), filed January 12, 2001.
- \* Confidential treatment requested as to some portions of this Exhibit.
- \*\* Management contract or compensation plan or arrangement.
- (b) Reports on Form 8-K

None.

#### Supplemental Information

No Annual Report to Stockholders or Proxy materials have been sent to stockholders as of the date of this report. The Annual Report to Shareholders and Proxy material will be furnished to the Company's stockholders subsequent to the filing of this report and the Company will furnish such material to the Securities and Exchange Commission at that time.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: March 22, 2001

Novatel Wireless, Inc.

By: /s/ John Major

-----  
John Major,  
Chairman and Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John Major and Melvin Flowers, or either of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934, THIS ANNUAL REPORT ON FORM 10-K HAS BEEN SIGNED BELOW BY THE FOLLOWING PERSONS ON BEHALF OF THE REGISTRANT AND IN THE CAPACITIES AND ON THE DATES INDICATED.

SIGNATURE -----	TITLE -----	DATE ----
/s/ John Major ----- John Major	Chairman and Chief Executive Officer (Principal Executive Officer)	March 22, 2001
/s/ Ambrose Tam ----- Ambrose Tam	President, Chief Operation Officer and Chief Technology Officer	March 22, 2001
/s/ Melvin Flowers ----- Melvin Flowers	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 22, 2001
/s/ Robert Getz ----- Robert Getz	Director	March 22, 2001
/s/ Nathan Gibb ----- Nathan Gibb	Director	March 22, 2001
/s/ H.H. Haight ----- H.H. Haight	Director	March 22, 2001
/s/ David Oros ----- David Oros	Director	March 22, 2001
/s/ Mark Rossi ----- Mark Rossi	Director	March 22, 2001
/s/ Steven Sherman ----- Steven Sherman	Director	March 22, 2001

Consolidated Balance Sheets.....	36
Consolidated Statements of Operations.....	37
Consolidated Statements of Shareholders' Equity (Deficit).....	38
Consolidated Statements of Cash Flows.....	39
Notes to Consolidated Financial Statements.....	40
Report of Independent Public Accountants.....	54
Financial Statement Schedule .....	55

NOVATEL WIRELESS, INC.  
CONSOLIDATED BALANCE SHEETS

	DECEMBER 31,	
	1999	2000
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents .....	\$ 25,455,000	\$ 66,826,000
Accounts receivable, net of allowance for doubtful accounts of \$181,000 (1999) and \$253,000 (2000) .....	1,345,000	8,093,000
Accounts receivable -- related party (Note 12) .....		7,446,000
Inventories .....	4,706,000	7,783,000
Due from contract manufacturers .....	4,732,000	5,340,000
Prepaid expenses and other .....	480,000	3,388,000
	-----	-----
Total current assets .....	36,718,000	98,876,000
	-----	-----
Property and equipment, net .....	1,346,000	8,986,000
Intangible assets .....		2,260,000
Other assets .....	54,000	702,000
	-----	-----
	\$ 38,118,000	\$ 110,824,000
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Accounts payable .....	\$ 11,560,000	\$ 23,829,000
Accrued expenses .....	1,174,000	5,390,000
Deferred revenues .....	8,134,000	1,996,000
Current portion of capital lease obligations .....	81,000	182,000
	-----	-----
Total current liabilities .....	20,949,000	31,397,000
	-----	-----
Capital lease obligations, net of current portion .....	106,000	205,000
Convertible and redeemable minority interest .....	4,386,000	
Convertible and redeemable preferred stock, 24,067,245 shares issued and outstanding (1999), at liquidation value, net of unamortized offering costs of \$2,875,000 .....	43,805,000	
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock, par value \$.001, 15,000,000 shares authorized, no shares issued or outstanding .....		
Common stock, par value \$.001, 350,000,000 shares authorized, 9,752,880 (1999) and 53,800,830 (2000) shares issued and outstanding .....	10,000	54,000
Additional paid-in capital .....	4,784,000	183,300,000
Deferred stock compensation .....	(800,000)	(18,234,000)
Accumulated deficit .....	(35,122,000)	(85,898,000)
	-----	-----
Total stockholders' equity (deficit) .....	(31,128,000)	79,222,000
	-----	-----
	\$ 38,118,000	\$ 110,824,000
	=====	=====

See accompanying notes to consolidated financial statements.

## NOVATEL WIRELESS, INC.

## CONSOLIDATED STATEMENTS OF OPERATIONS

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
Revenue .....	\$ 5,378,000	\$ 9,556,000	\$ 36,947,000
Revenue -- related party (Note 12) .....			24,207,000
Total revenue .....	5,378,000	9,556,000	61,154,000
Cost of revenue .....	3,433,000	11,955,000	37,113,000
Cost of revenue -- related party .....			22,475,000
Total cost of revenue .....	3,433,000	11,955,000	59,588,000
Gross margin .....	1,945,000	(2,399,000)	1,566,000
Operating costs and expenses:			
Research and development .....	2,333,000	3,717,000	13,488,000
Sales and marketing(**) .....	2,685,000	4,480,000	18,262,000
General and administrative .....	2,496,000	4,443,000	5,027,000
Amortization of deferred stock compensation(*) .....	115,000	220,000	12,833,000
Total operating costs and expenses .....	7,629,000	12,860,000	49,610,000
Operating loss .....	(5,684,000)	(15,259,000)	(48,044,000)
Other income (expense):			
Interest income .....	178,000	47,000	1,156,000
Interest expense .....		(3,267,000)	(43,000)
Other, net .....		10,000	7,000
Net loss .....	\$ (5,506,000)	\$ (18,469,000)	\$ (46,924,000)
Per share data:			
Net loss applicable to common stockholders ...	\$ (6,657,000)	\$ (19,873,000)	\$ (50,776,000)
Weighted average shares used in computation of basic and diluted net loss per common share .....	9,711,630	9,728,421	15,654,079
Basic and diluted net loss per common share .....	\$ (0.69)	\$ (2.04)	\$ (3.24)
(*) Amortization of deferred stock compensation:			
Cost of revenue .....			\$ 370,000
Research and development .....			430,000
Sales and marketing .....			419,000
General and administrative .....	\$ 115,000	\$ 220,000	11,614,000
	\$ 115,000	\$ 220,000	\$ 12,833,000

(\*\*) Sales and marketing expense in 2000 includes a \$2,283,000 one-time non-cash charge for the beneficial conversion feature relating to the 434,782 Preferred Series D shares issued for \$5.75 at a discount of \$5.25 in October 2000

See accompanying notes to consolidated financial statements.



## CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)

	PREFERRED STOCK		COMMON STOCK	
	SHARES	AMOUNT	SHARES	AMOUNT
Balance, January 1, 1998 .....			\$ 9,711,630	\$ 10,000
Deferred compensation for stock options issued .....				
Amortization of deferred compensation .....				
Accretion of dividends on minority interest in NWT .....				
Accretion of dividends on convertible and redeemable preferred stock of NWI .....				
Amortization of offering costs for convertible and redeemable preferred stock .....				
Net loss .....				
Balance, December 31, 1998 .....			9,711,630	10,000
Additional paid-in capital from stock options exercised .....			41,250	
Deferred compensation for stock options issued .....				
Amortization of deferred compensation .....				
Accretion of dividends on minority interest in NWT .....				
Accretion of dividends on convertible and redeemable preferred stock of NWI .....				
Amortization of offering costs for convertible and redeemable preferred stock .....				
Imputed value of warrants issued with convertible subordinated debentures .....				
Net loss .....				
Balance, December 31, 1999 .....			9,752,880	10,000
Issuance of convertible preferred stock, net of issuance costs .....	6,326,932	6,000		
Exercise of stock options and warrants .....			1,232,537	1,000
Deferred compensation for stock options issued .....				
Amortization of deferred compensation .....				
Accretion of dividends on minority interest in NWT .....				
Accretion of dividends on convertible and redeemable preferred stock of NWI .....				
Amortization of offering costs for convertible and redeemable preferred stock .....				
Issuance of common stock in initial public offering, net of issuance costs .....			8,025,000	8,000
Conversion of convertible and redeemable preferred stock upon the initial public offering .....			28,463,481	29,000
Conversion of convertible preferred stock upon the initial public offering .....	(6,326,932)	(6,000)	6,326,932	6,000
Net loss .....				
Balance, December 31, 2000 .....		\$	\$ 53,800,830	\$ 54,000

	ADDITIONAL PAID-IN CAPITAL	DEFERRED COMPENSATION	ACCUMULATED DEFICIT	TOTAL STOCKHOLDERS' EQUITY (DEFICIT)
Balance, January 1, 1998 .....	\$ 499,000		\$ (8,592,000)	\$ (8,083,000)
Deferred compensation for stock options issued .....	276,000	\$ (276,000)		
Amortization of deferred compensation .....		115,000		115,000
Accretion of dividends on minority interest in NWT .....			(273,000)	(273,000)
Accretion of dividends on convertible and redeemable preferred stock of NWI .....			(859,000)	(859,000)
Amortization of offering costs for				

convertible and redeemable preferred stock .....			(19,000)	(19,000)
Net loss .....			(5,506,000)	(5,506,000)
Balance, December 31, 1998 .....	775,000	(161,000)	(15,249,000)	(14,625,000)
Additional paid-in capital from stock options exercised .....	30,000			30,000
Deferred compensation for stock options issued .....	859,000	(859,000)		
Amortization of deferred compensation .....		220,000		220,000
Accretion of dividends on minority interest in NWT .....			(286,000)	(286,000)
Accretion of dividends on convertible and redeemable preferred stock of NWI .....			(1,096,000)	(1,096,000)
Amortization of offering costs for convertible and redeemable preferred stock .....			(22,000)	(22,000)
Imputed value of warrants issued with convertible subordinated debentures .....	3,120,000			3,120,000
Net loss .....			(18,469,000)	(18,469,000)
Balance, December 31, 1999 .....	4,784,000	(800,000)	(35,122,000)	(31,128,000)
Issuance of convertible preferred stock, net of issuance costs .....	38,087,000			38,093,000
Exercise of stock options and warrants .....	951,000			952,000
Deferred compensation for stock options issued .....	30,267,000	(30,267,000)		
Amortization of deferred compensation .....		12,833,000		12,833,000
Accretion of dividends on minority interest in NWT .....			(197,000)	(197,000)
Accretion of dividends on convertible and redeemable preferred stock of NWI .....			(3,146,000)	(3,146,000)
Amortization of offering costs for convertible and redeemable preferred stock .....			(509,000)	(509,000)
Issuance of common stock in initial public offering, net of issuance costs .....	57,195,000			57,203,000
Conversion of convertible and redeemable preferred stock upon the initial public offering .....	52,016,000			52,045,000
Conversion of convertible preferred stock upon the initial public offering .....			(46,924,000)	(46,924,000)
Net loss .....				
Balance, December 31, 2000 .....	<u>\$ 183,300,000</u>	<u>\$ (18,234,000)</u>	<u>\$ (85,898,000)</u>	<u>\$ 79,222,000</u>

See accompanying notes to consolidated financial statements.

## NOVATEL WIRELESS, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
Operating activities:			
Net loss .....	\$ (5,506,000)	\$(18,469,000)	\$(46,924,000)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization .....	442,000	672,000	1,853,000
Provision for bad debt .....		137,000	72,000
Compensation for stock options issued below fair value .....	115,000	220,000	12,833,000
Compensation for warrants issued in connection with convertible subordinated debentures .....		3,120,000	
One-time non-cash beneficial conversion charge .....			2,283,000
Changes in assets and liabilities:			
Accounts receivable .....	(214,000)	(875,000)	(6,820,000)
Accounts receivable -- related party .....			(7,446,000)
Due from contract manufacturers .....		(4,732,000)	(608,000)
Inventories .....	(226,000)	(4,050,000)	(3,077,000)
Prepaid expenses and other .....	(127,000)	(256,000)	(2,908,000)
Other assets .....		(54,000)	(648,000)
Accounts payable .....	332,000	10,391,000	12,269,000
Accrued expenses .....	156,000	576,000	4,218,000
Deferred revenues .....		8,134,000	(6,138,000)
Net cash used in operating activities .....	(5,028,000)	(5,186,000)	(41,041,000)
Investing activities:			
Purchases of property and equipment .....	(313,000)	(880,000)	(9,170,000)
Purchase of intangible assets .....			(2,260,000)
Net change in short-term investments .....	(36,000)	296,000	
Net cash used in investing activities .....	(349,000)	(584,000)	(11,430,000)
Financing activities:			
Payments on promissory notes .....	(500,000)		
Net issuance of convertible and redeemable preferred Stock .....	7,197,000	24,625,000	
Net issuance of convertible and redeemable minority interest shares .....	510,000		
Issuance of convertible preferred stock .....			35,810,000
Proceeds from exercise of stock options .....		30,000	952,000
Proceeds from issuance of convertible subordinated debentures .....		3,120,000	
Net proceeds from initial public offering .....			57,203,000
Payments under capital lease obligation .....		(47,000)	(123,000)
Net cash provided by financing activities .....	7,207,000	27,728,000	93,842,000
Net increase in cash and cash equivalents .....	1,830,000	21,958,000	41,371,000
Cash and cash equivalents, beginning of period .....	1,667,000	3,497,000	25,455,000
Cash and cash equivalents, end of period .....	\$ 3,497,000	\$ 25,455,000	\$ 66,826,000
Supplemental disclosures of non-cash investing and financing activities:			
Conversion of convertible subordinated debentures and related accrued interest into Series C convertible and redeemable preferred stock .....		\$ 3,250,000	
Conversion of convertible and redeemable preferred stock into shares of common stock upon the initial public offering .....			\$ 52,045,000
Accretion of dividends on minority interest .....	\$ 273,000	286,000	197,000
Accretion of dividends on convertible and redeemable preferred stock .....	859,000	1,096,000	3,146,000
Amortization of offering costs for convertible and redeemable preferred stock .....	19,000	22,000	509,000
Deferred compensation for stock options issued .....	276,000	859,000	30,267,000
Property and equipment acquired under capital lease obligations .....		234,000	323,000
Supplemental disclosures of cash flow information:			
Cash paid during the period for:			
Interest .....	\$	\$ 7,000	\$ 44,000

See accompanying notes to consolidated financial statements.



NOVATEL WIRELESS, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 1. THE COMPANY

Novatel Wireless, Inc., a Delaware corporation (the "Company") is headquartered in San Diego, California. The Company is a provider of wireless data modems and enabling software for use with handheld computing devices and portable personal computers that allow businesses and consumers to access personal, corporate and public information through email, enterprise networks and the Internet. The Company also offers its wireless data modems and custom engineering services for hardware integration projects in a wide range of vertical applications.

The Company's subsidiaries include wholly owned Novatel Wireless Solutions, Inc., incorporated in Delaware, and wholly owned Novatel Wireless Technologies Ltd. ("NWT"), incorporated in Alberta, Canada.

## 2. RISKS AND UNCERTAINTIES

### Company Operations

The Company is subject to a number of risks and uncertainties associated with companies at a similar stage of maturity, has only a limited operating history and the revenue and income potential of the Company's business and markets are unproven. Further, the markets for wireless Internet products and services are relatively new and rapidly evolving both technologically and competitively.

The Company has experienced net losses in each year since its inception and had an accumulated deficit of \$85.9 million at December 31, 2000. The Company incurred net losses of \$5.5 million, \$18.5 million, and \$46.9 million and negative cash flows from operations of \$5.0 million, \$5.2 million, and \$41.0 million for the years ended December 31, 1998, 1999 and 2000, respectively. The Company expects to continue to incur significant losses for the foreseeable future. While the Company is unable to predict accurately its future operating expenses, the Company currently expects these expenses to increase substantially, as it, among other things, expands its selling and marketing activities, increases its research and development efforts to upgrade its existing services and develop new services and technologies, upgrades its operational and financial systems, procedures and controls, and hires and trains additional personnel.

The Company will need to significantly increase its revenues to achieve and maintain profitability. If it fails to significantly increase its revenues, the Company will continue to experience losses and, accordingly, the Company may be required to obtain additional financing in the future. Management believes that the Company's cash reserves including net proceeds from the initial public offering (see Note 3) will be sufficient to fund operations for at least the next twelve months.

## 3. RECENT FINANCINGS AND EQUITY ACTIVITY

### Initial Public Offering

In November 2000, the Company completed its initial public offering transaction, raising approximately \$57.2 million, net of offering costs of approximately \$7 million, upon the issuance of 8,025,000 shares of the Company's common stock. On the closing of this transaction, all classes of preferred stock converted into shares of common stock of the Company on a one-for-one basis.

### Series D Convertible Preferred Stock

In June and July of 2000, the Company issued 5,892,150 shares of Series D convertible preferred stock at \$5.75 per share to accredited investors in a private placement. Net proceeds from the financing amounted to approximately \$33.3 million, net of offering costs of approximately \$541,000. The Company also issued warrants to purchase a total of 1,178,400 shares of its common stock at an exercise price of \$5.75 expiring June 30, 2005.

In October 2000, the Company issued 434,782 shares of Series D convertible preferred stock at \$5.75 per share to a qualified institutional buyer in a private placement. Net proceeds from the financing amounted to approximately \$2.5 million. The per share price represents a discount of \$5.25 compared to the fair value on the date of issuance. Concurrently, the Company entered into a product purchase and licensing agreement with the same investor. As a result of this transaction, the Company recorded the sale of the preferred stock measured at fair value pursuant to the guidance in SFAS No. 123 and EITF 98-5. The discount of approximately \$2.3 million for the beneficial conversion has been recorded as a one-time charge in sales and marketing expense during the fourth quarter of 2000.

#### 4. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### Principles of Consolidation

The consolidated financial statements include the accounts of Novatel Wireless, Inc. and its wholly owned subsidiaries Novatel Wireless Solutions, Inc. and NWT. NWT became wholly owned in September 2000 when the holders of NWT Series A and Series B preferred shares exchanged all of their shares (See Note 7). Prior to such exchange, NWT was 50% owned. NWT was consolidated prior to the share exchange because NWT had financial and managerial control over NWT and had the ability to unilaterally obtain a majority share ownership position and voting control. The other shareholder in NWT was a passive investor with no operational influence, no veto voting rights and no obligation to fund NWT's operations.

The remaining 50% ownership of NWT is reflected in the accompanying balance sheets as convertible and redeemable minority interest through the period that NWT became a wholly owned subsidiary. Refer to Note 7 for further discussion of the minority interest. All significant intercompany transactions and balances are eliminated in consolidation. Certain reclassifications have been made to amounts included in the prior years' financial statements to conform to the presentation for the year ended December 31, 2000.

##### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues, expenses and disclosures of contingent assets and liabilities. Actual results could differ from these estimates.

##### Revenue Recognition

The Company's revenue has been generated from the sale of wireless modems to wireless telecommunications operators, wireless data content and service providers, resellers and OEM customers. The Company also generates revenue from product activation services provided prior to shipping; through December 31, 2000, product activation revenue has not been significant. Revenue from product sales and services, which includes product activation, is recognized upon the later of transfer of title or upon shipment of the product to the customer or upon rendering product activation services, if applicable. Revenues from long-term supply contracts are recognized as products are shipped to customers over the period of the contract. The Company records deferred revenue for cash payments received from customers in advance of product shipments. The Company grants price protection provisions to certain customers and tracks pricing and other terms offered to customers buying similar products to assess compliance with these provisions. To date, the Company has not incurred material price protection expenses. The Company establishes reserves for estimated product returns and warranty allowances in the period in which revenue is recognized.

During 1998, the Company generated revenues of \$650,000 under a license agreement. Revenues on this agreement were recognized under the contractual terms, which included successful manufacturing of the product by the customer. Cost of revenues incurred under the agreement totaled approximately \$294,000 in 1998.

In December 1999, the Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin ("SAB") No. 101, "Revenue Recognition in Financial Statements." SAB No. 101 summarizes the SEC's views in applying generally accepted accounting principles to revenue recognition in financial statements. SAB No. 101 became effective during the fourth quarter of fiscal 2000. Management adopted the provisions of SAB No. 101 which did not have a material impact on the Company's financial position or results of operations.

## Research and Development Costs

Research and development costs are expensed as incurred. To date, the Company has not incurred significant software development costs that would be capitalized in accordance with Statement of Financial Accounting Standards ("SFAS") No. 86, "Accounting for the Costs of Computer Software to Be Sold, Leased or Otherwise Marketed."

## Warranty Costs

The Company accrues warranty costs based on estimates when such costs have been incurred.

## Cash and Cash Equivalents

Cash and cash equivalents include highly liquid investments with original maturities of three months or less. Cash and cash equivalents consist of money market and mutual funds and are carried at market, which approximates cost.

## Inventories

Inventories are stated at the lower of cost (first-in, first-out method) or market.

## Due from Contract Manufacturers

Due from contract manufacturers represents amounts due to the Company from outsourced product manufacturers from the sale of materials inventories by the Company to the manufacturers. These sales represent a transfer of assets and are not recognized as revenues in the accompanying consolidated statements of operations.

## Property and Equipment

Property and equipment are stated at cost and depreciated primarily using the straight-line method. Test equipment, computer equipment and software, furniture and fixtures and product tooling are depreciated over lives between two and five years and leasehold improvements are depreciated over the shorter of the related lease period or useful life.

## Intangible Assets

Intangible assets include non-exclusive and perpetual worldwide software product licenses. License costs are amortized on a straight-line basis over the estimated useful lives of the assets, which range from 3 to 7 years and will begin amortizing as the software product licenses are used in our products.

## Long-Lived Assets

The Company evaluates the carrying value of the unamortized balances of its long-lived assets to determine whether any impairment of these assets has occurred or whether any revision to the related amortization periods should be made. This evaluation is based on management's projections of the undiscounted future cash flows associated with each asset. If management's evaluation were to indicate that the carrying values of these assets were impaired, such impairment would be recognized by a write down of the applicable asset to its estimated fair value and expensed through operations.

## Income Taxes

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes," which requires the use of the liability method of accounting for deferred income taxes. Under this method, deferred income taxes are recorded to reflect the tax consequences on future years of temporary differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end. If it is more likely than not that some portion or all of a deferred tax asset will not be realized, a valuation allowance is recognized.

## Stock-Based Compensation

As permitted by SFAS No. 123, "Accounting for Stock-Based Compensation," the Company accounts for costs of stock-based employee compensation in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees." Accordingly, the Company discloses the pro forma effect on net loss and related per share amounts as if the fair-value method prescribed by SFAS No. 123 had been used to account for its stock-based employee compensation. The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123 and related interpretations.

## Computation of Net Loss Per Share

SFAS No. 128, "Earnings Per Share," requires companies to compute basic and diluted per share data for all periods for which a statement of operations is presented. Basic net loss per share is computed by dividing the net loss applicable to common stockholders by the weighted average number of common shares that were outstanding during the period. Diluted earnings per share is computed by giving effect to all potentially dilutive securities that were outstanding for the periods presented. Potentially dilutive securities consisting of options, warrants, convertible and redeemable minority interest and convertible and redeemable preferred stock were not considered in the calculation of diluted earnings per share, as their impact would be antidilutive. For the periods presented, there is no difference between basic and diluted net loss per share. The difference between net loss and net loss applicable to common stockholders consists of accretion of dividends on minority interest, accretion of dividends on convertible and redeemable preferred stock and amortization of offering costs for convertible and redeemable preferred stock.

## Foreign Currency Translation

Monetary balance sheet accounts of the Company's Canadian subsidiary are translated from Canadian dollars into U.S. dollars at the exchange rate in effect at the balance sheet date, non-monetary balance sheet accounts are translated at historical rates and revenue and expense accounts are translated using an average exchange rate during the period of recognition. The functional currency of the Canadian subsidiary is the U.S. dollar, thus translation gains and losses are reflected in operations. Exchange gains and losses arising from transactions denominated in foreign currencies are recorded using the actual exchange differences on the date of the transaction and are reflected in operations.

## Fair Value of Financial Instruments

The carrying amounts of the Company's financial instruments, primarily including cash, accounts receivable, accounts payable and accrued expenses approximate their fair value due to their short term nature. The Company performs credit evaluations of key customers and management believes it is not exposed to significant credit risk on its accounts receivable in excess of established reserves.

## Comprehensive Income

SFAS No. 130, "Comprehensive Income," requires that all items recognized under accounting standards as components of comprehensive income be reported with the same prominence as other financial statements. The Company has no items requiring separate display of comprehensive income.

## Segment Information

SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information," requires public companies to report financial and descriptive information about their reportable operating segments. The Company identifies its operating segments based on how management internally evaluates separate financial information, business activities and management responsibility. The Company operates in a single business segment consisting of the development, manufacture and sale of wireless Internet products.



## Recent Accounting Pronouncements

In 1998, the Financial Accounting Standards Board, ("FASB"), issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." In June 1999, the FASB issued SFAS No. 137, "Accounting for Derivatives and Hedging Activities -- Deferral of the Effective Date of FASB Statement No. 133" and in June 2000 issued SFAS No. 138 "Accounting for Derivative Instruments and Hedging Activities -- an Amendment of FASB Statement No. 133. Under SFAS No. 133, as amended by SFAS Nos. 137 and 138, derivatives not meeting hedge criteria are recorded in the balance sheet as either an asset or liability measured at fair value and changes in fair value are recognized currently in earnings. The Company implemented SFAS No. 133, as amended by SFAS Nos. 137 and 138, effective January 1, 2001. The implementation of SFAS No. 133, as amended by SFAS Nos. 137 and 138, did not have a material impact on the Company's financial position or results of operations.

In July 2000, the Emerging Issues Task Force ("EITF") reached a consensus on EITF 00-10, "Accounting for Shipping and Handling Fees and Costs." EITF 00-10 requires that all amounts billed to a customer in a sales transaction related to shipping and handling, if any, represent revenue to the vendor and should be classified as revenue. There has been no consensus at this time on the treatment for the related costs. The Company records shipping and handling fees and costs in cost of revenue. The Company adopted EITF 00-10 in October 2000. The implementation of EITF 00-10 did not have a material impact on its financial position or results of operations.

## 5. FINANCIAL STATEMENT DETAILS

## Due from Contract Manufacturers

Due from contract manufacturers represents amounts due from the Company's third party product manufacturers from the transfer of materials inventories by the Company to the manufacturers. These transfers of assets were not recognized as revenues in the accompanying consolidated statements of operations. At December 31, 2000, the inventory amount transferred to the contract manufacturers was \$5.3 million.

## Inventories

Inventories consist of the following:

	DECEMBER 31,	
	1999	2000
Finished goods .....	\$3,377,000	\$4,503,000
Raw materials and components .....	1,329,000	3,280,000
	\$4,706,000	\$7,783,000
	=====	=====

## Property and Equipment

Property and equipment consists of the following:

	DECEMBER 31,	
	1999	2000
Test equipment .....	\$ 650,000	\$ 4,511,000
Computer equipment and purchased software .....	1,550,000	4,728,000
Furniture and fixtures .....	396,000	1,331,000
Product tooling .....	491,000	1,099,000
Leasehold improvements .....	15,000	926,000
	3,102,000	12,595,000
Less -- accumulated depreciation and amortization ...	(1,756,000)	(3,609,000)
	\$ 1,346,000	\$ 8,986,000
	=====	=====

Depreciation expense was \$442,000, \$672,000, and \$1,853,000 for the years ended December 31, 1998, 1999 and 2000, respectively. At December 31, 1999 and 2000, assets held under capital leases had a net book value of \$190,000 and \$380,000, respectively, net of accumulated amortization of \$31,000 and \$170,000, respectively.

#### Accrued Expenses

Accrued expenses consist of the following:

	DECEMBER 31,	
	1999	2000
Sales taxes .....	\$ 346,000	\$ 945,000
Payroll and related .....	430,000	1,575,000
Product warranty .....	236,000	675,000
Insurance policy premiums .....		773,000
Professional fees .....	100,000	491,000
Reserve for product returns .....		127,000
Other .....	62,000	804,000
	-----	-----
	\$1,174,000	\$5,390,000
	=====	=====

#### 6. LINE OF CREDIT

In December 2000, we entered into a credit facility with a bank, which allows the Company to borrow up to the lesser of \$10 million or 80% of eligible accounts receivable balances. This credit facility bears interest at prime plus 1% (9.5% at December 31, 2000), is secured by substantially all assets of the Company and expires in June 2001. As of December 31, 2000, there were no borrowings outstanding under this facility.

#### 7. CONVERTIBLE AND REDEEMABLE MINORITY INTEREST

Minority interest consisted of 3,755,394 Series A convertible and redeemable preferred shares "Series A shares" and 640,842 Series B convertible and redeemable preferred shares "Series B shares" of NWT at December 31, 1999.

In 1996 and 1997, the Company issued 3,755,394 Series A shares and 281,688 Series B shares to accredited investors in private placements. Proceeds from these financings were approximately \$3,066,000.

In 1998, the Company issued 359,154 Series B shares to accredited investors in a private placement. Proceeds from the financing were approximately \$510,000, or \$1.42 per share. The Company also caused its subsidiary, NWT, to issue warrants to purchase a total of 134,682 shares of NWT common stock at an exercise price of \$1.42 on or prior to April 24, 2003.

Each of NWT's preferred stockholders were entitled to receive, from funds legally available, a cumulative annual dividend of 8% per annum based on their respective purchase price upon any liquidation, dissolution or winding up of the affairs of NWT, redemption, or when declared by the Board of Directors, provided that, upon optional or automatic conversion of the preferred shares, all accrued and unpaid dividends are forfeited. Dividends on these shares of \$273,000, \$286,000 and \$197,000 for the years ended December 31, 1998, 1999 and 2000, respectively, have been recorded in the accompanying consolidated financial statements.

In September 2000, the NWT Series A and Series B holders exchanged their NWT Series A and Series B shares on a one-for-one basis into NWI Series A preferred and Series B preferred shares. These shares were subsequently converted into shares of common stock on a one-for-one basis upon the initial public offering in November 2000 (see Note 3) and the accrued dividends were forfeited and as such, reclassified to Additional Paid-in Capital.

## 8. CONVERTIBLE AND REDEEMABLE PREFERRED STOCK

The Company had three classes of convertible and redeemable preferred stock as follows.

	DECEMBER 31, 1999
	-----
Convertible and redeemable preferred stock, Series A, par value \$.001, 16,500,000 shares authorized, 6,791,571 shares issued and outstanding .....	\$ 5,870,000
Convertible and redeemable preferred stock, Series B, par value \$.001, 7,500,000 shares authorized (485,241 are non-voting), 6,252,843 shares issued and outstanding .....	10,060,000
Convertible and redeemable preferred stock, Series C, par value \$.001, 16,500,000 shares authorized, 11,022,831 shares issued and outstanding .....	27,875,000
	-----
	\$43,805,000
	=====

In 1996 and 1997, the Company issued 6,791,571 shares of Series A convertible and redeemable preferred stock "Series A" and 1,126,761 shares of Series B convertible and redeemable preferred stock "Series B" to accredited investors in private placements. Net proceeds from these financing were approximately \$6,322,000.

In 1998, the Company issued 5,126,082 shares of Series B to accredited investors in a private placement. Net proceeds from the financing were approximately \$7,197,000.

In December 1999, the Company issued 11,022,831 shares of Series C convertible and redeemable preferred stock "Series C" to accredited investors in a private placement at a price of \$2.78 per share. Net proceeds from the financing were approximately \$27,875,000, including conversion of subordinated debentures of \$3,120,000 (see Note 9) and related accrued interest of \$130,000 after deducting offering costs and placement agent's commissions of approximately \$2,768,000.

The holders of the Series A, Series B and Series C were entitled to receive, from funds legally available, a cumulative annual dividend of 8% of the purchase price upon any liquidation, dissolution or winding up of the affairs of the Company, upon redemption, or when declared by the Board of Directors, provided that upon optional or automatic conversion of the shares of preferred stock all accrued and unpaid dividends were to be forfeited. Dividends on these shares of \$859,000, \$1,096,000 and \$3,146,000 for the years ended December 31, 1998, 1999 and 2000, respectively, have been recorded in the accompanying consolidated financial statements.

Upon the closing of the initial public offering in November 2000, all shares of the Company's preferred stock were converted into shares of the Company's common stock on a one-for-one basis and the accrued dividends were forfeited and as such, reclassified to Additional Paid-in Capital.

## 9. STOCKHOLDERS' EQUITY (DEFICIT)

During fiscal 2000, the Company amended its Certificate of Incorporation to change its authorized share capital. As a result, the Company is authorized to issue 350,000,000 shares of common stock, par value \$.001; and 15,000,000 shares of preferred stock, par value \$.001. Common shares are voting shares and have equal rights in the event of liquidation. The Company has not issued any shares of preferred stock.

In August 2000, the Company's Board of Directors approved a three-for-one stock split. The effects of this stock split have been retroactively reflected for all periods presented.

## Convertible Subordinated Debentures

On June 24, 1999 and July 15, 1999, the Company issued convertible subordinated debentures to accredited investors in the total principal amount of \$3,120,000 bearing interest at the rate of 8% per annum. The Company also

issued warrants to purchase a total of 3,930,006 shares of its common stock and 750,000 shares of common stock of NWT at an exercise price of \$0.67 per share. Of these warrants, 4,650,621 expire on June 24, 2004 and 29,385 expire on July 15, 2004. Concurrently with the closing of the Series C preferred stock financing in December 1999, all of the subordinated debentures, and the accrued and unpaid interest of approximately \$130,000, were converted into shares of Series C preferred stock at a conversion price of \$2.78 per share.

#### Warrants

Each of the Company and NWT have issued warrants to purchase shares of the Company's and NWT's capital stock to various investors and lenders as approved by their respective boards of directors.

A summary of warrant activity is as follows:

	DECEMBER 31,					
	1998		1999		2000	
	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
<b>NWI WARRANTS</b>						
Outstanding, beginning of year ....	422,535	\$ 1.42	2,344,815	\$ 1.42	8,494,890	\$ 1.56
Granted .....	1,922,280	1.42	6,150,075	1.61	2,168,715	3.51
Exercised .....					(121,515)	1.41
Outstanding, end of year .....	2,344,815	\$ 1.42	8,494,890	\$ 1.56	10,542,090	\$ 1.96
<b>NWT WARRANTS</b>						
Outstanding, beginning of year ....	105,633	1.42	240,315	1.42	990,315	0.85
Granted .....	134,682	1.42	750,000	0.67		
Cancelled .....					(990,315)	0.85
Outstanding, end of year .....	240,315	\$ 1.42	990,315	\$ 0.85		

In connection with the Series D financing in 2000 (see Note 3), the Company issued warrants to purchase 1,178,400 shares of common stock of the Company. These warrants may be exercised at \$5.75 per share at any time up to June 30, 2005. The Company estimated the fair market value of these warrants at the date of issuance was nominal and, accordingly, no value has been assigned to them.

In connection with the Series C financing in 1999 (see Note 8), the Company issued warrants to purchase 2,148,639 shares of common stock of the Company. These warrants may be exercised at \$3.33 per share (for 2,119,071 warrants) and \$2.78 per share (for 29,568 warrants) at any time up to December 31, 2004. The Company estimated the fair market value of these warrants at the date of issuance was nominal and, accordingly, no value has been assigned to them.

In connection with the convertible subordinated debenture transaction, the Company issued warrants to buy 3,930,006 shares of its common stock and 750,000 common shares of NWT. These warrants may be exercised at \$0.67 per share. Of these warrants, 4,650,621 expire on June 24, 2004 and 29,385 expire on July 15, 2004. The Company estimated that the fair value of the warrants at the date of issuance was approximately \$4.3 million as the exercise price per share of common stock was less than deemed fair value per share of common stock. Accordingly, the Company allocated the gross debenture proceeds of \$3,120,000 toward the value of these warrants. This also resulted in non-cash interest expense totaling \$3,120,000 in fiscal 1999 to accrete the debt discount (resulting from the allocation of proceeds to the warrant) from the time of debenture issuance to conversion to Series C.

In connection with the previous line of credit financing, the Company issued warrants to buy 71,430 shares of Series C. These warrants may be exercised at \$2.10 per share at any time up to expiration at December 31, 2004. The Company believes the fair value of these warrants at the date of issuance was nominal and, accordingly, no value has been assigned to them.

In connection with the Series B financing in 1997 and 1998 (see Note 8), the Company issued warrants to buy 422,535 and 1,922,280 shares of its common stock, and NWT issued warrants to buy 105,633 and 134,682 common shares of NWT, respectively. These warrants may be exercised at \$1.42 per share at any time up to December 31, 2002 (for 528,168 of the warrants) and April 24, 2003 (for 2,056,962 of the warrants). The Company believes the fair market value of these warrants at the date of issuance was nominal and, accordingly, no value has been assigned to them.



## Stock Option Plans

The Company's June 1997 stock option plan (the "1997 Plan") for employees authorizes the granting of options for up to 12,000,000 shares of the Company's common stock. Generally, options are to be granted at prices equal to at least 100% of the fair value of the stock at the date of grant, expire not later than ten years from the date of grant and vest ratably over a four-year period following the date of grant. From time to time, as approved by the Company's Board of Directors, options with differing terms have also been granted. The 1997 Plan provides that any shares issued come from the Company's authorized but unissued or reacquired common stock.

In July 2000, the Company's Board of Directors approved the 2000 Stock Incentive Plan (the "2000 Plan") authorizing the granting of options for up to 16,500,000 shares of the Company's common stock, including the 12,000,000 shares authorized under the 1997 plan. The Company implemented the 2000 Plan upon the effective date of the initial public offering in November 2000 (see Note 3). Options under the 2000 Plan are generally issued, vest and expire on the same terms as the 1997 Plan.

A summary of stock option activity is as follows:

	OPTIONS OUTSTANDING	OPTIONS AVAILABLE FOR GRANT	WEIGHTED AVERAGE EXERCISE PRICE PER SHARE
Options outstanding, January 1, 1998 .....	1,405,500	982,650	\$ 0.72
New authorized options .....		1,500,000	
Granted .....	2,337,000	(2,337,000)	\$ 0.84
Cancelled .....	(322,500)	322,500	\$ 0.76
Options outstanding, December 31, 1998 .....	3,420,000	468,150	\$ 0.80
New authorized options .....		2,111,850	
Granted .....	852,000	(852,000)	\$ 0.95
Exercised .....	(41,250)		\$ 0.71
Cancelled .....	(198,750)	198,750	\$ 0.78
Options outstanding, December 31, 1999 .....	4,032,000	1,926,750	\$ 0.83
New authorized options .....		10,500,000	
Granted .....	8,816,443	(8,816,443)	\$ 6.19
Exercised .....	(1,111,022)		\$ 0.68
Cancelled .....	(1,286,601)	1,286,601	\$ 1.28
Options outstanding, December 31, 2000 .....	10,450,820	4,896,908	\$ 5.31
Exercisable, December 31, 1998 .....	328,752		\$ 0.65
Exercisable, December 31, 1999 .....	1,327,752		\$ 0.66
Exercisable, December 31, 2000 .....	2,018,766		\$ 3.02

Additional information relating to stock options outstanding and exercisable at December 31, 2000, summarized by exercise price is as follows:

RANGE OF EXERCISE PRICES	OUTSTANDING WEIGHTED AVERAGE			EXERCISABLE WEIGHTED AVERAGE	
	SHARES	LIFE (YEARS)	EXERCISE PRICE	SHARES	EXERCISE PRICE
\$ 0.71 -- 2.67	2,724,327	8.08	\$ 1.35	955,977	\$ 0.81
\$ 5.00 -- 5.00	4,157,493	9.55	5.00	1,062,789	\$ 5.00
\$ 7.50 -- 9.63	2,843,400	9.75	8.09		
\$11.00 -- 12.19	725,600	9.76	11.06		
	10,450,820			2,018,766	

The Company amortizes stock-based employee compensation over the vesting periods of the related options using the attribute method prescribed by FASB Interpretation No. 28 and SFAS No. 123. Under this method, each vested tranche of options is accounted for as a separate option grant awarded for services. Accordingly, the compensation expense is recognized over the period during which the services are provided. This method results in higher compensation expense in the earlier vesting periods of the related options.



From September through December 2000, the Company granted options to employees to purchase 1,638,100 shares of common stock at an average exercise price of \$10.09 per share. These options were granted at fair value as of the date of the grant.

In August 2000, the Company granted options to employees to purchase 1,941,150 shares of common stock at an exercise price of \$7.50 per share. In connection with these grants, the Company recorded \$6,794,000 of gross deferred stock compensation.

In July 2000, the Company granted options to employees to purchase 3,948,243 shares of common stock at an exercise price of \$5.00 per share. In connection with these grants, the Company recorded \$22,350,000 of gross deferred stock compensation. Additionally, \$659,000 of gross deferred compensation expense related to 65,625 options was recorded for the extension of the vesting period related to a terminated employee. In July 2000, the Company appointed a new Chief Executive Officer, and granted this officer options to purchase 3,036,543 shares of common stock at an exercise price of \$5.00 per share. The options vest and become exercisable as follows: 607,308 options were immediately exercisable; 379,569 options vest and become exercisable on July 24, 2001; 379,569 options vest and become exercisable on July 24, 2002; and 303,654 options vest and become exercisable on each July 24 of 2001, 2002, 2003 and 2004. In addition, 455,481 options vested and became exercisable upon the closing of the Company's Initial Public Offering. The remaining 911,700 July option grants vest over a four-year period, with 25% of the options vesting each year from the date of grant.

In April and May 2000, the Company granted options to employees to purchase 907,950 shares of common stock at an average price of \$3.33 per share. In connection with this grant, the Company recorded \$169,000 of gross deferred stock compensation.

In February 2000, the Company granted options to purchase 375,000 shares of common stock at an exercise price of \$1.67 per share. In connection with this grant, the Company recorded \$295,000 of gross deferred stock compensation.

In 1999, the Company issued options to employees to purchase an aggregate of 852,000 shares of the Company's common stock at an exercise price of \$0.95 per share. On the grant dates the deemed fair value of a share of common stock was in excess of \$0.95 per share. Accordingly, the Company recognized gross deferred compensation related to these grants of \$859,000. This deferred charge will be amortized to expense over the four-year vesting period of these options.

Of the remaining options granted through December 31, 1999, options to purchase 1,521,000 and 2,037,000 shares of common stock were granted in 1997 and 1998, respectively. These options were granted at exercise prices which the Company believes approximated fair value at the date of grant.

In 1998, the Company granted to an employee an option to purchase 300,000 shares of the Company's common stock at an exercise price of \$0.03 per share. On the grant date, the fair value of a share of common stock was in excess of the exercise price. Accordingly, the Company recognized gross deferred compensation of \$276,000.

Amortization of stock-based compensation was \$115,000, \$220,000 and \$12.8 million for the periods ended December 31, 1998, 1999 and 2000, respectively. The Company expects to amortize \$10.8 million in 2001, \$4.7 million in 2002, \$2.1 million in 2003 and \$700,000 in 2004, assuming no cancellations or additional stock option grants below deemed fair value.



As permitted, the Company has adopted the disclosure only provisions of SFAS No. 123. Accordingly, no compensation expense, except as specifically described above, has been recognized for employee stock option plans. Had compensation expense been determined based on the fair values at the dates of grant for the years ended December 31, 1998, 1999 and 2000 consistent with the provisions of SFAS No. 123, the Company's net loss per share would have been reported as the pro forma amounts indicated below:

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
Net loss applicable to common stockholders, as reported .....	\$ (6,657,000)	\$ (19,873,000)	\$ (50,776,000)
Net loss applicable to common stockholders, pro forma .....	\$ (6,789,000)	\$ (20,201,000)	\$ (53,587,000)
Net loss per share, as reported ...	\$ (0.69)	\$ (2.04)	\$ (3.24)
Net loss per share, pro forma .....	\$ (0.70)	\$ (2.08)	\$ (3.42)

The fair value of these option grants were estimated on the date of grant using an option-pricing model with the following weighted-average assumptions: zero dividend yield; risk-free interest rates between 5.28% and 6.45%; volatility of 77% (2000) and expected lives of four to five years.

The option pricing model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Option valuation models also require the input of highly subjective assumptions. Because the Company's employee stock-based compensations plans have characteristics significantly different from those of traded options and because changes in the subjective input assumptions can materially affect fair value estimates, the Company believes that existing option valuation models do not necessarily provide a reliable single measure of the fair value of awards from the plans.

#### Employee Stock Purchase Plan

In July 2000, the Company's Board of Directors approved the 2000 Employee Stock Purchase Plan "ESPP". The Company implemented the ESPP upon the completion of the initial public offering in November 2000 (see Note 3). The ESPP, subject to certain limitations, permits eligible employees of the Company to purchase common stock through payroll deductions of up to 10% of their compensation. The Company has authorized the issuance of 1,500,000 shares of common stock under the ESPP, plus an automatic annual increase, to be added on the first day of the fiscal year beginning in 2001, equal to the lesser of (a) 0.5% of the outstanding shares on the last day of the prior fiscal year, (b) 270,000 shares, or (c) such lesser number of shares as may determined by the Board in its sole discretion. If purchases of stock through the plan deplete this supply, the Company will limit, suspend or discontinue purchases under the plan until additional shares of stock are available.

#### Common Shares Reserved for Future Issuance

The Company has reserved shares of common stock for future issuance as follows:

	DECEMBER 31, 2000
Stock options outstanding .....	10,450,820
Stock options available for future grant .....	4,896,908
Stock warrants outstanding .....	10,542,090
Shares available under the Employee Stock Purchase Plan ....	1,500,000
Total reserved shares for issuance of common stock ....	27,389,818

## 10. INCOME TAXES

The Company's deferred tax assets and liabilities consist of the following:

	DECEMBER 31,	
	1999	2000
Current deferred taxes:		
Accounts receivable reserve .....	\$ 327,000	\$ 86,000
Accrued expenses .....	393,000	1,131,000
Other .....	183,000	208,000
Deferred tax asset -- current .....	903,000	1,425,000
Valuation allowance .....	(903,000)	(1,425,000)
Net current deferred taxes		
Long-term deferred taxes:		
Depreciation and amortization .....	1,095,000	1,420,000
Deferred revenue .....		164,000
Research and development costs .....	205,000	205,000
Net operating loss and credit carryforwards ....	8,462,000	18,898,000
Deferred tax asset -- noncurrent .....	9,762,000	20,687,000
Valuation allowance .....	(9,762,000)	(20,687,000)
Net long-term deferred taxes		
Net deferred income taxes .....	\$	\$

Management has established a valuation allowance against its net deferred tax assets due to the uncertainty surrounding the realization of such assets.

At December 31, 2000, the Company has U.S. federal net operating loss carryforwards of approximately \$43.6 million, which expire at various dates through 2021. The Company has California net operating loss carryforwards of approximately \$12.5 million, which expire at various dates through 2005. The Company has Arizona net operating loss carryforwards of approximately \$1.6 million, which expire at various dates through 2005. In addition, the Company has Canadian net operating loss carryforwards of approximately \$7.8 million, which do not expire. As a result of ownership changes (as defined by Section 382 of the Internal Revenue Code), which occurred in 1996, 1999 and 2000, tax loss carryforwards generated prior to November 2000 have been limited to a total of approximately \$37.2 million, of which approximately \$21.1 can be utilized per year in years subsequent to December 31, 2000. Any additional ownership changes may further limit the utilization of net operating loss carryforwards.

The provision for income taxes reconciles to the amount computed by applying the statutory federal income tax rate to income before provision for income taxes as follows:

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
Federal tax provision, at statutory rate ....	\$ (1,927,000)	\$ (6,464,000)	\$ (16,424,000)
State tax, net of federal benefit .....	(195,000)	(543,000)	(1,364,000)
Change in valuation allowance .....	2,069,000	5,636,000	11,447,000
Interest expense on convertible			
Subordinated debentures .....		1,279,000	
Deferred compensation .....			5,262,000
Customer acquisition costs .....			936,000
Other .....	53,000	92,000	143,000
	\$	\$	\$

## 11. COMMITMENTS AND CONTINGENCIES

## Operating and Capital Leases

The Company leases its office space and certain equipment under non-cancelable operating and capital leases. Rental expense under operating leases in fiscal 1998, 1999 and 2000 was approximately \$370,000, \$517,000 and \$1,223,000, respectively. The minimum future lease payments under non-cancelable operating leases and future minimum capital lease payments as of December 31, 2000 are:

	OPERATING -----	CAPITAL -----
2001 .....	\$1,436,000	\$ 219,000
2002 .....	1,520,000	125,000
2003 .....	1,460,000	80,000
2004 .....	1,230,000	13,000
2005 .....	563,000	
Thereafter .....	808,000	
	-----	-----
Total minimum lease payments .....	\$7,017,000	437,000
	=====	
Less -- amount representing interest (at rates ranging from 9.9% to 20.3%) .....		(50,000)
		-----
Present value of net minimum lease payments .....		387,000
Less -- current installments of obligations under capital leases .....		(182,000)
		-----
Obligations under capital leases, excluding current installments .....		\$ 205,000
		=====

## Royalties

The Company is required to pay quarterly royalties for its products shipped with CDPD technology. The Company incurred royalty expenses of \$136,000, \$353,000 and \$284,000 in fiscal 1998, 1999 and 2000, respectively. The Company is also required to make royalty payments for its products shipped with CDMA technology at an amount of 6.5% of the net selling price. To date, the Company has not shipped any products with this technology.

## Employment Agreements

The Company has entered into an employment agreement with its Chief Executive Officer that provides for a lump sum payment equivalent to annual base salary and certain additional benefits upon termination without cause or upon a change in control of the Company. The Company also has entered into an employment agreement with its President and Chief Operating Officer that provides for compensation in the event of termination of employment or in the event of resignation within 30 days of a change in control of the Company, plus continuation of certain benefits and pro rata payment of incentive bonuses. Employment agreements with certain other key employees provide for six months salary payment in the event of termination without cause.

## Legal Matters

The Company is party to various legal matters and subject to claims in the ordinary course of business. In the opinion of management, none of these matters will have a material adverse effect on the Company's financial position or results of operations.

## 12. SEGMENT INFORMATION AND CONCENTRATIONS OF RISK AND RELATED PARTIES

## Segment Information

The Company operates in the wireless data modem technology industry and all sales of the Company's products and services are made in this segment. Management makes decisions about allocating resources based on this one operating segment.

The Company has operations in the United States and Canada. The distribution of the Company's assets in the United States and Canada as of December 31, 1999, and December 31, 2000 are \$27.4 million and \$10.7 million, and \$91.6 and \$19.2 million, respectively.

## Concentrations of Risk and Related Parties

One customer, Omnisky, accounted for 45% of the revenues for the year ended December 31, 2000. Two customers accounted for 23% and 14%, respectively, of 1999 revenues. No customer accounted for more than 10% of 1998 revenues. Substantially all of the Company's revenues come from wireless Internet products. Any decline in market acceptance of the Company's products may impair the Company's ability to operate effectively.

On June 30, 2000, Aether Capital, LLC, purchased \$20 million of the Company's Series D convertible preferred stock. Aether Capital, LLC is the investment arm of Aether Systems, Inc., which is the sole member of Aether Capital, LLC. David S. Oros, one of the Company's directors, who joined the Company's board in July 2000, serves as Chairman, Chief Executive Officer and President of Aether Systems, Inc. Mr. Oros is also a director of OmniSky Corporation, in which Aether Systems, Inc. is an investor. As a result of this capital transaction, OmniSky Corporation, a significant customer, became a related party. Sales to OmniSky amounted to \$27,771,000 and \$24,207,000 for the year and six months ended December 31, 2000, respectively. Receivables from OmniSky Corporation amounted to \$7,446,000 as of December 31, 2000.

## 13. RETIREMENT SAVINGS PLAN

The Company has a defined contribution 401(k) retirement savings plan (the "Plan"). Substantially all of the Company's U.S. employees are eligible to participate in the Plan after meeting certain minimum age and service requirements. Employees may make discretionary contributions to the Plan subject to Internal Revenue Service limitations. As of December 31, 2000, there are no provisions for employer contributions to the Plan. Participants are fully vested in all contributions to the Plan.

The Company has a Registered Retirement Savings Plan for its Canadian employees. Substantially all of the Company's Canadian employees are eligible to participate in the Plan. Employees make discretionary contributions to the plan subject to local limitations. Employer contributions amounted to \$83,000 and \$67,000 for the years ended December 31, 2000 and 1999, respectively.

## 14. QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

The following is a summary of unaudited quarterly results of operations for the years ended December 31, 2000 and 1999.

	QUARTER			
	FIRST	SECOND	THIRD	FOURTH
(In thousands, except per share amounts)				
2000:				
Total revenues .....	\$ 6,837	\$ 9,094	\$ 17,477	\$ 27,746
Gross margin .....	(1,028)	(1,055)	521	3,128
Net loss .....	(7,369)	(10,769)	(15,435)	(17,203)
Net loss per share .....	(0.74)	(1.06)	(1.51)	(0.53)
1999:				
Total revenues .....	\$ 1,205	\$ 1,096	\$ 3,213	\$ 4,042
Gross margin .....	180	(656)	239	(2,162)
Net loss .....	(1,992)	(4,031)	(4,560)	(9,290)
Net loss per share .....	(0.21)	(0.41)	(0.47)	(0.95)

To Novatel Wireless, Inc.:

We have audited the accompanying consolidated balance sheets of Novatel Wireless, Inc. (a Delaware corporation) and Subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Novatel Wireless, Inc. and Subsidiaries as of December 31, 2000 and 1999, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. Schedule II -- Valuation and Qualifying Accounts is presented for purposes of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. The schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

/s/ ARTHUR ANDERSEN LLP

San Diego, California  
February 5, 2001

## SCHEDULE II

NOVATEL WIRELESS INC.  
VALUATION AND QUALIFYING ACCOUNTS  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999, AND 1998

	BALANCE AT BEGINNING OF YEAR -----	ADDITIONS CHARGED TO OPERATIONS -----	DEDUCTIONS FROM RESERVES -----	BALANCE AT END OF YEAR -----
<b>ALLOWANCE FOR DOUBTFUL ACCOUNTS:</b>				
December 31, 1998 .....	\$ 47,000		\$ 3,000	\$ 44,000
December 31, 1999 .....	44,000	\$ 137,000		181,000
December 31, 2000 .....	181,000	72,000		253,000
<b>WARRANTY RESERVE :</b>				
December 31, 1998 .....	89,000	155,000		244,000
December 31, 1999 .....	244,000	132,000	140,000	236,000
December 31, 2000 .....	236,000	439,000		675,000
<b>DEFERRED TAX ASSET VALUATION ALLOWANCE:</b>				
December 31, 1998 .....	3,201,000	1,828,000		5,029,000
December 31, 1999 .....	5,029,000	5,636,000		10,665,000
December 31, 2000 .....	10,665,000	11,447,000		22,112,000

## EXHIBIT INDEX

3.1	Certificate of Incorporation
3.2	Bylaws
4.1(1)	Specimen Common Stock Certificate.
10.1(2)	1997 Stock Option Plan, as Amended and Restated.
10.2(2)	2000 Stock Incentive Plan.
10.3(2)	2000 Employee Stock Purchase Plan.
10.4(1)	Amended and Restated Registration Rights Agreement, dated as of June 15, 1999, by and among Novatel Wireless, Inc. and some of its stockholders.
10.5(1)	Amended and Restated Investors' Rights Agreement, dated as of June 30, 2000, by and among Novatel Wireless, Inc. and some of its stockholders.
10.6(1)	Form of Indemnification Agreement between Novatel Wireless, Inc. and each of its officers and directors.
10.7	Loan and Security Agreement, dated as of December 21, 2000, by and between Novatel Wireless, Inc. and Venture Banking Group, a division of Cupertino National Bank, as amended.
10.8(1)	Real Property Sublease dated as of July 7, 2000, by and between Sicor Inc. (formerly Gensia Sicor, Inc.) and Novatel Wireless, Inc., for 9360 Towne Centre Drive, San Diego, California.
10.9(1)	Real Property Lease, dated as of February 1, 1997, by and between Novatel Wireless Technologies Ltd. and Sun Life Assurance Company of Canada, for 6715 8th St., N.E., Calgary, Alberta.
*10.10(1)	Supply Agreement, dated as of March 31, 2000, by and between Novatel Wireless, Inc. and Hewlett-Packard Company.
*10.11(1)	Technology License, Manufacturing and Purchase Agreement, dated as of October 13, 1999, by and between Novatel Wireless, Inc. and Metricom, Inc.
*10.12(1)	Supply Agreement, dated as of August 12, 1999, by and between Novatel Wireless, Inc. and OpenSky Corporation (currently known as OmniSky Corporation).
*10.13(1)	Electronic Manufacturing Services, dated as of September 3, 1999, by and between Novatel Wireless, Inc. and Sanmina (Canada) ULC.
*10.14(1)	Letter Agreement, dated as of March 15, 2000, by and between Novatel Wireless, Inc. and Symbol Technologies, Inc.
*10.15(1)	Agreement for Purchase and Sale of Novatel Wireless, Inc. Mobile Terminal Units dated as March 2000 by and between Novatel Wireless, Inc. and VoiceStream Wireless Corporation.
*10.16(1)	Agreement for Electronic Manufacturing Services, dated as of April 8, 2000, by and between Novatel Wireless, Inc. and GVC Corporation.
**10.17(1)	Employment Agreement, dated as of July 24, 2000, by and between Novatel Wireless, Inc. and John Major.
**10.18(1)	Employment Agreement, dated as of August 21, 1996, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
10.19(1)	Standard Manufacturing Agreement, dated as of August 8, 2000, by and between Novatel Wireless, Inc. and Solectron de Mexico, S.A. de C.V.
10.20(1)	First Amendment to Employment Agreement, dated as of September 22, 2000, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
*10.21(1)	Product Purchase and License Agreement, dated as of October 23, 2000, by and between Novatel Wireless Inc. and Intel Corporation.
21	Subsidiaries of Novatel Wireless, Inc.
23.1	Consent of Arthur Andersen LLP, Independent Public Accountants
23.2	Consent of Arthur Andersen LLP, Independent Public Accountants
24	Power of Attorney (See signature page)

- -----

- 1) Incorporated by reference to the Company's Registration Statement on Form S-1 (No. 333-42570), filed November 14, 2000, as amended.
- 2) Incorporated by reference to the Company's Registration Statement on Form S-8 (No. 333-53692), filed January 12, 2001.
- \* Confidential treatment requested as to some portions of this Exhibit.
- \*\* Management contract or compensation plan or arrangement.



AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
NOVATEL WIRELESS, INC.

The undersigned, John Major and Melvin Flowers, hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and Secretary, respectively, of Novatel Wireless, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on April 26, 1996 under the name of Novatel Wireless, Inc.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is Novatel Wireless, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

(A) The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Three Hundred Sixty Five Million (365,000,000) shares, each with a par value of \$0.001 per share. Three Hundred Fifty Million (350,000,000) shares shall be Common Stock and Fifteen Million (15,000,000) shares shall be Preferred Stock.

(B) The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by filing a certificate pursuant to the applicable law of the State of Delaware and within the limitations and restrictions stated in this Certificate of Incorporation, to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares

of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

#### ARTICLE V

The number of directors of the Corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors.

#### ARTICLE VI

This Article VI shall become effective only when the Corporation qualifies for an exemption from Section 2115 of the California Corporations Code (the "Effective Time").

On or prior to the date on which the Corporation first provides notice of an annual meeting of the stockholders following the Effective Time, the Board of Directors of the Corporation shall divide the directors into three classes, as nearly equal in number as reasonably possible, designated Class I, Class II and Class III, respectively. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders or any special meeting in lieu thereof following the Effective Time, the terms of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders or any special meeting in lieu thereof following the Effective Time, the terms of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders or any special meeting in lieu thereof following the Effective Time, the terms of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders or special meeting in lieu thereof, directors elected to succeed the directors of the class whose terms expire at such meeting shall be elected for a full term of three years.

Prior to the Effective Time, the provisions of the preceding paragraph shall not apply, and all directors shall be elected at each annual meeting of stockholders or any special meeting in lieu thereof to hold office until the next annual meeting or special meeting in lieu thereof.

Notwithstanding the foregoing provisions of this Article VI, each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation, or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal, or other causes shall be filled by either (i) the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of voting stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock") voting together as a single class; or (ii) by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Subject to the rights of any series of Preferred Stock then outstanding, newly created directorships resulting from any

increase in the number of directors shall, unless the Board of Directors determines by resolution that any such newly created directorship shall be filled by the stockholders, be filled only by the affirmative vote of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified.

#### ARTICLE VII

In the election of directors, each holder of shares of any class or series of capital stock of the Corporation shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

#### ARTICLE VIII

If at any time this Corporation shall have a class of stock registered pursuant to the provisions of the Securities Exchange Act of 1934, as amended, for so long as such class is so registered, any action by the stockholders of such class must be taken at an annual or special meeting of stockholders, upon due notice and in accordance with the provisions of the Bylaws of this Corporation, and may not be taken by written consent.

#### ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles VI, X, XIII and XIV, and this Article IX, of this Amended and Restated Certificate of Incorporation may not be repealed, amended or altered in any respect without the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the voting stock of the Corporation entitled to vote.

#### ARTICLE X

(A) Except as otherwise provided in the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote of at least 66 2/3% of the voting power of all of the then-outstanding shares of the voting stock of the Corporation entitled to vote. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal Bylaws.

(B) The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

(C) Advance notice of stockholder nominations for the election of directors or of business to be brought by the stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

## ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

## ARTICLE XII

The Corporation shall have perpetual existence.

## ARTICLE XIII

(A) To the fullest extent permitted by the General Corporation Law of Delaware, as the same may be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law of Delaware is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of a corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware, as so amended.

(B) Any repeal or modification of the foregoing provisions of this Article XIII shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

## ARTICLE XIV

(A) To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law of Delaware, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to a corporation, its stockholders, and others.

(B) Any repeal or modification of any of the foregoing provisions of this Article XIV shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification."

\* \* \*

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Section 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at San Diego, California on the 21st day of November, 2000.

/s/ John Major  
-----  
John Major, Chief Executive Officer

/s/ Melvin Flowers  
-----  
Melvin Flowers, Secretary

BYLAWS  
OF  
NOVATEL WIRELESS, INC.

(AS AMENDED AND RESTATED EFFECTIVE NOVEMBER 15, 2000)

## TABLE OF CONTENTS

	Page
	----
ARTICLE I - CORPORATE OFFICES.....	1
1.1 Registered Office.....	1
1.2 Other Offices.....	1
ARTICLE II - MEETINGS OF STOCKHOLDERS.....	1
2.1 Place of Meetings.....	1
2.2 Annual Meeting.....	1
2.3 Special Meeting.....	2
2.4 Notice of Stockholder's Meetings; Affidavit of Notice.....	2
2.5 Advance Notice of Stockholder Nominees and Other Stockholder Proposals.....	2
2.6 Quorum.....	3
2.7 Adjourned Meeting; Notice.....	4
2.8 Conduct of Business.....	4
2.9 Voting.....	4
2.10 Waiver of Notice.....	4
2.11 Record Date for Stockholder Notice; Voting.....	5
2.12 Proxies.....	5
ARTICLE III - DIRECTORS.....	6
3.1 Powers.....	6
3.2 Number of Directors.....	6
3.3 Election, Qualification and Term of Office of Directors.....	6
3.4 Resignation and Vacancies.....	6
3.5 Place of Meetings; Meetings by Telephone.....	7
3.6 Regular Meetings.....	7
3.7 Special Meetings; Notice.....	8
3.8 Quorum.....	8
3.9 Waiver of Notice.....	8
3.10 Board Action by Written Consent Without a Meeting.....	9
3.11 Fees and Compensation of Directors.....	9
3.12 Approval of Loans to Officers.....	9
3.13 Removal of Directors.....	9
3.14 Chairman of the Board of Directors.....	10
ARTICLE IV - COMMITTEES.....	10
4.1 Committees of Directors.....	10
4.2 Committee Minutes.....	10
4.3 Meetings and Action of Committees.....	11
ARTICLE V - OFFICERS.....	11
5.1 Officers.....	11

5.2	Appointment of Officers.....	11
5.3	Subordinate Officers.....	11
5.4	Removal and Resignation of Officers.....	11
5.5	Vacancies in Offices.....	12
5.6	Chief Executive Officer.....	12
5.7	President.....	12
5.8	Vice Presidents.....	12
5.9	Secretary.....	13
5.10	Chief Financial Officer.....	13
5.11	Representation of Shares of Other Corporations.....	13
5.12	Authority and Duties of Officers.....	14
ARTICLE VI - INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS.....		14
6.1	Indemnification of Directors and Officers.....	14
6.2	Indemnification of Others.....	14
6.3	Payment of Expenses in Advance.....	14
6.4	Indemnity Not Exclusive.....	15
6.5	Insurance.....	15
6.6	Conflicts.....	15
ARTICLE VII - RECORDS AND REPORTS.....		15
7.1	Maintenance and Inspection of Records.....	15
7.2	Inspection by Directors.....	16
7.3	Annual Statement to Stockholders.....	16
ARTICLE VIII - GENERAL MATTERS.....		16
8.1	Checks.....	16
8.2	Execution of Corporate Contracts And Instruments.....	16
8.3	Stock Certificates; Partly Paid Shares.....	17
8.4	Special Designation on Certificates.....	17
8.5	Lost Certificates.....	18
8.6	Construction; Definitions.....	18
8.7	Dividends.....	18
8.8	Fiscal Year.....	18
8.9	Seal.....	18
8.10	Transfer of Stock.....	18
8.11	Stock Transfer Agreements.....	19
8.12	Registered Stockholders.....	19
ARTICLE IX.....		19



AMENDED AND RESTATED  
BYLAWS  
OF  
NOVATEL WIRELESS, INC.

ARTICLE I  
CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

1.2 OTHER OFFICES.

The Board of Directors may at any time establish other offices at any place or places where the Corporation is qualified to do business.

ARTICLE II  
MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the Corporation.

2.2 ANNUAL MEETING.

(a) The annual meeting of stockholders shall be held each year on a date and at a time designated by resolution of the Board of Directors. At the meeting, directors shall be elected and any other proper business may be transacted.

(b) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice with respect to such meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the notice provided for in this Section 2.2, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this Section 2.2.

(c) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (b) of this Section 2.2, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation, as provided in Section 2.5, and such business must be a proper matter for stockholder action under the General Corporation Law of Delaware.

(d) Only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws. The chairman of the meeting shall determine whether a nomination or any business proposed to be transacted by the stockholders has been properly brought before the meeting and, if any proposed nomination or business has not been properly brought before the meeting, the chairman shall declare that such proposed business or nomination shall not be presented for stockholder action at the meeting.

(e) Nothing in this Section 2.2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended.

### 2.3 SPECIAL MEETING.

(a) A special meeting of the stockholders may be called at any time by the Board of Directors, or by the chairman of the board or by the chief executive officer.

(b) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders, if such election is set forth in the notice of such special meeting. Such nominations may be made either by or at the direction of the Board of Directors, or by any stockholder of record entitled to vote at such special meeting, provided the stockholder follows the notice procedures set forth in Section 2.5.

### 2.4 NOTICE OF STOCKHOLDER'S MEETINGS; AFFIDAVIT OF NOTICE.

All notices of meetings of stockholders shall be in writing and shall be sent or otherwise given in accordance with this Section 2.4 of these Bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting (or such longer or shorter time as is required by Section 2.5 of these Bylaws, if applicable). The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

### 2.5 ADVANCE NOTICE OF STOCKHOLDER NOMINEES AND OTHER STOCKHOLDER PROPOSALS.

Only persons who are nominated in accordance with the procedures set forth in this Section 2.5 shall be eligible for election as directors. Nominations of persons for election to

the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.5. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the secretary of the Corporation. Stockholders may bring other business before the annual meeting, provided that timely notice is provided to the secretary of the Corporation in accordance with this section, and provided further that such business is a proper matter for stockholder action under the General Corporation Law of Delaware. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the anniversary date of the prior year's meeting; provided, however, that in the event that (i) the date of the annual meeting is more than 30 days prior to or more than 60 days after such anniversary date, and (ii) less than 60 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made.

Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the class and number of shares of the Corporation which are beneficially owned by such person and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including, without limitation, such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and address of the stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned of record by such stockholder and beneficially by such beneficial owner.

At the request of the Board of Directors any person nominated by the Board of Directors for election as a director shall furnish to the secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.5. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the Bylaws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

## 2.6 QUORUM.

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

#### 2.7 ADJOURNED MEETING; NOTICE.

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

#### 2.8 CONDUCT OF BUSINESS.

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business.

#### 2.9 VOTING.

(a) The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

(b) Except as may be otherwise provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

#### 2.10 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business

because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

#### 2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

#### 2.12 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by a written proxy, signed by the stockholder and filed with the secretary of the Corporation, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

## ARTICLE III

## DIRECTORS

## 3.1 POWERS.

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

## 3.2 NUMBER OF DIRECTORS.

The number of directors constituting the entire Board of Directors shall be eight (8). Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires.

## 3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS.

Except as provided in Section 3.4 of these Bylaws, and unless otherwise provided in the Certificate of Incorporation, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Unless otherwise specified in the Certificate of Incorporation, elections of directors need not be by written ballot.

## 3.4 RESIGNATION AND VACANCIES.

Any director may resign at any time upon written notice to the attention of the secretary of the Corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock that may then be outstanding, a vacancy created by the removal of a director by the vote of the stockholders or by court order may be filled only by the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the quorum). Each director so elected shall hold

office until the next annual meeting of the stockholders and until a successor has been elected and qualified.

Unless otherwise provided in the Certificate of Incorporation or these Bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board of Directors (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

### 3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board of Directors of the Corporation may hold meetings, both regular and special, either within or outside the State of Delaware. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6 REGULAR MEETINGS.

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

### 3.7 SPECIAL MEETINGS; NOTICE.

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the chief executive officer, the president, any vice president, the secretary or any two (2) directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone, telecopy, telegram, telex or other similar means of communication, it shall be delivered at least twenty-four (24) hours before the time of the holding of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary and appropriate in the circumstances. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation.

### 3.8 QUORUM.

At all meetings of the Board of Directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

### 3.9 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.



### 3.10 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. Written consents representing actions taken by the board or committee may be executed by telex, telecopy or other facsimile transmission, and such facsimile shall be valid and binding to the same extent as if it were an original.

### 3.11 FEES AND COMPENSATION OF DIRECTORS.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

### 3.12 APPROVAL OF LOANS TO OFFICERS.

The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 3.2 contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

### 3.13 REMOVAL OF DIRECTORS.

Unless otherwise restricted by statute, by the Certificate of Incorporation or by these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that if the stockholders of the Corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

## 3.14 CHAIRMAN OF THE BOARD OF DIRECTORS.

The Corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board of Directors who shall not be considered an officer of the Corporation.

## ARTICLE IV

## COMMITTEES

## 4.1 COMMITTEES OF DIRECTORS.

The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, with each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in the Bylaws of the Corporation, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) amend the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the General Corporation Law of Delaware, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), (b) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (c) recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, (d) recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or (e) amend the Bylaws of the Corporation; and, unless the board resolution establishing the committee, the Bylaws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of Delaware.

## 4.2 COMMITTEE MINUTES.

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

#### 4.3 MEETINGS AND ACTION OF COMMITTEES.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting) of these Bylaws, with such changes in the context of such provisions as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

### ARTICLE V

#### OFFICERS

##### 5.1 OFFICERS.

The officers of the Corporation shall be a chief executive officer, a president, a secretary, and a chief financial officer. The Corporation may also have, at the discretion of the Board of Directors, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws. Any number of offices may be held by the same person.

##### 5.2 APPOINTMENT OF OFFICERS.

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

##### 5.3 SUBORDINATE OFFICERS.

The Board of Directors may appoint, or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

##### 5.4 REMOVAL AND RESIGNATION OF OFFICERS.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the Board of Directors or, except in

the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the attention of the secretary of the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

#### 5.5 VACANCIES IN OFFICES.

Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

#### 5.6 CHIEF EXECUTIVE OFFICER.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the Corporation shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

#### 5.7 PRESIDENT.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board (if any) or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the Corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

#### 5.8 VICE PRESIDENTS.

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws, the president or the chairman of the board.

## 5.9 SECRETARY.

The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board Of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

## 5.10 CHIEF FINANCIAL OFFICER.

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

## 5.11 REPRESENTATION OF SHARES OF OTHER CORPORATIONS.

The chairman of the board, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board of Directors or the chief executive officer or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this Corporation. The authority granted herein may be exercised either

by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

#### 5.12 AUTHORITY AND DUTIES OF OFFICERS.

In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors or the stockholders.

### ARTICLE VI

#### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

##### 6.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.1, a "director" or "officer" of the Corporation includes any person (a) who is or was a director or officer of the Corporation, (b) who is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a Corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

##### 6.2 INDEMNIFICATION OF OTHERS.

The Corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an "employee" or "agent" of the Corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the Corporation, (b) who is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

##### 6.3 PAYMENT OF EXPENSES IN ADVANCE.

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by

the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

#### 6.4 INDEMNITY NOT EXCLUSIVE.

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Certificate of Incorporation.

#### 6.5 INSURANCE.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of Delaware.

#### 6.6 CONFLICTS.

No indemnification or advance shall be made under this Article VI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Certificate of Incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

### ARTICLE VII

#### RECORDS AND REPORTS

##### 7.1 MAINTENANCE AND INSPECTION OF RECORDS.

The Corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their

names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal place of business.

#### 7.2 INSPECTION BY DIRECTORS.

Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the Corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

#### 7.3 ANNUAL STATEMENT TO STOCKHOLDERS.

The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

### ARTICLE VIII

#### GENERAL MATTERS

##### 8.1 CHECKS.

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

##### 8.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or



confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

### 8.3 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or vice-chairman of the Board of Directors, or the chief executive officer or the president or vice-president, and by the chief financial officer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

### 8.4 SPECIAL DESIGNATION ON CERTIFICATES.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

#### 8.5 LOST CERTIFICATES.

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and canceled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

#### 8.6 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

#### 8.7 DIVIDENDS.

The directors of the Corporation, subject to any restrictions contained in (a) the General Corporation Law of Delaware or (b) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock.

The directors of the Corporation may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

#### 8.8 FISCAL YEAR.

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

#### 8.9 SEAL.

The Corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

#### 8.10 TRANSFER OF STOCK.

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession,

assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

#### 8.11 STOCK TRANSFER AGREEMENTS.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

#### 8.12 REGISTERED STOCKHOLDERS.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

### ARTICLE IX

#### AMENDMENTS

The Bylaws of the Corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the Corporation may, in its Certificate of Incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

CERTIFICATE OF ADOPTION OF  
AMENDED AND RESTATED BYLAWS

OF

NOVATEL WIRELESS, INC.

The undersigned hereby certifies that the undersigned is the duly elected, qualified, and acting Secretary of Novatel Wireless, Inc. (the "Corporation"), and that the foregoing Amended and Restated Bylaws were adopted as the Bylaws of the corporation on July 24, 2000 by the Board of Directors of the corporation.

Executed this 15th day of November, 2000.

/s/ Melvin L. Flowers

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Melvin L. Flowers, Secretary

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NOVATEL WIRELESS, INC.

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
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This AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT is entered into as of December 21, 2000, by and between VENTURE BANKING GROUP, a division of Cupertino National Bank ("Bank") and NOVATEL WIRELESS, INC. ("Borrower").

#### RECITALS

A. Bank and Borrower are parties to that certain Loan and Security Agreement dated as of October 12, 1999 (as amended, supplemented, or otherwise modified, the "Original Agreement").

B. Borrower and Bank wish to amend and restate, without novation, the terms of the Original Agreement. This Agreement sets forth the terms on which Bank will advance credit to Borrower, and Borrower will repay the amounts owing to Bank.

#### AGREEMENT

The parties agree as follows:

##### 1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, the following terms shall have the following definitions:

"Accounts" means all presently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"Adjusted Net Worth" means Net Worth plus the book value of the Minority Interest.

"Advance" or "Advances" means a cash advance or cash advances under the Revolving Facility.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Bank Expenses" means all: reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the administration and enforcement of the Loan Documents; reasonable Collateral audit fees; and Bank's reasonable attorneys' fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

"Borrower's Books" means all of Borrower's books and records including: ledgers; records concerning Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

"Borrowing Base" means an amount equal to eighty percent (80%) of Eligible Accounts of Borrower and each Guarantor, as determined by Bank in its good faith business judgment with reference to the most recent Borrowing Base Certificate delivered by Borrower.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

"Certificates" means the certificate(s) of deposit described on Exhibit A, having maturities of up to one year, and such other certificate(s) of deposit having maturities of up to one year issued by Bank and held by Bank as Collateral from time to time and for which Borrower has executed a pledge agreement in form and substance satisfactory to Bank.

"Closing Date" means the date of this Agreement.

"Code" means the California Uniform Commercial Code.

"Collateral" means the property described on Exhibit A attached hereto.

"Committed Revolving Line" means a credit extension of up to Ten Million Dollars (\$10,000,000).

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"Copyrights" means 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, now or hereafter existing, created, acquired or held.

"Credit Extension" means each Advance, Letter of Credit, or any other extension of credit by Bank for the benefit of Borrower hereunder.

"Current Assets" means, as of any applicable date, all amounts that should, in accordance with GAAP, be included as current assets on the consolidated balance sheet of Borrower and its Subsidiaries as at such date.

"Current Liabilities" means, as of any applicable date, all amounts that should, in accordance with GAAP, be included as current liabilities on the consolidated balance sheet of Borrower and its Subsidiaries, as at such date, plus, to the extent not already included therein, all outstanding Credit Extensions made under this Agreement, including all Indebtedness that is payable upon demand or within one year from the date of determination thereof unless such Indebtedness is renewable or extendible at the option of Borrower or any Subsidiary to a date more than one year from the date of determination.

"Daily Balance" means the amount of the Obligations owed at the end of a given day.

"Eligible Accounts" means those Accounts that arise in the ordinary course of Borrower's or a Guarantor's business that comply in all material respects with all of Borrower's representations and warranties to Bank set forth in Section 5.4; provided, that standards of eligibility may be fixed and revised from time to time by Bank in Bank's reasonable judgment and upon notification thereof to Borrower in accordance with the provisions hereof. Unless otherwise agreed to by Bank, Eligible Accounts shall not include the following:

(a) Accounts that the account debtor has failed to pay within ninety (90) days of invoice date;

(b) Accounts with respect to an account debtor, twenty-five percent (25%) of whose Accounts the account debtor has failed to pay within ninety (90) days of invoice date;

(c) Accounts with respect to which the account debtor is an officer, employee, or agent of Borrower;

(d) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, or other terms by reason of which the payment by the account debtor may be conditional;

(e) Accounts with respect to which the account debtor is an Affiliate of Borrower;

(f) Accounts with respect to which the account debtor does not have its principal place of business in the United States, except for Eligible Foreign Accounts;

(g) Accounts with respect to which the account debtor is the United States or any department, agency, or instrumentality of the United States, unless there is compliance with the Assignment of Claims Act;

(h) Accounts with respect to which Borrower is liable to the account debtor for goods sold or services rendered by the account debtor to Borrower, but only to the extent of any amounts owing to the account debtor against amounts owed to Borrower;

(i) Accounts with respect to an account debtor, including Subsidiaries and Affiliates, whose total obligations to Borrower exceed twenty-five percent (25%) of all Accounts, to the extent such obligations exceed the aforementioned percentage, except that the concentration limit for Accounts owing by OmniSky, Inc. and Metricom shall be forty percent (40%);

(j) Accounts with respect to which the account debtor disputes liability or makes any claim with respect thereto as to which Bank believes, in its reasonable discretion, that there may be a basis for dispute (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business; and

(k) Accounts the collection of which Bank reasonably determines to be doubtful.

"Eligible Foreign Accounts" means Accounts with respect to which the account debtor does not have its principal place of business in the United States and that (i) are supported by one or more letters of credit or insurance in an amount and of a tenor, and issued by a financial institution, insurance company or governmental entity acceptable to Bank, or (ii) that Bank approves on a case-by-case basis.

"Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Event of Default" has the meaning assigned in Article 8.

"GAAP" means generally accepted accounting principles as in effect from time to time.

"Guarantor" or "Guarantors" means Novatel Wireless Technology, Ltd. and Novatel Wireless Solutions, Inc.



"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

"Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property Collateral" means all of Borrower's right, title, and interest in and to the following:

(a) Copyrights, Trademarks and Patents;

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held;

(d) Any and all claims for damages by way of past, present and future infringement 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 intellectual property rights identified above;

(e) 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;

(f) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(g) 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.

"Inventory" means all present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing.

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

"IRC" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, any note or notes executed by Borrower, and any other agreement entered into between Borrower and Bank in connection with this Agreement, all as amended or extended from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business operations or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents.

"Minority Interest" means the equity interest of Borrower in Novatel Canada.

"Negotiable Collateral" means all of Borrower's present and future letters of credit of which it is a beneficiary, notes, drafts, instruments, securities, documents of title, and chattel paper, and Borrower's Books relating to any of the foregoing.

"Net Worth" means net worth, as determined in accordance with GAAP.

"Novatel Canada" means Novatel Wireless Technologies, Ltd., a corporation organized under the laws of Alberta.

"Obligations" means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Bank may have obtained by assignment or otherwise.

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

"Periodic Payments" means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

"Permitted Indebtedness" means:

(a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and disclosed in the Schedule;

(c) Indebtedness secured by a lien described in clause (c) of the defined term "Permitted Liens," provided such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness;

(d) Subordinated Debt;

(e) accounts payable to trade creditors and accrued expenses (other than for money borrowed) that are not aged more than 30 days from due date, in each case incurred in the ordinary course of business and paid within such time period, unless the same are being actively contested in good faith and by appropriate and lawful proceedings, and Borrower shall have set aside such reserves, if any, with respect thereto as are required by GAAP and deemed adequate by Borrower and its independent accountants;

(f) rental obligations under existing leases of Borrower;

(g) contingent liabilities arising out of endorsements of checks and other negotiable instruments for deposit or collection in the ordinary course of Borrower's business;

(h) intercompany indebtedness among Borrower and Guarantors;

(i) taxes, assessments and governmental charges or levies which are not delinquent or which are being contested in good faith and for which, in accordance with GAAP, adequate reserves have been set aside on the books of Borrower; and

(j) indebtedness not included in paragraphs (a) through (i) above which does not exceed at any time, in the aggregate, the sum of \$100,000.

"Permitted Investment" means:

(a) Investments existing on the Closing Date disclosed in the Schedule; and

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) certificates of deposit maturing no more than one (1) year from the date of investment therein issued by Bank and (iv) Bank's money market accounts.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and disclosed in the Schedule or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank's security interests;

(c) Liens (i) upon or in any equipment acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;

(d) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

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

"Prime Rate" means the variable rate of interest, per annum, quoted from time to time in the Western Edition of The Wall Street Journal, as the "prime rate," whether or not such rate is the lowest rate available from Bank.

"Quick Assets" means, at any date as of which the amount thereof shall be determined, the unrestricted cash and cash-equivalents and billed trade accounts receivable of Borrower determined in accordance with GAAP.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Controller and the Treasurer of Borrower.

"Revolving Facility" means the facility under which Borrower may request Bank to issue Advances, as specified in Section 2.1(a) hereof.

"Revolving Maturity Date" means June 30, 2001.

"Schedule" means the schedule of exceptions attached hereto, if any.

"Subordinated Debt" means any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Bank on terms reasonably acceptable to Bank (and identified as being such by Borrower and Bank).

"Subsidiary" means any corporation or partnership in which (i) any general partnership interest or (ii) more than 50% of the stock of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

"Tangible Net Worth" means the excess of total assets over Total Liabilities, excluding from the determination of total assets all assets that would be classified as intangible assets under GAAP.

"Total Liabilities" means at any date as of which the amount thereof shall be determined, all obligations that should, in accordance with GAAP be classified as liabilities on the consolidated balance sheet of Borrower, including in any event all Indebtedness.

"Trademarks" means any 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 Borrower connected with and symbolized by such trademarks.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms "financial statements" shall include the notes and schedules thereto.

## 2. LOAN AND TERMS OF PAYMENT.

### 2.1 Credit Extensions.

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to Borrower hereunder. Borrower shall also pay interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

#### (a) Revolving Advances.

(i) Subject to and upon the terms and conditions of this Agreement, Borrower may request Advances in an aggregate outstanding amount not to exceed the lesser of (i) the Committed Revolving Line or (ii) the Borrowing Base, minus, in each case, the aggregate undrawn face amount of the outstanding Letters of Credit, and any drawn but unreimbursed Letters of Credit. Subject to the terms and conditions of this Agreement, amounts borrowed pursuant to this Section 2.1(a) may be repaid and reborrowed at any time prior to the Revolving Maturity Date, at which time all Advances under this Section 2.1(a) shall be immediately due and payable. Borrower may prepay any Advances without penalty or premium. Borrower's obligation to repay the Advances is evidenced by this Agreement and a Promissory Note in substantially the form of Exhibit B attached hereto.

(ii) Whenever Borrower desires an Advance, Borrower will notify Bank by facsimile transmission or telephone no later than 3:00 p.m. Pacific time, on the Business Day that the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form in substantially the form of Exhibit C hereto. Bank is authorized to make Advances under this Agreement, based upon instructions received from a Responsible Officer or a designee of a Responsible Officer, or without instructions if in Bank's discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank shall be entitled

to rely on any telephonic notice given by a person who Bank reasonably believes to be a Responsible Officer or a designee thereof, and Borrower shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will credit the amount of Advances made under this Section 2.1(a) to Borrower's deposit account.

(b) Letters of Credit.

(i) Subject to the terms and conditions of this Agreement, Bank agrees to issue or cause to be issued letters of credit for the account of Borrower (each, a "Letter of Credit" and collectively, the "Letters of Credit") in an aggregate outstanding face amount not to exceed the sum of (a) the lesser of the availability under the Committed Revolving Line and the Borrowing Base, plus (b) the principal amount of Certificates constituting Collateral; provided the undrawn face amount of such Letters of Credit and any drawn but unreimbursed Letters of Credit shall not in any case exceed Five Million Dollars (\$5,000,000) in the aggregate. All Letters of Credit shall be, in form and substance, acceptable to Bank in its sole discretion and shall be subject to the terms of Bank's form of standard application and letter of credit agreement, including Bank's fee equal to (i) one percent (1%) of the face amount of each Letter of Credit issued against pledged certificates of deposit, and (ii) one and one-half percent (1.5%) of the face amount of each Letter of Credit issued against Eligible Accounts. On any drawn but unreimbursed Letter of Credit, the unreimbursed amount shall be deemed an Advance under Section 2.1(a). No Letter of Credit may have an expiration date later than the Revolving Maturity Date.

(ii) Subject to the penultimate sentence of Section 2.1(b)(i), the obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement and such Letters of Credit, under all circumstances whatsoever. Borrower shall indemnify, defend, protect, and hold Bank harmless from any loss, cost, expense or liability, including, without limitation, reasonable attorneys' fees, arising out of or in connection with any Letters of Credit, except for expenses caused by Bank's gross negligence or willful misconduct.

2.2 Overadvances. If at any time the aggregate amount of the outstanding Advances plus the undrawn face amount of any outstanding Letters of Credit, and any drawn but unreimbursed Letters of Credit, other than Letters of Credit secured by certificates of deposit, exceeds the lesser of the Borrowing Base or the Committed Revolving Line, Borrower shall immediately pay to Bank, in cash, the amount of such excess.

2.3 Interest Rates, Payments, and Calculations.

(a) Interest Rate. Except as set forth in Section 2.3(b), the Advances shall bear interest, on the outstanding daily balance thereof, at a rate equal to one percent (1.0%) above the Prime Rate.

(b) Default Rate. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) Payments. Interest hereunder shall be due and payable in arrears on the last calendar day of each month during the term hereof. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of Borrower's deposit accounts or against the Committed Revolving Line, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

(d) Computation. In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

2.4 Crediting Payments. Prior to the occurrence of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 12:00 noon Eastern time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Fees. Borrower shall pay to Bank the following:

(a) Facility Fee. On the Closing Date, a Facility Fee equal to Seventy-Five Thousand Dollars (\$75,000), which shall be nonrefundable;

(b) Bank Expenses. On the Closing Date, all Bank Expenses incurred through the Closing Date (provided, that Bank's attorneys' fees and expenses incurred in connection with the preparation and negotiation of the Loan Documents shall be paid by Bank with the proceeds of the Facility Fee); and after the Closing Date, all Bank Expenses, including reasonable attorneys' fees and expenses, as and when they become due. Bank shall provide to Borrower monthly accountings of all Bank Expenses.

2.6 Additional Costs. In case after the date hereof any law, regulation, treaty or official directive or the interpretation or application thereof by any court or any governmental authority charged with the administration thereof or the compliance with any guideline or request of any central bank or other governmental authority (whether or not having the force of law):

(a) subjects Bank to any tax with respect to payments of principal or interest or any other amounts payable hereunder by Borrower or otherwise with respect to the transactions contemplated hereby (except for taxes on the overall net income of Bank imposed by the United States of America or any political subdivision thereof);

(b) imposes, modifies or deems applicable any deposit insurance, reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, Bank; or

(c) imposes upon Bank any other condition with respect to its performance under this Agreement,

and the result of any of the foregoing is to increase the cost to Bank, reduce the income receivable by Bank or impose any expense upon Bank with respect to the Obligations, Bank shall notify Borrower thereof. Borrower agrees to pay to Bank the amount of such increase in cost, reduction in income or additional expense as and when such cost, reduction or expense is incurred or determined, upon presentation by Bank of a statement of the amount and setting forth Bank's calculation thereof, all in reasonable detail, which statement shall be deemed true and correct absent manifest error.

2.7 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for a term ending on the Revolving Maturity Date. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Notwithstanding termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

## 3. CONDITIONS OF CREDIT EXTENSIONS.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Bank to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:

(a) this Agreement;

(b) a certificate of the Secretary of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;

(c) financing statements (Forms UCC-1);

(d) an intellectual property security agreement;

(e) affirmations of each unconditional guaranty and security agreement of each Guarantor;

(f) an agreement to provide insurance;

(g) a securities account control agreement;

(h) payment of the fees then due specified in Section 2.5 hereof;

(i) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to all Credit Extensions. The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

(a) timely receipt by Bank of the Payment/Advance Form as provided in Section 2.1; and

(b) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Credit Extension as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension (provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date). The making of each Credit Extension shall be deemed to be a representation and warranty by Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2(b).

## 4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. Borrower grants and pledges to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Except for Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof. Prior to the maturity of any Collateral consisting of certificates of deposit held by Bank pursuant hereto, Borrower and Bank shall agree upon a security or instrument similar in form, quality and substance to the original Collateral in which the proceeds of the Collateral can be reinvested on maturity. Upon maturity of the Collateral in accordance with its terms, or in the event the Collateral otherwise becomes payable during the term of this Agreement, such maturing Collateral may be presented for payment, exchange, or otherwise marketed by Bank on behalf of Borrower and the proceeds therefrom used to purchase the security or instrument agreed to by Borrower and Bank in accordance with the immediately preceding sentence. If no agreement has been

made, such proceeds shall be placed into an interest bearing account offered by Bank in which Bank has a first priority security interest until such time as an agreement as to the security replacing the original Collateral can be reached. Bank may retain any such successor collateral and the proceeds therefrom as Collateral in accordance with the terms of this Agreement. Notwithstanding termination of this Agreement, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

4.2 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all Negotiable Collateral, the certificates evidencing all of the outstanding capital stock of each Guarantor (together with stock powers executed in blank), all financing statements and other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and continue perfected Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

4.3 Right to Inspect. Bank (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours but no more than once a year (unless an Event of Default has occurred and is continuing), to inspect Borrower's Books and to make copies thereof and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral.

## 5. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Borrower and each Subsidiary is a corporation duly existing under the laws of its state or province of incorporation and qualified and licensed to do business in any jurisdiction in which failure to be so qualified or licensed could reasonably be expected to have a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower's Articles of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement to which Borrower is a party or 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, which default could have a Material Adverse Effect.

5.3 No Prior Encumbrances. Borrower has good and indefeasible title to the Collateral, free and clear of Liens, except for Permitted Liens.

5.4 Bona Fide Eligible Accounts. The Eligible Accounts are bona fide existing obligations. The property giving rise to such Eligible Accounts has been delivered to the account debtor or to the account debtor's agent for immediate shipment to and acceptance by the account debtor, subject only to usual and customary return rights, or the services giving rise to such Eligible Accounts have been fully performed. Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor that is included in any Borrowing Base Certificate as an Eligible Account.

5.5 Merchantable Inventory. All Eligible Inventory is in all material respects of good and marketable quality, free from all material defects.

5.6 Intellectual Property Collateral. Borrower is the sole owner of the Intellectual Property Collateral, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business. Each of the Patents is valid and enforceable, and no part of the Intellectual Property Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party. The Intellectual Property Security Agreement sets forth all of the Intellectual Property Collateral that is material to Borrower's business. Except as set forth in the Schedule, Borrower's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross



revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service.

5.7 Name; Location of Chief Executive Office. Except as disclosed in the Schedule, Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof.

5.8 Litigation. Except as set forth in the Schedule, there are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency in which an adverse decision could reasonably be expected to have a Material Adverse Effect, or a material adverse effect on Borrower's interest or Bank's security interest in the Collateral.

5.9 No Material Adverse Change in Financial Statements. All consolidated financial statements of Borrower and any Subsidiary that are delivered by Borrower to Bank fairly present in all material respects Borrower's consolidated financial condition as of the date thereof and Borrower's consolidated results of operations for the period then ended. There has not been a material adverse change in the consolidated financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank.

5.10 Solvency, Payment of Debts. Borrower is solvent and able to pay its debts (including trade debts) as they mature.

5.11 Regulatory Compliance. Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied in all material respects with all the provisions of the Federal Fair Labor Standards Act. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, violation of which could reasonably be expected to have a Material Adverse Effect.

5.12 Environmental Condition. Except as disclosed in the Schedule, none of Borrower's or any Subsidiary's properties or assets has ever been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; to the best of Borrower's knowledge, none of Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by Borrower or any Subsidiary; and neither Borrower nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by Borrower or any Subsidiary resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

5.13 Taxes. Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid (unless the same are being contested in good faith by appropriate proceedings), or have made adequate provision for the payment of, all taxes reflected therein.

5.14 Subsidiaries. Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.15 Government Consents. Borrower and each Subsidiary 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 for the continued operation of Borrower's business as currently conducted, the failure to obtain which could reasonably be expected to have a Material Adverse Effect.

5.16 Full Disclosure. No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading.

#### 6. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that, until payment in full of all outstanding Obligations, and for so long as Bank may have any commitment to make a Credit Extension hereunder, Borrower shall do all of the following:

6.1 Good Standing. Borrower shall maintain its and each of its Subsidiaries' corporate existence in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Borrower shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a Material Adverse Effect.

6.2 Government Compliance. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect, or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral.

6.3 Financial Statements, Reports, Certificates. Borrower shall deliver to Bank: (a) as soon as available, but in any event within thirty (30) days after the end of each calendar month in which a Credit Extension against Eligible Accounts is outstanding (or, if no such Credit Extension is outstanding, as a condition precedent to a request for such a Credit Extension), a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during such period, prepared in accordance with GAAP, consistently applied, in a form acceptable to Bank and certified by a Responsible Officer; (b) as soon as available, but in any event within one hundred twenty (120) days after the end of Borrower's fiscal year, audited consolidated financial statements of Borrower prepared in accordance with GAAP, consistently applied, together with an unqualified opinion on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank (or a qualified opinion subject only to a "going concern" qualification or "ability to raise additional equity" qualification or other similar qualification); (c) copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt and all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission; (d) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against Borrower or any Subsidiary that could reasonably be expected to result in damages or costs to Borrower or any Subsidiary of Fifty Thousand Dollars (\$50,000) or more; and (e) such budgets, sales projections, operating plans or other financial information as Bank may reasonably request from time to time generally prepared by Borrower in the ordinary course of business.

Within thirty (30) days after the last day of each month in which any Credit Extension against Eligible Accounts is outstanding (or, if no such Credit Extension is outstanding, within thirty (30) days after the last day of each fiscal quarter, and as a condition precedent to a request for such a Credit Extension), Borrower shall deliver to Bank a Borrowing Base Certificate signed by a Responsible Officer in substantially the form of Exhibit D hereto, together with aged listings of accounts receivable and accounts payable.

Borrower shall deliver to Bank with the monthly financial statements a Compliance Certificate signed by a Responsible Officer in substantially the form of Exhibit E hereto.

Bank shall have a right from time to time hereafter to audit Borrower's Accounts and appraise Collateral at Borrower's expense, provided that such audits will be conducted no more often than annually unless an Event of Default has occurred and is continuing.

6.4 Inventory; Returns. Borrower shall keep all Inventory in good and marketable condition, free from all material defects except for Inventory for which adequate reserves have been made. Returns and allowances, if any, as between Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of Borrower, as they exist at the time of the execution and delivery of this Agreement. Borrower shall promptly notify Bank of all returns and recoveries and of all disputes and claims, where the return, recovery, dispute or claim involves more than Fifty Thousand Dollars (\$50,000).

6.5 Taxes. Borrower shall make, and shall cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and will cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

#### 6.6 Insurance.

(a) Borrower, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's business is conducted on the date hereof. Borrower shall also maintain insurance relating to Borrower's ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Bank, showing Bank as an additional loss payee thereof, and all liability insurance policies shall show the Bank as an additional insured and shall specify that the insurer must give at least twenty (20) days notice to Bank before canceling its policy for any reason. Upon Bank's request, Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Bank, be payable to Bank to be applied on account of the Obligations.

6.7 Principal Depository. Borrower shall maintain with Bank depository and operating accounts having average balances of not less than \$2,000,000 in the aggregate.

6.8 Quick Ratio. Borrower shall maintain, as of the last day of each calendar month, a ratio of Quick Assets to Current Liabilities of at least 1.25 to 1.00.

6.9 Revenue. Borrower shall achieve cumulative monthly revenue from the Closing Date through the last day of each month of not less than 75% of the revenue set forth in the forecast dated June 19, 2000 delivered to Bank.

6.10 Adjusted Net Worth. Borrower shall maintain at all times an Adjusted Net Worth of at least Ten Million Dollars (\$10,000,000), plus 25% of the net proceeds of any sale or issuance of equity securities or Subordinated Debt by the Borrower after the date hereof.

6.11 Total Liabilities-Tangible Net Worth. Borrower shall maintain, as of the last day of each calendar month, a ratio of Total Liabilities to Adjusted Net Worth of not more than 2.00 to 1.00.

## 6.12 Registration of Intellectual Property Rights.

(a) Borrower shall register or cause to be registered on an expedited basis (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable: (i) those intellectual property rights listed on Exhibits A, B and C to the Intellectual Property Security Agreement delivered to Bank by Borrower in connection with this Agreement, within thirty (30) days of the date of this Agreement, (ii) all registerable intellectual property rights Borrower has developed as of the date of this Agreement but heretofore failed to register, within thirty (30) days of the date of this Agreement, and (iii) those additional intellectual property rights developed or acquired by Borrower from time to time in connection with any product, prior to the sale or licensing of such product to any third party, and prior to Borrower's use of such product (including without limitation major revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Borrower shall give Bank notice of all such applications or registrations.

(b) Borrower shall execute and deliver such additional instruments and documents from time to time as Bank shall reasonably request to perfect Bank's security interest in the Intellectual Property Collateral.

(c) Borrower shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Bank in writing of material infringements detected and (iii) not allow any material Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld.

(d) Bank may audit Borrower's Intellectual Property Collateral to confirm compliance with this Section, provided such audit may not occur more often than once per year, unless an Event of Default has occurred and is continuing. Bank shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this Section to take but which Borrower fails to take, after fifteen (15) days' notice to Borrower. Borrower shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section.

6.13 Further Assurances. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

## 7. NEGATIVE COVENANTS.

Borrower covenants and agrees that, so long as any credit hereunder shall be available and until payment in full of the outstanding Obligations or for so long as Bank may have any commitment to make any Credit Extensions, Borrower will not do any of the following without the prior written consent of Bank:

7.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: (i) Transfers of Inventory in the ordinary course of business; (ii) Transfers of non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries; or (iii) Transfers of surplus, worn-out or obsolete Equipment; or (iv) Transfers of property with an aggregate value of \$100,000 or less per fiscal year of Borrower.

7.2 Change in Business. Engage in any business, or permit any of its Subsidiaries to engage in any business, other than the businesses currently engaged in by Borrower and its Subsidiaries and any business substantially similar or related thereto (or incidental thereto). Borrower will not, without thirty (30) days prior written notification to Bank, relocate its chief executive office.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization, or acquire, or permit any of its Subsidiaries to

acquire, all or substantially all of the capital stock or property of another Person; provided that a Subsidiary of Borrower may merge with and into Borrower, so long as Borrower is the surviving entity.

7.4 Indebtedness. Create, incur, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

7.5 Encumbrances. Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except that Borrower may (i) repurchase the stock of former employees pursuant to stock repurchase agreements, but only so long as an Event of Default does not exist or would not exist after giving effect to such repurchase and (ii) make distributions in capital stock of Borrower.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments.

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. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.10 Inventory and Equipment. Store the Inventory or the Equipment with a bailee, warehouseman, or similar party unless Bank has received a pledge of the warehouse receipt covering such Inventory; provided, however, that Borrower may deposit software code in escrow for customers in the ordinary course of business. Except for Inventory sold in the ordinary course of business and except for such other locations as Bank may approve in writing, Borrower shall keep the Inventory and Equipment only at the location set forth in Section 10 hereof and such other locations of which Borrower gives Bank prior written notice and as to which Borrower signs and files at Bank's request a financing statement where needed to perfect Bank's security interest.

7.11 Compliance. Become an "investment company" or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such 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 in all material respects with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could reasonably be expected to have a Material Adverse Effect, or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral, or permit any of its Subsidiaries to do any of the foregoing.

7.12 Negative Pledge Agreements. Borrower shall not permit the inclusion in any contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Borrower's rights and interests in any Collateral, unless an exception is made therein for the security interest of Bank.

## 8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

8.1 Payment Default. If Borrower fails to pay, when due, any of the Obligations;

8.2 Covenant Default. If Borrower fails to perform any obligation under Article 6 or violates any of the covenants contained in Article 7 of this Agreement, or fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant, or agreement contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and Bank and as to any default under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure such default within ten (10) days after Borrower receives notice thereof or any officer of Borrower becomes aware 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, then Borrower shall have an additional reasonable 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 have cured such default shall not be deemed an Event of Default (provided that no Credit Extensions will be required to be made during such cure period);

8.3 Material Adverse Change. If there occurs a material adverse change in Borrower's business or financial condition, or if there is a material impairment of the prospect of repayment of any portion of the Obligations or a material impairment of the value or priority of Bank's security interests in the Collateral;

8.4 Attachment. If any material portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within thirty (30) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within thirty (30) days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Credit Extensions will be required to be made during such cure period);

8.5 Insolvency. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within thirty (30) days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding);

8.6 Other Agreements. If there is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of \$250,000 or that could reasonably be expected to have a Material Adverse Effect;

8.7 Subordinated Debt. If Borrower makes any payment on account of Subordinated Debt, except to the extent such payment is allowed herein or under any subordination agreement entered into with Bank;

8.8 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least \$250,000 shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment); or

8.9 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

8.10 Guaranty. If any guaranty of all or a portion of the Obligations ceases for any reason to be in full force and effect, or any of the circumstances described in any of Sections 8.3, 8.4 or 8.5 occurs with respect to any Guarantor, or any Guarantor fails to perform any obligation under any guaranty of all or a portion of the Obligations, or any Guarantor revokes or purports to revoke any guaranty of the Obligations, or any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth in any guaranty of all or a portion of the Obligations or in any certificate delivered to Bank in connection with such guaranty.

#### 9. BANK'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank;

(c) Demand that Borrower (i) deposit cash with Bank in an amount equal to the amount of any Letters of Credit remaining undrawn, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all Letters of Credit fees scheduled to be paid or payable over the remaining term of the Letters of Credit; and

(d) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(e) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise, but only for so long as is reasonably required for the exercise of such right;

(f) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank;

(g) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(h) Dispose of the Collateral in accordance with the Code, including a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at

such places (including Borrower's premises) as is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate;

(i) Bank may credit bid and purchase at any public sale;

(j) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

9.2 Power of Attorney. Effective only upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (c) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) dispose of any Collateral; (e) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; (g) to modify, in its sole discretion, any intellectual property security agreement entered into between Borrower and Bank without first obtaining Borrower's approval of or signature to such modification by amending Exhibits A, B, and C, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Borrower after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Borrower no longer has or claims to have any right, title or interest; (h) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Borrower where permitted by law; and (i) to transfer the Intellectual Property Collateral into the name of Bank or a third party to the extent permitted under the California Uniform Commercial Code; provided Bank may exercise such power of attorney to sign the name of Borrower on any of the documents described in Section 4.2 regardless of whether an Event of Default has occurred if Borrower has not done so within 10 days of Bank's request. The appointment of Bank as Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide advances hereunder is terminated.

9.3 Accounts Collection. At any time during the term of this Agreement, Bank may notify any Person owing funds to Borrower of Bank's security interest in such funds and verify the amount of such Account. Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following after reasonable notice to Borrower: (a) make payment of the same or any part thereof; (b) set up such reserves under the Revolving Facility as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.6 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

9.6 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not



inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

9.7 Demand; Protest. Borrower waives demand, protest, notice of protest, 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 at any time held by Bank on which Borrower may in any way be liable.

#### 10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrower or to Bank, as the case may be, at its addresses set forth below:

If to Borrower: Novatel Wireless, Inc.  
9360 Towne Centre Drive, Suite 110  
San Diego, CA 92121  
Attn: Mr. Melvin Flowers, Chief Financial Officer, and  
Mr. Dan Halvorson, Treasurer  
FAX: (858) 812-3414

with a copy to:

Orrick, Herrington & Sutcliffe LLP  
777 South Figueroa Street, Suite 3200  
Los Angeles, CA 90017  
Attn: Blase Dillingham

If to Bank: Venture Banking Group  
Three Palo Alto Square  
Palo Alto, CA 94306  
Attn: Mr. Brad L. Smith  
FAX: (650) 843-6969

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other. Failure to deliver a notice to Borrower's counsel shall not render ineffective any notice delivered to Borrower.

#### 11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Each of Borrower and Bank hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California. BORROWER AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL

COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

## 12. GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder.

12.2 Indemnification. Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of transactions between Bank and Borrower under this Agreement or the other Loan Documents (including without limitation reasonable attorneys fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. This Agreement cannot be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement, if any, are merged into this Agreement and the Loan Documents.

12.6 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, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Effect of Amendment and Restatement. This Agreement is intended to and does completely amend and restate, without novation, the Original Agreement. All security interests granted under the Original Agreement are hereby confirmed and ratified and shall continue to secure all Obligations under this Agreement.

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

NOVATEL WIRELESS, INC.

By: /s/ Melvin L. Flowers

Title: Senior VP and CFO

VENTURE BANKING GROUP, a division of  
Cupertino National Bank

By: Brad Smith

Title: Vice President

## EXHIBIT A

The Collateral shall consist of all right, title and interest of Borrower in and to the following:

(a) All goods and equipment now owned or hereafter acquired, including, without limitation, all machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory, now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing;

(c) All contract rights and general intangibles now owned or hereafter acquired, including, without limitation, goodwill, trademarks, servicemarks, trade styles, trade names, patents, patent applications, leases, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, computer programs, computer discs, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights and all other forms of obligations owing to Borrower arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing;

(e) All documents, cash, deposit accounts, securities, investment property, financial assets, securities entitlements, securities accounts, letters of credit, certificates of deposit, instruments and chattel paper now owned or hereafter acquired and Borrower's Books relating to the foregoing;

(f) All copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired; all trade secret rights, including all rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; all mask work or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired; all claims for damages by way of any past, present and future infringement of any of the foregoing; and

Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof; provided that, notwithstanding anything in the foregoing description to the contrary, the Collateral shall not include (i) Borrower's equipment and related computer programs and other related general intangibles to the extent the same are subject to a lease or financing arrangement which includes a valid and enforceable prohibition on further encumbrances ("Excluded Equipment"), (ii) additions, attachments, accessories and accessions to, substitutions, replacements and exchanges for, and products and proceeds (including insurance proceeds) of the Excluded Equipment, and (iii) Borrower's rights as licensee under license agreements, the encumbering of which constitutes an event of termination which may be asserted against Borrower; provided that such exclusion shall not apply to proceeds generated from or inventory sold pursuant to any such license agreement; provided, however, that "Collateral" shall include, (A) any general intangible or contract right which is an Account or a proceed of, or otherwise related to the enforcement or collection of, any Account or goods which are the subject of any Account, and (B) any and all proceeds of any general intangibles or contract rights which are otherwise excluded to the extent that the assignment or encumbrance of such proceeds is not so restricted, and (C) upon obtaining the consent of any such licensor, lessor, or other applicable party with respect to any such otherwise excluded general intangibles, contract rights and Equipment, such general intangibles, contract rights and Equipment as well as any and all proceeds thereof that might theretofore have been excluded from the term "Collateral."

## EXHIBIT B

## REVOLVING PROMISSORY NOTE

\$10,000,000

Palo Alto, California  
December 21, 2000

FOR VALUE RECEIVED, NOVATEL WIRELESS, INC. (the "Borrower"), promises to pay to the order of Venture Banking Group (the "Bank") the principal amount of Ten Million Dollars (\$10,000,000) or, if less, the aggregate amount of Advances (as defined in the Loan Agreement referred to below) made by Bank to Borrower pursuant to the Loan Agreement referred to below outstanding on the Revolving Maturity Date (as defined in the Loan Agreement referred to below). All unpaid amounts of principal and interest shall be due and payable in full on the Revolving Maturity Date.

Borrower also promises to pay interest on the unpaid principal amount hereof from the date hereof until paid at the rates and at the times which shall be determined in accordance with the provisions of the Loan Agreement. Notwithstanding any other limitations contained in this Note, Bank does not intend to charge and Borrower shall not be required to pay any interest or other fees or charges in excess of the maximum permitted by applicable law. Any payments in excess of such maximum shall be refunded to the Borrower or credited against principal.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the office of Bank described in the Loan Agreement. Until notified of the transfer of this Note, Borrower shall be entitled to deem Bank or such person who has been so identified by the transferor in writing to the Borrower as the holder of this Note, as the owner and holder of this Note.

This Note is referred to in, and is entitled to the benefits of, the Amended and Restated Loan and Security Agreement dated as of December 21, 2000 (the "Loan Agreement") between Borrower and Bank. The Loan Agreement, among other things, (i) provides for the making of Advances by Bank to Borrower from time to time in an aggregate amount not to exceed at any time outstanding the U.S. dollar amounts stated therein, and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

The terms of this Note are subject to amendment only in the manner provided in the Loan Agreement.

No reference herein to the Loan Agreement and no provision of this Note or the Loan Agreement shall alter or impair the obligation of Borrower, which is absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

Borrower promises to pay all costs and expenses, including reasonable attorneys' fees, incurred in the collection and enforcement of this Note. Borrower hereby consents to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waives diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

This Note shall be governed by, and construed in accordance with, the laws of the State of California without giving effect to its choice of law doctrine.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered by its duly authorized officer, as of the date and the place first above written.

NOVATEL WIRELESS, INC.

By: /s/ Melvin L. Flowers

Title: Sr. VP and CFO

EXHIBIT C

LOAN PAYMENT/ADVANCE TELEPHONE REQUEST FORM

DEADLINE FOR SAME DAY PROCESSING IS 3:00 P.M., Pacific Time

TO: Venture Banking Group DATE: -----

FAX #: 650-843-6969 TIME: -----

FROM: -----

CLIENT NAME (BORROWER)

REQUESTED BY: NOVATEL WIRELESS, INC.

AUTHORIZED SIGNER'S NAME

AUTHORIZED SIGNATURE: -----

PHONE NUMBER: -----

FROM ACCOUNT # ----- TO ACCOUNT # -----

REQUESTED TRANSACTION TYPE	REQUEST DOLLAR AMOUNT
	\$ -----
PRINCIPAL INCREASE (ADVANCE)	\$ -----
PRINCIPAL PAYMENT (ONLY)	\$ -----
INTEREST PAYMENT (ONLY)	\$ -----
PRINCIPAL AND INTEREST (PAYMENT)	\$ -----

OTHER INSTRUCTIONS: -----

All representations and warranties of Borrower stated in the Amended and Restated Loan and Security Agreement are true, correct and complete in all material respects as of the date of the telephone request for an Advance confirmed by this Advance Request Form; provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date.

BANK USE ONLY

TELEPHONE REQUEST:

The following person is authorized to request the loan payment transfer/loan advance on the advance designated account and is known to me.

-----  
Authorized Requester Phone #

-----  
Received By (Bank) Phone #

-----  
Authorized Signature (Bank)

## EXHIBIT D

## BORROWING BASE CERTIFICATE

-----  
 Borrower: Novatel Wireless, Inc., Novatel Wireless Solutions, Inc., Novatel  
 Wireless Technologies, Ltd.

Commitment Amount: \$10,000,000  
 -----

## ACCOUNTS RECEIVABLE

1.	Accounts Receivable Book Value as of	\$	-----
2.	Additions (please explain on reverse)	\$	-----
3.	TOTAL ACCOUNTS RECEIVABLE	\$	-----

## ACCOUNTS RECEIVABLE DEDUCTIONS (without duplication)

4.	Amounts over 90 days due	\$	-----
5.	Balance of 25% over 90 day accounts	\$	-----
6.	Concentration Limits	\$	-----
7.	Foreign Accounts	\$	-----
8.	Governmental Accounts	\$	-----
9.	Contra Accounts	\$	-----
10.	Demo Accounts	\$	-----
11.	Intercompany/Employee Accounts	\$	-----
12.	Other (please explain on reverse)	\$	-----
13.	TOTAL ACCOUNTS RECEIVABLE DEDUCTIONS	\$	-----
14.	Eligible Accounts (#3 minus #13)	\$	-----
15.	LOAN VALUE OF ACCOUNTS (80% of #14)	\$	-----

## BALANCES

16.	Maximum Loan Amount	\$10,000,000
17.	Total Funds Available [Lesser of #15 or #16]	\$
18.	Present balance owing on Line of Credit	\$
19.	Outstanding under Sublimits (Letters of Credit)	\$
20.	RESERVE POSITION (#17 minus #18 and #19)	\$

The undersigned represents and warrants that the foregoing is true, complete and correct, and that the information reflected in this Borrowing Base Certificate complies with the representations and warranties set forth in the Amended and Restated Loan and Security Agreement between the undersigned and Venture Banking Group.

NOVATEL WIRELESS, INC.

By: \_\_\_\_\_

Authorized Signer

EXHIBIT E  
COMPLIANCE CERTIFICATE

TO: VENTURE BANKING GROUP  
FROM: NOVATEL WIRELESS, INC.

The undersigned authorized officer of Novatel Wireless, Inc. hereby certifies in his capacity as an officer of the Borrower that in accordance with the terms and conditions of the Amended and Restated Loan and Security Agreement between Borrower and Bank (the "Agreement"), (i) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

PLEASE INDICATE COMPLIANCE STATUS BY CIRCLING YES/NO UNDER "COMPLIES" COLUMN.

REPORTING COVENANT - - - - -	REQUIRED - - - - -	COMPLIES - - - - -	
Monthly consolidated financial statements	Monthly within 30 days	Yes	No
Annual (CPA Audited)	FYE within 120 days	Yes	No
10K and 10Q	(as applicable)	Yes	No
A/R & A/P Agings, Borrowing Base Cert.	Monthly within 30 days when Credit Extension against Eligible Accounts outstanding; otherwise quarterly within 30 days	Yes	No
A/R Audit	Annual	Yes	No
Quarterly consolidating financial statements	Quarterly within 30 days	Yes	No

FINANCIAL COVENANT - - - - -	REQUIRED - - - - -	ACTUAL - - - - -	COMPLIES - - - - -	
Maintain on a Monthly Basis:				
Minimum Quick Ratio	1.25:1.00	_____:1.00	Yes	No
Minimum Adjusted Net Worth	\$_____*	\$_____	Yes	No
Maximum Total Liabilities to Adjusted Net Worth	2.00:1.00	_____:1.00	Yes	No
Revenue	>75% of projected cumulative monthly revenue	\$_____	Yes	No

\* \$10,000,000 plus 25% of any sale or issuance of equity securities or Subordinated Debt after the Closing Date.

COMMENTS REGARDING EXCEPTIONS: See Attached.

Sincerely,

-----  
SIGNATURE

-----  
TITLE

-----  
DATE

-----  
BANK USE ONLY

Received by: \_\_\_\_\_  
AUTHORIZED SIGNER

Date: \_\_\_\_\_

Verified:



-----  
AUTHORIZED SIGNER

Date:

-----  
Compliance Status

Yes

No

## SCHEDULE OF EXCEPTIONS

Permitted Indebtedness (Section 1.1)

See attached UCC search.

Permitted Investments (Section 1.1)

None.

Permitted Liens (Section 1.1)

See attached search.

Prior Names (Section 5.7)

None.

Litigation (Section 5.8)

None.

Environmental (Section 5.12)

None.

## CORPORATE RESOLUTIONS TO BORROW

-----  
 BORROWER: Novatel Wireless, Inc.  
 -----

I, the undersigned Secretary or Assistant Secretary of Novatel Wireless, Inc. (the "Corporation"), HEREBY CERTIFY that the Corporation is organized and existing under and by virtue of the laws of the State of Delaware.

I FURTHER CERTIFY that attached hereto as Attachments 1 and 2 are true and complete copies of the Certificate of Incorporation, as amended, and the Bylaws of the Corporation, each of which is in full force and effect on the date hereof.

I FURTHER CERTIFY that at a meeting of the Directors of the Corporation, duly called and held, at which a quorum was present and voting (or by other duly authorized corporate action in lieu of a meeting), the following resolutions were adopted.

BE IT RESOLVED, that any one (1) of the following named officers, employees, or agents of this Corporation, whose actual signatures are shown below:

NAMES -----	POSITION -----	ACTUAL SIGNATURES -----
Melvin L. Flowers -----	Sr. VP and CFO -----	/s/ Melvin L. Flowers -----
Peter Leparulo -----	Sr. VP, Business Strategy -----	/s/ Peter Leparulo -----
Dan L. Halvorson -----	Treasurer -----	/s/ Dan L. Halvorson -----

acting for an on behalf of this Corporation and as its act and deed be, and they hereby are, authorized and empowered:

**BORROW MONEY.** To borrow from time to time from Venture Banking Group, a division of Cupertino National Bank ("Bank"), on such terms as may be agreed upon between the officers, employees, or agents and Bank, such sum or sums of money as in their judgment should be borrowed, without limitation, including such sums as are specified in that certain Amended and Restated Loan and Security Agreement dated as of December 21, 2000 (the "Loan Agreement").

**EXECUTE LOAN DOCUMENTS.** To execute and deliver to Bank the Loan Agreement and any other agreement entered into between Borrower and Bank in connection with the Loan Agreement, all as amended or extended from time to time (collectively, with the Loan Agreement, the "Loan Documents"), and also to execute and deliver to Bank one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for the Loan Documents, or any portion thereof.

**GRANT SECURITY; ISSUE WARRANTS.** To grant a security interest to Bank in the Collateral described in the Loan Documents, which security interest shall secure all of the Corporation's Obligations, as described in the Loan Documents, and to issue to Bank a warrant to purchase the Corporation's capital stock.

**NEGOTIATE ITEMS.** To draw, endorse, and discount with Bank all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Corporation or in which the Corporation may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the account of the Corporation with Bank, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

**LETTERS OF CREDIT.** To execute letters of credit applications and other related documents pertaining to Bank's issuance of letters of credit.

**FURTHER ACTS.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances thereunder, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as they may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of these Resolutions.

BE IT FURTHER RESOLVED, that any and all acts authorized pursuant to these resolutions and performed prior to the passage of these resolutions are hereby ratified and approved, that these Resolutions shall remain in full force and effect and Bank may rely on these Resolutions until written notice of their revocation shall have been delivered to and received by Bank. Any such notice shall not affect any of the Corporation's agreements or commitments in effect at the time notice is given.

I FURTHER CERTIFY that the officers, employees, and agents named above are duly elected, appointed, or employed by or for the Corporation, as the case may be, and occupy the positions set forth opposite their respective names; that the foregoing Resolutions now stand of record on the books of the Corporation; and that the Resolutions are in full force and effect and have not been modified or revoked in any manner whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand on December 21, 2000 and attest that the signatures set opposite the names listed above are their genuine signatures.

CERTIFIED AND ATTESTED BY:

X /s/ Melvin L. Flowers

-----

AGREEMENT TO PROVIDE INSURANCE

TO: VENTURE BANKING GROUP  
Three Palo Alto Square  
Palo Alto, CA 94306

Date: December 21, 2000

Borrower: Novatel Wireless, Inc.

In consideration of a loan in the amount of up to \$10,000,000, secured by all tangible personal property including inventory and equipment.

I/We agree to obtain adequate insurance coverage to remain in force during the term of the loan.

I/We also agree to advise the below named agent to add Venture Banking Group, a division of Cupertino National Bank as lender's loss payable on the new or existing insurance policy, and to furnish Bank at above address with a copy of said policy/endorsements and any subsequent renewal policies.

I/We understand that the policy must contain:

- 1. Fire and extended coverage in an amount sufficient to cover:
  - (a) The amount of the loan, OR
  - (b) All existing encumbrances, whichever is greater,

But not in excess of the replacement value of the improvements on the real property.

- 2. Lender's "Loss Payable" Endorsement Form 438 BFU in favor of Venture Banking Group, a division of Cupertino National Bank, or any other form acceptable to Bank.

INSURANCE INFORMATION

Insurance Co./Agent

Telephone No.:

Agent's Address:

Signature of Obligor: /s/ Dan L. Halvorson

Signature of Obligor: /s/ Melvin L. Flowers

FOR BANK USE ONLY

INSURANCE VERIFICATION: Date: \_\_\_\_\_

Person Spoken to: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective From: \_\_\_\_\_ To: \_\_\_\_\_

Verified by: \_\_\_\_\_

## REVOLVING PROMISSORY NOTE

\$10,000,000

Palo Alto, California  
December 21, 2000

FOR VALUE RECEIVED, NOVATEL WIRELESS, INC. (the "Borrower"), promises to pay to the order of Venture Banking Group (the "Bank") the principal amount of Ten Million Dollars (\$10,000,000) or, if less, the aggregate amount of Advances (as defined in the Loan Agreement referred to below) made by Bank to Borrower pursuant to the Loan Agreement referred to below outstanding on the Revolving Maturity Date (as defined in the Loan Agreement referred to below). All unpaid amounts of principal and interest shall be due and payable in full on the Revolving Maturity Date.

Borrower also promises to pay interest on the unpaid principal amount hereof from the date hereof until paid at the rates and at the times which shall be determined in accordance with the provisions of the Loan Agreement. Notwithstanding any other limitations contained in this Note, Bank does not intend to charge and Borrower shall not be required to pay any interest or other fees or charges in excess of the maximum permitted by applicable law. Any payments in excess of such maximum shall be refunded to the Borrower or credited against principal.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the office of Bank described in the Loan Agreement. Until notified of the transfer of this Note, Borrower shall be entitled to deem Bank or such person who has been so identified by the transferor in writing to the Borrower as the holder of this Note, as the owner and holder of this Note.

This Note is referred to in, and is entitled to the benefits of, the Amended and Restated Loan and Security Agreement dated as of December 21, 2000 (the "Loan Agreement") between Borrower and Bank. The Loan Agreement, among other things, (i) provides for the making of Advances by Bank to Borrower from time to time in an aggregate amount not to exceed at any time outstanding the U.S. dollar amounts stated therein, and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

The terms of this Note are subject to amendment only in the manner provided in the Loan Agreement.

No reference herein to the Loan Agreement and no provision of this Note or the Loan Agreement shall alter or impair the obligation of Borrower, which is absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

Borrower promises to pay all costs and expenses, including reasonable attorneys' fees, incurred in the collection and enforcement of this Note. Borrower hereby consents to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waives diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

This Note shall be governed by, and construed in accordance with, the laws of the State of California without giving effect to its choice of law doctrine.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered by its duly authorized officer, as of the date and the place first above written.

NOVATEL WIRELESS, INC.

By: /s/ Melvin L. Flowers

Title: Sr. VP &amp; CFO

## SUBSIDIARIES OF THE REGISTRANT

Subsidiary Name -----	Jurisdiction -----
Novatel Wireless Technologies, Ltd.	Calgary, Canada
Novatel Solutions, Inc.	Delaware, USA

## CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference of our report included in this Form 10-K, into Novatel Wireless, Inc.'s previously filed Form S-8 No. 333-53692.

/s/ ARTHUR ANDERSEN LLP

San Diego, California  
March 23, 2001



## CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference in this Form 10-K of our report dated September 13, 2000 and to all references to our Firm included in Novatel Wireless, Inc.'s previously filed Prospectus No. 333-42570.

/S/ ARTHUR ANDERSEN LLP

San Diego, California  
March 23, 2001