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

FORM 10-K

(mark one)

Annual Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended September 30, 2009

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission file number 000-26285

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

Delaware	**87-0419387**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

2755 Bristol St., Suite 285
Costa Mesa, CA 92626
(Address of Principal Executive Offices)(Zip Code)

(714) 545-3288
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered under Section 12(g) of the Exchange Act:

Common Stock, $0.001 par value

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☒

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) 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.

☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act.)

Yes ☐ No ☒

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on March 31, 2009, the last business day of the registrant's most recently completed second fiscal quarter was $13,555,818 (based on the closing sales price of the registrant's common stock on that date).

At December 28, 2009, the registrant had 51,747,729 shares of Common Stock, $0.001 par value, issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the issuer's Proxy Statement for its 2010 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report.

CNS RESPONSE, INC.

2009 FORM 10-K ANNUAL REPORT

TABLE OF CONTENTS

PART I

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This 2009 Annual Report on Form 10-K, including the sections entitled "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," contains "forward-looking statements" that include information relating to future events, future financial performance, strategies, expectations, competitive environment, regulation and availability of resources. These forward-looking statements include, without limitation, statements regarding: proposed new products or services; our statements concerning litigation or other matters; statements concerning projections, predictions, expectations, estimates or forecasts for our business, financial and operating results and future economic performance; statements of management's goals and objectives; trends affecting our financial condition, results of operations or future prospects; our financing plans or growth strategies; and other similar expressions concerning matters that are not historical facts. Words such as "may," "will," "should," "could," "would," "predicts," "potential," "continue," "expects," "anticipates," "future," "intends," "plans," "believes" and "estimates," and similar expressions, as well as statements in future tense, identify forward-looking statements.

Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by which, that performance or those results will be achieved. Forward-looking statements are based on information available at the time they are made and/or management's good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause these differences include, but are not limited to:

- our inability to raise additional funds to support operations and capital expenditures;
- our inability to achieve greater and broader market acceptance of our products and services in existing and new market segments;
- our inability to successfully compete against existing and future competitors;
- our inability to manage and maintain the growth of our business;
- our inability to protect our intellectual property rights; and
- other factors discussed under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business."

Forward-looking statements speak only as of the date they are made. You should not put undue reliance on any forward-looking statements. We assume no obligation to update forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information, except to the extent required by applicable securities laws. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

ITEM 1. Business

With respect to this discussion, the terms "we" "us" "our" "CNS" and the "Company" refer to CNS Response, Inc., a Delaware corporation and its wholly-owned subsidiaries CNS Response, Inc., a California corporation ("CNS California"), Colorado CNS Response, Inc., a Colorado corporation ("CNS Colorado") and Neuro-Therapy Clinic, Inc., a Colorado professional medical corporation and a wholly-owned subsidiary of CNS Colorado ("NTC").

Background

CNS Response, Inc. was incorporated in Delaware on July 10, 1984, under the name Mammon Oil & Gas, Inc. Prior to January 16, 2007, CNS Response, Inc. (then called Strativation, Inc.) existed as a "shell company" with nominal assets whose sole business was to identify, evaluate and investigate various companies to acquire or with which to merge. On January 16, 2007, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with CNS Response, Inc., a California corporation formed on January 11, 2000 ("CNS California"), and CNS Merger Corporation, a California corporation and our wholly-owned subsidiary ("MergerCo") pursuant to which we agreed to acquire CNS California in a merger transaction wherein MergerCo would merge with and into CNS California, with CNS California being the surviving corporation (the "Merger"). On March 7, 2007, the Merger closed, CNS California became our wholly-owned subsidiary, and on the same date we changed our corporate name from Strativation, Inc. to CNS Response, Inc.

Overview

CNS Response is a life sciences company with two distinct business segments. Our Laboratory Information Services business operated by CNS California, which we consider our primary business, is focused on the research, development, and commercialization of a patented system that guides psychiatrists and other physicians/prescribers to determine a proper treatment for patients with behavioral (psychiatric and/or addictive) disorders. Our Clinical Services business operated by NTC is a full service psychiatric clinic.

Laboratory Information Services

Traditionally, prescription of medication for the treatment of behavioral disorders (such as depression, bipolar disorders, eating disorders, addiction, anxiety disorders, ADHD and schizophrenia) has been primarily based on symptomatic factors, while the underlying physiology and pathology of the disorder is rarely able to be analyzed, often resulting in multiple ineffective, costly, and often lengthy, courses of treatment before effective medications are identified. Some patients never find effective medications.

We believe that our technology offers an improvement upon traditional methods for determining a course of medication for patients suffering from nonpsychotic behavioral disorders because our technology is designed to correlate the success of courses of medication, with the neurophysiological characteristics of a particular patient. Our technology provides medical professionals with medication sensitivity data for a subject patient based upon the identification and correlation of treatment outcome information from other patients with similar neurophysiologic characteristics. This treatment outcome information is contained in a proprietary outcomes database that consists of over 17,000 medication trials for patients with psychiatric or addictive problems (the "*CNS Database*"). For each patient in the CNS Database, we have compiled electroencephalographic ("*EEG*") scans, symptoms and outcomes often across multiple treatments from multiple psychiatrists and physicians. This patented technology, called "Referenced-EEG®" or "rEEG®" represents an innovative approach to identifying effective medications for patients suffering from debilitating behavioral disorders.

With rEEG®, physicians order a digital EEG for a patient, which is then evaluated with reference to the CNS Database. By providing this reference correlation, an attending physician can choose a treatment strategy with the knowledge of how other patients having similar brain function have previously responded to a myriad of treatment alternatives. Analysis of this complete data set yielded a platform of 74 quantitative biomarkers that have shown utility in characterizing patient response to diverse medications. This platform then allows a new patient to be characterized, based on these 74 biomarkers, and the database to be queried to understand the statistical probability of how patients with similar brain patterns have previously responded to the medications currently in the database. This technology allows us to create and provide simple reports ("*rEEG Reports*") to the prescriber that summarizes historical treatment success of specific medications for those patients with similar brain patterns. It provides neither a diagnosis nor specific treatment, but like all lab results, objective, evidenced-based information to help the prescriber in their decision-making.

Our Laboratory Information Services business is focused on increasing the demand for our rEEG Reports. We believe the key factors that will drive broader adoption of our rEEG Reports will be acceptance by healthcare providers and patients of their benefit, demonstration of the cost-effectiveness of using our technology, reimbursement by third-party payers, expansion of our sales force and increased marketing efforts.

In addition to its utility in providing psychiatrists and other physicians/prescribers with medication sensitivity guidance, rEEG provides us with significant opportunities in the area of pharmaceutical development. rEEG, in combination with the information contained in the CNS Database, has the potential to be able to identify novel uses for neuropsychiatric medications currently on the market and in late stages of clinical development, as well as aid in the identification of neurophysiologic characteristics of clinical subjects that may be successfully treated with neuropsychiatric medications in the clinical testing stage. We intend to enter into relationships with established drug and biotechnology companies to further explore these opportunities, although no relationships are currently contemplated. The development of biomarkers as the new method for identifying the correct patient population to research is being encouraged by both The National Institute of Mental Health (NIMH) and The Food and Drug Administration (FDA).

Clinical Services

In January 2008, we acquired our largest customer, NTC, located in Colorado. Upon the completion of the transaction, NTC became our wholly-owned subsidiary. At the time, NTC operated one of the largest psychiatric medication management practices in the state of Colorado, under contracts with national health plans. Daniel A. Hoffman, M.D. is the medical director at NTC, and, after the acquisition, became our Chief Medical Officer and more recently, our President.

NTC, having performed a significant number of rEEG's, serves as an important resource in our product development, the expansion of our CNS Database, production system development and implementation, along with the integration of our rEEG services into a medical practice. Through NTC, we also expect to successfully develop marketing and patient acquisition strategies for our Laboratory Information Services business. Specifically, NTC is learning how to best communicate the advantages of rEEG to patients and referring physicians in the local market. We will share this knowledge and develop communication programs which can be generalized to physicians using our services throughout the country, which we believe will help drive market acceptance of our services. In addition, we plan to use NTC to train practitioners across the country in the uses of rEEG technology.

We view our Clinical Services business as secondary to our Laboratory Information Services business, and we have no current plans to significantly expand this business.

Laboratory Information Services

The Challenge and the Opportunity

The 1990's were known as "the Decade of the Brain," a period in which basic neuroscience yielded major advances in drug discovery and neurotherapy. Several trends have emerged which may propel significant adoption of these advances over the next decade:

- Comparative Effectiveness Research is incorporated into the Obama health plan. The cost to treat Americans under care for depression and other mental illnesses rose by nearly two-thirds from $35 billion to $58 billion in the last 10 years, according to a recent report from the Agency for Healthcare Research and Quality. Finding more cost-effective treatment modalities in mental disorders will be critical to successful health care reform;

- Mental Health Parity Act (Parity Act) requires payers, beginning in 2010, to pay for behavioral medications and treatments using the same standards for evidence and coverage as they currently use for medical/surgical treatments;

- According to a recent RAND report, 275,000 returning military personnel from the Iraq and Afghanistan theatres suffer from Major Depression, Post Traumatic Stress Disorder (PTSD), traumatic brain injury; and

- Consumers have emerged as active decision makers in behavioral treatment, driven by over $4.8 billion in annual Pharma direct-to-consumer advertising and the internet. At the same time, media costs for reaching those consumers are at historic lows.

Today, there are over 100 prescription drugs available to patients suffering from a behavioral disorder, representing one of the largest and fastest-growing drug classes. Unfortunately, psychotropic drugs often do not work, or lose their effect over time, and over 17 million Americans who have failed two or more medication treatments are now considered "treatment resistant". For these patients, the conventional "trial and error" method of prescribing psychotropic drugs has resulted in low efficacy, high relapse and treatment discontinuation rates, significant patient suffering and billions in additional cost to payers.

We believe we are the first company to create a biomarker database that correlates a patient's response to major drug classes and specific medications with their individual brain physiology. We developed this tool to improve pharmacotherapy outcomes, particularly in treatment resistant patients, a particularly expensive patient population with profound unmet clinical needs. Our rEEG technology has been used by physicians to guide prescribing in behavioral disorders such as depression, anxiety, anorexia, OCD, bipolar, ADHD, addiction and others.

rEEG® was developed by a pathologist/psychiatrist who recognized that correlation of a patient's unique brain patterns to known long-term medication outcomes in similar patients might significantly improve therapeutic performance. This approach — commonly referred to as Personalized Medicine, and exemplified by biomarker companies such as Genomic Health (GHDX) — is in the process of transforming both clinical practice and the pharmaceutical industry. CNS Response brings this science to behavioral medicine, where the unmet clinical need is well-documented, expensive, and growing.

The rEEG® Method

rEEG® reports are offered as a service, much like a reference lab, in which standard electroencephalogram (EEG) readings are referenced to a biomarker database to suggest patient-specific probabilities of response to different medications. EEG recording devices are widely available, inexpensive to lease, and are available in most cities by independent mobile EEG providers.

The service works as follows:

- Patients are directed to a national rEEG® provider, who performs a standard digital EEG.
- EEG data is uploaded over the web to our central analytical laboratory.
- We analyze the data against the CNS Database for patients with similar brain patterns.
- We provide a report describing the probability of patient success with different medication options (much like an antibiotic sensitivity report commonly used in medicine).
- The rEEG® report is sent back to the doctor, typically the next day.

Treatment Decisions Made by Licensed Professionals

With the exception of our subsidiary, the Neuro-Therapy Clinic based in Denver, CO, we do not currently operate our own healthcare facilities, employ our own treating physicians or provide medical advice or treatment to patients. Physicians who contract for our rEEG Reports own their own facilities or professional licenses, and control and are responsible for the clinical activities provided on their premises. Patients receive medical care in accordance with orders from their attending physicians or providers. Physicians who contract for rEEG Reports are responsible for exercising their independent medical judgment in determining the specific application of the information contained in the rEEG Reports, and the appropriate course of care for each patient. Following the prescription of any medication, Physicians are presumed to administer and provide continuing care treatment.

Estimated Market for rEEG Reports

Currently, the wholesale (direct to physician) price for standard rEEG testing is $400 per test, and the retail (payer and consumer) price is approximately $800. Thus far, payments have typically been from psychiatrists whose patients pay privately for the rEEG® report. The National Institute of Mental Health (NIMH) estimates that only 12.7% of patients get minimally effective treatment, with over 17 million Americans now classified as “treatment resistant”, meaning they’ve failed to find relief after trying two or more medications.

We therefore estimate the potential market for our rEEG reports at $1.7 billion annually, based on an addressable market of 17 million Treatment Resistant patients, with only 12.5% of patients seeking care and complying with treatment. Now that we have completed our clinical trial (please see page 11 Laboratory Services Accomplishments for further information on our clinical trial), we intend to place greater emphasis on the marketing of our rEEG technology to physicians, consumers and payers.

Path to Adoption

Several biomarker firms have successfully commercialized products that predict medication response, including Genomic Health's OncotypeDx which predicts response to chemotherapy, and Roche/Affymetrix Cytochrome P450 test which shows how each patient is likely to metabolize a given antidepressant. We are following the paths to adoption used by these successful biomarker firms by focusing on growth in three stages:

(1) Private pay market.

Consumers and private-pay psychiatrists drive over 33% of the market for psychiatric visits, and a significant proportion of all licensed psychiatrists now describe themselves as private pay only. We believe consumers who have experienced treatment failure will seek out our network of physicians once they become aware of the successful outcomes demonstrated in our clinical trial.

During 2008, the recruiting for our Depression Efficacy Trial (the Depression Efficacy Trial is further described under the heading Laboratory Services Accomplishments on page 11) generated many important lessons about integrated marketing for our rEEG® service. By using a media mix of web, radio and TV, interested patients were delivered into the trial at an average cost of $40-$68 per contact. We will continue to pursue integrated consumer marketing as a means to introduce interested patients to our rEEG® provider network.

To drive growth in private pay, consumer-driven rEEG testing, we plan to do the following:

- Grow our focused physician network: We currently have 51 active practicing physicians utilizing rEEG in their practices, defined as having paid for testing within the last 12 months. An additional 52 physicians are currently involved in training or clinical trials utilizing rEEG. Physicians who become "power users" (which we define as physicians who conduct several tests per month) report significantly better results than casual users of rEEG technology, and have certain economies of scale in using the test in their practices. Similar to the adoption of LASIK technology in consumer-driven opthalmology, successful practices using rEEG have reported that as their word-of-mouth referrals increase, their procedure billings increase, and their average patient visits decrease (as patients improve). Accordingly, their patient turnover may increase over time, requiring additional marketing efforts to grow their practice volume.

  We plan to focus on supporting these power users through direct marketing, clinical practice support (patient intake, scheduling, washout support and reporting), and technical support. This focused network approach has been successful in other specialties (for example, in organ transplant networks and in disease management) because it is easier to sell to payers, facilitates data collection, and is more cost-effective in delivering care even at higher provider margins.

- Increase unit pricing: Currently, the wholesale (direct-to-physician) price for standard rEEG testing is $400 per test, and the retail (payer and consumer) is approximately $800. We anticipate that our pricing will be increased over time with greater acceptance of the test as a standard of care, rewarding power users for committed volume and affording improvement in test margins overall.

- Utilize our product laboratory: In 2008, we purchased the psychiatric clinic in Denver, CO founded by our Chief Medical Officer, Daniel Hoffman, MD. The clinic currently serves as a platform for perfecting rEEG workflow, information systems, product development and research. We also test local marketing strategies in Denver which can then be generalized to other rEEG® network clinics. The Denver clinic may ultimately become a national Center of Excellence for neuropsychiatry, where insurers may direct certain treatment-resistant patients.

- Scalable platform for delivery: During 2008, significant development effort was focused on production systems and lab infrastructure to accommodate potential growth in the production volume of our rEEG Reports. Our current production application is able to accommodate up to 100 tests per day without additional manpower. In addition to providing scalable capacity, the production system provides for online delivery of tests and delivery of test data to physicians' desktops. Currently, we are investing in projects to reduce or eliminate the remaining manual processes in test production: "artifacting" of EEG data and Neurologist review of each case. It is estimated that these processes will, over time, be replaced with validated algorithms and/or post-facto sampling for quality assurance.

(2) Payer economic trials.

Health plans currently spend over $30 billion on psychotropic medications each year according to the Substance Abuse and Mental Health Services Administration (SAMHSA), and most are aware that these agents only work on about 30% of patients who take them. The lack of medication adherence and poor treatment outcomes in behavioral health have been longstanding issues for payers, but they've lacked a targeted, cost-efficient approach to solve the problem.

Presently, rEEG is not a reimbursable procedure for most health care payers. Initially, payer response to most new technologies is a reflexive denial of coverage, regardless of the superiority of evidence or economics. Over time, however, certain payers may adopt technologies which confer a clear marketing or underwriting advantage, or which protect them from legal claims for reimbursement under new legislation (e.g. Parity). Because of this, it is possible that with sufficient marketing efforts, we may shift payer "fear of adoption" to "fear of not adopting" and increase the number of payers that approve our rEEG Reports as a reimbursable expense.

We intend to prove that our rEEG reports are a compelling value for payers through independent research, budget impact models, and payer pilots (economic trials):

- **Evidence for payers:** We will share well-designed research on rEEG® efficacy, showing the weight of superior evidence in controlled and real-world clinical trials and case series.

  For example, in 2008, the Center for Health Economics, Epidemiology, and Science Policy of United BioSource evaluated current evidence supporting the utility of rEEG® in guiding treatment of treatment-resistant depression vs. other guidelines commonly used by insurance companies and managed care payers. They reported:

  *"Referenced-EEG® was associated with relatively high remission rates in Treatment Resistant Depression with reasonable levels of evidence. ... In conclusion, the evidence supporting rEEG® appears **superior** to that supporting American Psychiatric Association (APA) or Texas Medication Algorithm Project (TMAP) treatment guidelines for TRD and certainly the results of the Sequenced Treatment Alternatives to Relieve Depression (STAR*D) Level 3 and Level 4 studies that are commonly used by payers."*

- **Parity:** In 2010, Mental Health Parity Act (Parity Act) will change all payers' coverage criteria, requiring equal coverage for behavioral and medical therapies, using the same coverage criteria and evidence. Milliman Global Actuarial Services estimates a 1-3% increase in overall health costs resulting from a significant increase in behavioral health expenditures driven by the Parity Act. Of particular interest to us, however, is the specific language in the Parity Act which requires that coverage of a scope-of-service for one type of diagnosis (for example: a Neurologist performing a diagnostic EEG for Epilepsy) be applied equally as the use of an EEG by a Psychiatrist for medication management.

- **Budget Impact Model:** A Budget Impact Model for rEEG® has been developed by Analysis Group Economics based on the published research of Kessler, Russell, and others covering the cost of treatment failure in mental disorders. Modeling the economic impact of rEEG® in a health plan with five million members, we estimate that full utilization of rEEG® in treatment-resistant depression, anxiety, bipolar and ADHD could save $8,500 per treatment resistant member for a savings of $45 million per year.

- **Economic Trials:** Economic Trials are intended to demonstrate the comparative effectiveness of rEEG versus prevailing Trial & Error medication management through pilot programs within a payer's own population. Although no payer is currently reimbursing physicians for the use of rEEG technology, we are currently negotiating pilot programs for reimbursement coverage with several of the nation's largest payers, representing over 80 million covered lives.

One example of the payer appeal was outlined in an advisory issued last year by the actuarial firm Milliman Global:

> *"One innovative company has come up with an interesting method to help doctors treat patients who have previously been defined as treatment-resistant. Instead of using the trial and error method to find an appropriate medication for these patients, a form of digital electroencephalography (EEG) is used to identify abnormal patient physiology. The results of this EEG are then used in combination with a database containing over 1,600 patients and 13,000 medication trials to select the most efficacious drug(s). Initial outcomes indicate a high success rate (75%) for participants in this program.*
>
> *Quality initiatives to increase effective treatment of behavioral disorders with psychotropic drugs will result in preferred outcomes for all involved. If patients are using the "correct" drug and doing so in accordance with established medical guidelines, their all around health will improve. Payers who implement similar quality initiatives will also benefit by getting greater value in their healthcare spending, and hopefully, reducing total healthcare costs down the road as members get healthier and stay healthier. Even employers will benefit with reduced healthcare costs, fewer sick days and disability days, and increased productivity."*
>
> Milliman Global Client Advisory, August 2008.

(3) Full payer coverage.

Full reimbursement of referenced-EEG is likely to follow successful direct-to-consumer adoption of the rEEG test, along with continued release of confirmatory rEEG research in peer-reviewed publications. Following the example of the biomarker firms discussed above, it appears possible to accelerate the effect of these initiatives in the following ways:

- **Patient Advocacy:** we believe that some components of the rEEG test may be billable to payers under Mental Health Parity Act. Historically, patients of our physician network providers, and those in our own clinic in Colorado, have paid out of pocket for rEEG testing and then sought reimbursement from their insurance carrier. Although these providers frequently furnish information to support these claims, the success of their prosecution by patients is unclear.

  Accordingly, we intend to follow the example of biomarker firms such as Genomic Health, which developed Patient Advocacy services where patient claims were documented and tracked, and the company helped organize the advocacy of each claim with third party payers. Using this approach, Genomic Health was able to win a retrospective reversal of claim denials for its test from Medicare (the Centers for Medicare and Medicaid Services) in 2006.

- **Guideline development:** we intend to continue internal and externally-sponsored clinical research to prove the efficacy of our technology to professional associations, such as the American Psychiatric Association. We believe that with strong clinical results, professional associations may endorse rEEG in their treatment guidelines, which may drive full payer coverage.

We also believe that the inclusion of historical and new rEEG research in Comparative Effectiveness studies conducted under the Agency for Healthcare Research and Quality (AHRQ) would be a significant milestone. As a consequence of this recent focus on cost-effective treatment, an unprecedented level of funding has been made available under the Economic Recovery Act, the budgets for NIH and AHRQ, and earmarked budgets for Defense and the Veterans Association (VA). We intend to pursue research opportunities with several external sponsors of research, including:

- the **National Institutes of Mental Health**, focusing on the cost-effectiveness of rEEG as a more deployable version of brain imaging to guide prescribing;

- the **Department of Defense and the Veterans Administration**, to address the potential for rEEG in treating returning soldiers with PTSD and Major Depression; and

- the **Centers for Medicare and Medicaid Services (CMS)**, as a mechanism for improving quality and cost performance in programs that spend billions on psychotropic medications.

Laboratory Services Accomplishments

Over the last few years, we have been primarily focused on proving the efficacy of rEEG-guided treatments through multiple clinical trials. The largest of these — the Depression Efficacy Trial — was a multi-center, randomized, parallel controlled trial completed this year at 12 medical centers, including Harvard, Stanford, Cornell, UCI and Rush. The study began in late 2007 and was completed in September of this year, screening 465 potential subjects with Treatment Resistant Depression and ultimately randomizing 114 participants to a 12-week course of treatment utilizing rEEG in the experimental group, and a modified STAR*D algorithm in the control group (STAR*D, or Sequenced Alternatives to Relieve Depression, was a large, seven-year study sponsored by the National Institute of Mental Health and completed in 2006). Top-line results were consistent with previous clinical trials of rEEG:

- The study found that rEEG significantly outperformed the modified STAR*D treatment algorithm from the beginning. The difference, or separation, between rEEG and the STAR*D control group was 50 and 100 percent for the study's two primary endpoints. By contrast, separation between a new treatment and a control group often averages less than 10 percent in antidepressant studies. Interestingly, separation was achieved early (week 2) and durable, continuing to grow through week 12.

- The control group in this case, STAR*D, was a particularly tough comparator, representing a level of evidence-based depression care that is available to only 10% of the US population, according to one of the study's authors.

- Statistical significance ($p < .05$) was achieved on all primary and most secondary endpoints.

In the course of undertaking the study, we also gained insights into marketing of the rEEG technology, highlighting aspects of marketing which proved to be more successful than others. Furthermore, we also developed a foundation for commercialization of the rEEG technology with insurance companies, and signing a payer group, Cal Optima (a Southern California health plan for Medicare/Medicaid enrollees), to run a pilot study with us. A second large insurer is in the process of negotiating a pilot study. Additionally, over the course of the last few years, much time has been spent securing sufficient financing to continue our operations and ensure that the clinical trial was completed.

Going forward, we plan to continue expanding the CNS Database with the addition of more pharmaceuticals and their respective outcomes. Additionally, we plan on improving the functionality and clinical utility of our rEEG reports, in order to improve adoption and compress the training period necessary for physicians to become proficient with the report. Finally, we plan to increase and refine our marketing efforts to consumers and psychiatrists, and expand our effort to obtain regular insurance reimbursement for rEEG-guided therapies.

Use of rEEG Technology in Pharmaceutical Development

In addition to its utility in providing psychiatrists and other physicians with medication sensitivity guidance, rEEG provides us with significant opportunities in the area of pharmaceutical development. In the future, we aim to use our propriety data and processes to advance central nervous system (CNS) pharmaceutical development and economics, in one or more of the following ways:

- **Enrichment:** selecting patients for clinical trial who not only have the symptoms of interest, but are shown by rEEG® screening to likely respond to the developer's drug. An oft-cited example is the antidepressant Prozac, which failed several clinical trials before it achieved success in two separate trials. The ability to design trials in which exclusion criteria identify and exclude patients who are clearly resistant, as determined by rEEG, has the potential to sharpen patient focus and productivity in clinical trials of psychotropic medications.

- **Repositioning:** rEEG® may suggest new applications/indications of existing medications. For example, Selective Serotonin Reuptake Inhibitors Antidepressants (SSRI's) are now commonly given by primary care physicians for depression and other complaints, but often produce unwanted side effects or inadequate results. The ability to biomarker patients who respond better to tricyclics (TCA's), or combinations of TCA's and stimulants, offers the potential for new indications for existing compounds.

- **Salvage:** resuscitation of medications that failed phase II or III studies. One example of this opportunity is Sanofi-Aventis' unsuccessful PMA filing for Rimonabant, a promising anti-obesity/cardiometabolic compound which was denied approval in the U.S. due to CNS side-effects in their clinical trial populations. Being able to screen out trial participants with resistance to a certain medication is an application for rEEG, and could create "theranostic" products (where an indication for use is combined with rEEG) for compounds which have failed to receive broader approval.

- **New Combinations:** unwanted adverse effects occur with medications in fields from cancer to hepatitis. The ability to improve these medications, in combination with psychotropics, may improve safety, compliance, and, sometimes, patient outcomes.

- **Decision Support:** improved understanding supports improved decision making at all levels of pharmaceutical development.

Competition

Comparable Biomarker Companies

Although there are no companies offering a service directly comparable to rEEG, the following companies might be noted as pursuing similar strategies:

- GENOMIC HEALTH (Nasdaq: GHDX) Genomic Health, Inc. is a life science company focused on the development and commercialization of genomic-based clinical laboratory services for cancer that allow physicians and patients to make individualized treatment decisions. The company was founded in 2000 and is based in Redwood City, California. In 2004, the company launched the Oncotype DX breast cancer test, which has been shown to predict the likelihood of chemotherapy benefit, as well as recurrence in early-stage breast cancer. By the end of 2008, the company reported that over 90% of health plans were reimbursing use of this test. In addition to its adopted Oncotype DX breast cancer test, Genomic Health is preparing to launch its Oncotype DX colon cancer test in early 2010.

- ASPECT MEDICAL SYSTEMS, INC. (Nasdaq: ASPM), an EEG anesthesia monitoring company, is developing a specific EEG measurement system that indicates a patient's likely response to some antidepressant medications. Its biomarker, based on research from the UCLA Neuropsychiatric Institute, is called Cordance.

  A 375-subject multi-site clinical trial on the efficacy of this biomarker in guiding treatment of treatment resistant depression — the BRITE trial — demonstrated positive predictive outcomes for a single antidepressant, escitalopram (Lexapro). Patients in the trial were measured prior to and after taking medication. Publicly available data suggests that the technology may validate a patient's treatment but does not guide specific treatment. Initial trials have shown efficacy in correlating a patient's ultimate response to antidepressants. The revenue model may involve sale of equipment and a per-patient charge, but the company does not currently appear to be close to a commercial release of its product. The company is now conducting trials.

- BRAIN RESOURCE COMPANY (Aust: BRRZF) (www.brainresource.com), is an Australian Clinical Research Organization (CRO) and biomarker company focused on personalized medicine solutions for patients, clinicians, pharmaceutical trials and discovery research. As a CRO, its main focus has been iSPOT, an $18 million international biomarker study with a private biotechnology company. Their revenue model includes physician services and sale of systems and services to pharmaceutical development companies in the CNS discovery field. As a biomarker provider, it signed a $6 million agreement last year with Optum (United Healthcare) to provide screening for plan members.

We believe that we have a competitive advantage with respect to the behavioral biomarker firms such as Aspect Medical or Brain Resource Company as we offer more comprehensive testing (e.g. to cover the full range of CNS medications, not just certain antidepressants in the case of Aspect Medical) and have conducted studies to validate the efficacy of our service. We also believe that we offer greater clinical utility (ease of use, rapid results) in day-to-day clinical practice than our competitors.

Emerging Medical Device Technologies

The field of neuropsychiatry is undergoing dramatic change as a result of the introduction of new technologies. Many of these technologies are focused on the same treatment-resistant patient populations which are the focus of rEEG, and are priced from $10,000 to over $50,000 for a full course of treatment. Two of the three examples presented here are invasive, implantable devices.

- CYBERONICS, INC. (Nasdaq: CYBX) is a neuromodulation company, engages in the design, development, manufacture, and marketing of implantable medical devices that provide vagus nerve stimulation (VNS) therapy for the treatment of epilepsy and treatment-resistant depression. The VNS therapy system consists of an implantable generator that delivers an electrical signal to an implantable lead attached to the left vagus nerve, as well as a bipolar lead, a programming wand and software, and a tunneling tool.

  Cyberonics has developed an implantable Vagus Nerve Stimulation device approved for treatment-resistant depression. This device has received pre-market approval from the Food and Drug Agency for patients and is believed to be under reimbursement review by insurance payers.

- MEDTRONIC, INC. (NYSE: MDT). Medtronic has an implantable deep brain stimulation device (DBS) in development which is similar to their device approved for Parkinson's treatment. Deep brain stimulation uses an implanted electrode – essentially a pacemaker for the brain — to deliver electrical stimulation to specific structures within the brain. The Food and Drug Administration (FDA) approved DBS as a treatment for essential tremor in 1997, for Parkinson's disease in 2002, and dystonia in 2003. DBS is also routinely used to treat chronic pain and has been used to treat various affective disorders, including major depression. While DBS has proven helpful for some patients, there is potential for serious complications and side effects.

- NEURONETICS (Privately held) (www.neuronetics.com). Neuronetics has pioneered and refined the NeuroStar TMS Therapy system for non-invasive, non-systemic treatment for depression using a focused, pulsed magnetic field to stimulate function in targeted brain regions. NeuroStar TMS Therapy stimulates nerve cells in an area of the brain that is linked to depression by delivering highly focused MRI-strength magnetic field pulses.

TMS is performed in a physician's office with each treatment lasting about 40 minutes daily for four to six weeks. In an open-label clinical trial, which is most like real world clinical practice, approximately one in two patients experienced significant improvement in symptoms, and one in three experienced complete symptom resolution. NeuroStar TMS Therapy was cleared by the FDA in October 2008 for patients who have not adequately benefited from prior antidepressant medication. TMS Therapy is currently available at over 25 treatment locations in 15 states.

From a competitive standpoint, we view these emerging treatment options as expensive augmentations to existing therapies for treatment-resistant patients, and as competitive therapeutic options to medications. To the best of our knowledge, rEEG-guided therapy provides a higher probability of treatment success at a significantly lower cost than device-based solutions, which gives us a competitive advantage in the marketplace.

Intellectual Property

rEEG Patents

We have three issued U.S. Patents which we believe provide us with the right to exclude others from using our rEEG technology. In addition, we believe these patents cover the analytical methodology we use with any form of neurophysiology measurement including SPECT (Single Photon Emission Computed Tomography), fMRI (Functional Magnetic Resonance Imaging), PET (Positron Emission Tomography), CAT (Computerized Axial Tomography), and MEG (Magnetoencephalography)). We do not currently have data on the utility of such alternate measurements, but we believe they may, in the future, prove to be useful to guide therapy in a manner similar to rEEG. We have also filed patent applications for our technology in various foreign jurisdictions, and have issued patents in Australia and Israel.

rEEG Trademarks

“Referenced-EEG” and “rEEG” are registered trademarks of CNS California in the United States. We will continue to expand our brand names and our proprietary trademarks worldwide as our operations expand.

CNS Database

The CNS Database consists of over 17,000 medication trials across over 2,000 patients who had psychiatric or addictive problems. The CNS Database is maintained in two parts:

1. The QEEG Database

The QEEG Database includes EEG recordings and neurometric data derived from analysis of these recordings. This data is collectively known as the QEEG Data. QEEG or “Quantitative EEG” is a standard measure that adds modern computer and statistical analyses to traditional EEG studies. The Company utilizes two separate, FDA-approved external QEEG databases which provide statistical and normative information in the rEEG process.

2. The Clinical Outcomes Database

The Clinical Outcomes Database consists of physician provided assessments of the clinical long-term outcomes (average of 405 days) of patients and their associated medications. The clinical outcomes of patients are recorded using an industry-standard outcome rating scale, the Clinical Global Impression Global Improvement scale (“CGI-I”). The CGI-I requires a clinician to rate how much the patient's illness has improved or worsened relative to a baseline state. A patient's illness is compared to change over time and rated as: very much improved, much improved, minimally improved, no change, minimally worse, much worse, or very much worse.

The format of the data is standardized and that standard is enforced at the time of capture by a software application. Outcome data is input into the database by the treating physician or in some cases, their office staff. Each Physician has access to his/her own patient data through the software tool that captures clinical outcome data.

We consider the information contained in the CNS Database to be a valuable trade secret and are diligent about protecting such information. The CNS Database is stored on a secure server and only a limited number of employees have access to it.

Research and Development

In 2010, we plan to continue to enhance, refine and improve the accuracy of our CNS Database and rEEG through expansion of the number of medications covered by our rEEG Reports, expansion of our biomarkers, refinement of our biomarker system, and by reducing the time to turnaround a report to the physician.

Government Regulation

We do not believe that sales of our Laboratory Information Services, including our rEEG Reports, are subject to regulatory pre-market approval. However, on April 10, 2008 we received a “warning letter” from the FDA in which the FDA indicated it believed, based in part on the combination of certain marketing statements it read on our website, together with the delivery of our rEEG Reports, that we were selling a software product to aid in diagnosis, which constituted a “medical device” requiring pre-market approval or clearance by the FDA pursuant to the Federal Food, Drug and Cosmetic Act (the "Act"). We responded to the FDA on April 24, 2008 indicating that we believed it had incorrectly understood our product offering, and clarified that the Laboratory Information Services were not diagnostic and thus did not constitute a medical device. On December 14, 2008, the FDA again contacted us and indicated that, based upon its review of our description of our intended use of the rEEG Reports on our website, it continued to maintain that the rEEG Reports met its definition of medical devices. In response to of the FDA communications, we made a number of changes to our website and other marketing documents to reflect that rEEG is a service to aid in medication selection and is not a diagnosis aid. On September 4, 2009, through our regulatory counsel, we responded to the December 14, 2008 FDA letter explaining our position in more detail.

On December 28, 2009, the Company and Regulatory counsel received a response from the FDA indicating that it still believes referenced-EEG constitutes a “medical device” under the Act. In response to the most recent letter, we will request a meeting with FDA to discuss the scope of and requirements for 510(k) clearance, that they might require, if any. In any event, we will continue our ongoing dialogue with the FDA regarding our Laboratory Information Services, and we will take all action necessary and appropriate to support our position.

We cannot provide any assurance that additional FDA regulation, including PMA, will not be required in the future for referenced-EEG. It is also possible that legislation will be enacted into law and may result in increased regulatory burdens for us to continue to offer referenced-EEG testing.

If pre-market review is required, our business could be negatively impacted until such review is completed and clearance to market or approval is obtained, and FDA could require that we stop selling our test pending pre-market clearance or approval. If our test is allowed to remain on the market but there is uncertainty about our test, if it is labeled investigational by FDA, or if labeling claims FDA allows us to make are very limited, orders may decline. The regulatory approval process may involve, among other things, successfully completing additional clinical trials and submitting a pre-market clearance notice or filing a PMA application with the FDA. If pre-market review is required by FDA, there can be no assurance that our test will be cleared or approved on a timely basis, if at all. Ongoing compliance with FDA regulations would increase the cost of conducting our business, and subject us to inspection by FDA and to the requirements of FDA and penalties for failure to comply with these requirements.

Even if the sale of our Laboratory Information Services are not subject to regulatory approval, federal and state laws and regulations relating to the sale of our Laboratory Information Services are subject to future changes, as are administrative interpretations of regulatory agencies. In the event that we do not resolve the status of our Laboratory Information Services with the FDA, or in the event that federal and state laws and regulations change, we may need to incur additional costs to seek government approvals for the sale of our Laboratory Information Services.

In the future, we intend to seek approval for medications or combinations of medications for new indications, either with corporate partners, or potentially, on our own. The development and commercialization of medications for new indications is subject to extensive regulation by the U.S. Federal government, principally through the FDA and other federal, state and governmental authorities elsewhere. Prior to marketing any central nervous system medication, and in many cases prior to being able to successfully partner a central nervous system medication, we will have to conduct extensive clinical trials at our own expense to determine safety and efficacy of the indication that we are pursuing.

ITEM 1A. Risk Factors

INVESTING IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD CAREFULLY CONSIDER THE FOLLOWING RISK FACTORS AND ALL OTHER INFORMATION CONTAINED IN THIS REPORT BEFORE PURCHASING OUR COMMON STOCK. THE RISKS AND UNCERTAINTIES DESCRIBED BELOW ARE NOT THE ONLY ONES FACING US. ADDITIONAL RISKS AND UNCERTAINTIES THAT WE ARE UNAWARE OF, OR THAT WE CURRENTLY DEEM IMMATERIAL, ALSO MAY BECOME IMPORTANT FACTORS THAT AFFECT US. IF ANY OF THE FOLLOWING RISKS OCCUR, OUR BUSINESS, FINANCIAL CONDITION OR RESULTS OF OPERATIONS COULD BE MATERIALLY AND ADVERSELY AFFECTED. IN THAT CASE, THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE, AND YOU MAY LOSE SOME OR ALL OF THE MONEY YOU PAID TO PURCHASE OUR COMMON STOCK.

Risks Related to Our Company

Our core Laboratory Information Services business has a limited operating history, making it difficult to evaluate our future performance.

Our operating subsidiary which conducts our core Laboratory Information Services business, CNS Response, Inc., a corporation formed under the law of the State of California ("CNS California"), was incorporated in 2000 and therefore has a limited operating history. Investors therefore have limited substantive financial information relating to our core business to evaluate an investment in our company. Our potential must be viewed in light of the problems, expenses, difficulties, delays and complications often encountered in the operation of a new business. We will be subject to the risks inherent in the ownership and operation of a company with a limited operating history such as fluctuations in expenses, competition, the general strength of regional and national economies, and governmental regulation. Any failure to successfully address these risks and uncertainties could seriously harm our business and prospects.

If our rEEG reports do not gain widespread market acceptance, then our revenues may not exceed our expenses.

We have developed a methodology that aids psychiatrists and other physicians in selecting appropriate and effective medications for patients with certain behavioral or addictive disorders based on physiological traits of the patient's brain and information contained in a proprietary database that has been developed over the last twenty years. We began selling reports, referred to as rEEG Reports, based on our methodology in 2000. To date, we have not received widespread market acceptance of the usefulness of our rEEG Reports in helping psychiatrists and physicians inform their treatment strategies for patients suffering from behavioral and/or addictive disorders. If we fail to achieve widespread market acceptance for our rEEG Reports, we will not be able to grow our revenues, which could negatively impact our stock price.

Our Clinical Services Business generates the majority of our revenue, and adverse developments in this business could negatively impact our operating results.

Our Clinical Services business, which we view as ancillary to our core Laboratory Information Services business, currently generates the majority of our revenue. In the event that NTC is unable to sustain the current demand for its services because, for instance, the company is unable to maintain favorable and continuing relations with its clients and referring psychiatrists and physicians or Daniel Hoffman, the Medical Director at NTC and our Chief Medical Officer and President, is no longer associated with NTC, our revenues could significantly decline, which could adversely impact our operating results and our ability to implement our growth strategy.

Our operating results may fluctuate significantly and our stock price could decline or fluctuate if our results do not meet the expectation of analysts or investors.

Management expects that we will experience substantial variations in our operating results from quarter to quarter. We believe that the factors which influence this variability of quarterly results include:

- the use of and demand for rEEG Reports and other products and/or services that we may offer in the future that are based on our patented methodology;
- the effectiveness of new marketing and sales programs;
- turnover among our employees;
- changes in management;
- the introduction of products or services that are viewed in the marketplace as substitutes for the services we provide;
- communications published by industry organizations or other professional entities in the psychiatric and physician community that are unfavorable to our business;
- the introduction of regulations which impose additional costs on or impede our business; and
- the timing and amount of our expenses, particularly expenses associated with the marketing and promotion of our services, the training of physicians and psychiatrists in the use of our rEEG Reports, and research and development.

As a result of fluctuations in our revenue and operating expenses that may occur, management believes that period-to-period comparisons of our results of operations are not a good indication of our future performance. It is possible that in some future quarter or quarters, our operating results will be below the expectations of securities analysts or investors. In that case, our common stock price could fluctuate significantly or decline.

We have a history of operating losses.

We are a company with a limited operating history. Since our inception, we have incurred significant operating losses. As of September 30, 2009, our net loss was approximately $25 million. Our future capital requirements will depend on many factors, such as the risk factors described in this section, including our ability to maintain our existing cost structure and to execute our business and strategic plans as currently conceived. Even if we achieve profitability, we may be unable to maintain or increase profitability on a quarterly or annual basis.

We will need additional funding to support our operations and capital expenditures, which may not be available to us and which lack of availability could adversely affect our business.

We have not generated significant revenues or become profitable, may never do so, and may not generate sufficient working capital to cover costs of operations. We intend to fund our operations and capital expenditures from revenues, our cash on hand, from the proceeds of future financings and potentially from strategic collaborations. As of September 30, 2009, we had approximately $0.99 million in cash and cash equivalents at hand. On December 24, 2009 we closed on the second tranche of our Private Placement in which we raised net proceeds of $2.65 million (please see Item 5, under the heading "Recent Sales of Unregistered Securities—Private Placement Transactions" for further information). We plan to use these funds to pay-off debt and provide working capital for our operations. Despite the completion of this financing, we believe that it will be necessary to raise additional funds in 2010.

The amount of capital we will need to conduct our operations and the time at which we will require such capital may vary significantly depending upon a number of factors, such as:

- the amount and timing of costs we incur in connection with our research and product development activities, including enhancements to our CNS Database and costs we incur to further validate the efficacy of our rEEG technology;
- the amount and timing of costs we incur in connection with the expansion of our commercial operations, including our selling and marketing efforts;
- whether we incur additional legal fees in our litigation with Brandt in relation to his pending counterclaims in the United States District Court or any appeals that he may bring in Delaware;
- revenues we generate from the sale of our services; and
- if we expand our business by acquiring or investing in complimentary businesses.

We do not know whether additional funding will be available on acceptable terms, or at all, especially given the economic conditions that currently prevail. In addition, any additional funding may result in significant dilution to existing stockholders. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more research and development programs or selling and marketing initiatives, and implement other cost saving measures. Any of these actions could substantially harm our business.

Our industry is highly competitive, and we may not be able to compete successfully, which could result in price reductions and decreased demand for our products.

The healthcare business in general, and the behavioral health treatment business in particular, are highly competitive. In the event that we are unable to convince physicians, psychiatrists and patients of the efficacy of our products and services, individuals seeking treatment for behavioral health disorders may seek alternative treatment methods, which could negatively impact our sales and profitability.

Our rEEG reports may not be as effective as we believe them to be, which could limit or prevent us from growing our revenues.

Our belief in the efficacy of our rEEG technology is based on a limited number of studies. Such results may not be statistically significant, and may not be indicative of the long-term future efficacy of the information we provide. Controlled scientific studies, including those that have been announced and that are planned for the future, may yield results that are unfavorable or demonstrate that our services, including our rEEG Reports, are not clinically useful. While we have not experienced such problems to date, if the initially indicated results cannot be successfully replicated or maintained over time, utilization of services based on our rEEG technology, including the delivery of our rEEG Reports, may not increase as we anticipate, which would harm our operating results and stock price. In addition, if we fail to upgrade our CNS Database to account for new medications that are now available on the market, psychiatrists and other physicians may be less inclined to utilize our services if they believe that our reports only provide information about older treatment options, which would further harm our operating results and stock price.

If we do not maintain and expand our relationships in the psychiatric and physician community, our growth will be limited and our business could be harmed. If psychiatrists and other physicians do not recommend and endorse our products and services, we may be unable to increase our sales, and in such instances our profitability would be harmed.

Our relationships with psychiatrists and physicians are critical to the growth of our Laboratory Information Services business. We believe that these relationships are based on the quality and ease of use of our rEEG Reports, our commitment to the behavioral health market, our marketing efforts, and our presence at tradeshows. Any actual or perceived diminution in our reputation or the quality of our rEEG Reports, or our failure or inability to maintain our commitment to the behavioral health market and our other marketing and product promotion efforts could damage our current relationships, or prevent us from forming new relationships, with psychiatrists and other physicians and cause our growth to be limited and our business to be harmed.

To sell our rEEG Reports, psychiatric professionals must recommend and endorse them. We may not obtain the necessary recommendations or endorsements from this community. Acceptance of our rEEG Reports depends on educating psychiatrists and physicians as to the benefits, clinical efficacy, ease of use, revenue opportunity, and cost-effectiveness of our rEEG Reports and on training the medical community to properly understand and utilize our rEEG Reports. If we are not successful in obtaining the recommendations or endorsements of psychiatrists and other physicians for our rEEG Reports, we may be unable to increase our sales and profitability.

Negative publicity or unfavorable media coverage could damage our reputation and harm our operations.

In the event that the marketplace perceives our rEEG Reports as not offering the benefits which we believe they offer, we may receive significant negative publicity. This publicity may result in litigation and increased regulation and governmental review. If we were to receive such negative publicity or unfavorable media attention, whether warranted or unwarranted, our ability to market our rEEG Reports would be adversely affected, pharmaceutical companies may be reluctant to pursue strategic initiatives with us relating to the development of new products and services based on our rEEG technology, we may be required to change our products and services and become subject to increased regulatory burdens, and we may be required to pay large judgments or fines and incur significant legal expenses. Any combination of these factors could further increase our cost of doing business and adversely affect our financial position, results of operations and cash flows.

If we do not successfully generate additional products and services from our patented methodology and proprietary database, or if such products and services are developed but not successfully commercialized, then we could lose revenue opportunities.

Our primary business is the sale of rEEG Reports to psychiatrists and physicians based on our rEEG methodology and proprietary database. In the future, we may utilize our patented methodology and proprietary database to produce pharmaceutical advancements and developments. For instance, we may use our patented methodology and proprietary database to identify new medications that are promising in the treatment of behavioral health disorders, identify new uses of medications which have been previously approved, and identify new patient populations that are responsive to medications in clinical trials that have previously failed to show efficacy in United States Food & Drug Administration (FDA) approved clinical trials. The development of new pharmaceutical applications that are based on our patented methodology and proprietary database will be costly, since we will be subject to additional regulations, including the need to conduct expensive and time consuming clinical trials.

In addition, to successfully monetize our pharmaceutical opportunity, we will need to enter into strategic alliances with biotechnology or pharmaceutical companies that have the ability to bring to market a medication, an ability which we currently do not have. We maintain no pharmaceutical manufacturing, marketing or sales organization, nor do we plan to build one in the foreseeable future. Therefore, we are reliant upon approaching and successfully negotiating attractive terms with a partner who has these capabilities. No guarantee can be made that we can do this on attractive terms. If we are unable to find strategic partners for our pharmaceutical opportunity, our revenues may not grow as quickly as we desire, which could lower our stock price.

In the event that we pursue our pharmaceutical opportunities, we or any development partners that we partner with will likely need to conduct clinical trials. If such clinical trials are delayed or unsuccessful, it could have an adverse effect on our business.

We have no experience conducting clinical trials of psychiatric medications and in the event we conduct clinical trials, we will rely on outside parties, including academic investigators, outside consultants and contract research organizations to conduct these trials on our behalf. We will rely on these parties to assist in the recruitment of sites for participation in clinical trials, to maintain positive relations with these sites, and to ensure that these sites conduct the trials in accordance with the protocol and our instructions. If these parties renege on their obligations to us, our clinical trials may be delayed or unsuccessful.

In the event we conduct clinical trials, we cannot predict whether we will encounter problems that will cause us or regulatory authorities to delay or suspend our clinical trials or delay the analysis of data from our completed or ongoing clinical trials. In addition, we cannot assure you that we will be successful in reaching the endpoints in these trials, or if we do, that the FDA or other regulatory agencies will accept the results.

Any of the following could delay the completion of clinical trials, or result in a failure of these trials to support our business, which would have an adverse effect on our business:

- delays or the inability to obtain required approvals from institutional review boards or other governing entities at clinical sites selected for participation in our clinical trials;
- delays in enrolling patients and volunteers into clinical trials;
- lower than anticipated retention rates of patients and volunteers in clinical trials;
- negative results from clinical trials for any of our potential products; and
- failure of our clinical trials to demonstrate the efficacy or clinical utility of our potential products.

If we determine that the costs associated with attaining regulatory approval of a product exceed the potential financial benefits or if the projected development timeline is inconsistent with our determination of when we need to get the product to market, we may chose to stop a clinical trial and/or development of a product.

If we do not develop and implement a successful sales and marketing strategy, we may not expand our business sufficiently to cover our expenses.

We currently rely on a limited number of employees to market and promote our rEEG Reports. To grow our business, we will need to develop and introduce new sales and marketing programs and clinical education programs to promote the use of our rEEG Reports by psychiatrists and physicians and higher additional employees for this purpose. If we do not implement these new sales and marketing and education programs in a timely and successful manner, we may not be able to achieve the level of market awareness and sales required to expand our business.

We may fail to successfully manage and maintain the growth of our business, which could adversely affect our results of operations.

As we continue expanding our commercial operations, this expansion could place significant strain on our management, operational, and financial resources. To manage future growth, we will need to continue to hire, train, and manage additional employees, particularly a specially trained sales force to market our rEEG Reports.

In addition, we have maintained a small financial and accounting staff, and our reporting obligations as a public company, as well as our need to comply with the requirements of the Sarbanes-Oxley Act of 2002, and the rules and regulations of the SEC will continue to place significant demands on our financial and accounting staff, on our financial, accounting and information systems and on our internal controls. As we grow, we will need to add additional accounting staff and continue to improve our financial, accounting and information systems and internal controls in order to fulfill our reporting responsibilities and to support expected growth in our business. Our current and planned personnel, systems, procedures and controls may not be adequate to support our anticipated growth or management may not be able to effectively hire, train, retain, motivate and manage required personnel. Our failure to manage growth effectively could limit our ability to achieve our marketing and commercialization goals or to satisfy our reporting and other obligations as a public company.

We may not be able to adequately protect our intellectual property, which is the core of our business.

We consider the protection of our intellectual property to be critical to our business prospects. We currently have three issued U.S. patents, as well as issued patents in Australia and Israel, and we have filed separate patent applications in multiple foreign jurisdictions.

In the future, if we fail to file patent applications in a timely manner, or in the event we elect not to file a patent application because of the costs associated with patent prosecution, we may lose patent protection that we may have otherwise obtained. The loss of any proprietary rights which are obtainable under patent laws may result in the loss of a competitive advantage over present or potential competitors, with a resulting decrease in revenues and profitability for us.

With respect to the applications we have filed, there is no guarantee that the applications will result in issued patents, and further, any patents that do issue may be too narrow in scope to adequately protect our intellectual property and provide us with a competitive advantage. Competitors and others may design around aspects of our technology, or alternatively may independently develop similar or more advanced technologies that fall outside the scope of our claimed subject matter but that can be used in the treatment of behavioral health disorders.

In addition, even if we are issued additional patents covering our products, we cannot predict with certainty whether or not we will be able to enforce our proprietary rights, and whether our patents will provide us with adequate protection against competitors. We may be forced to engage in costly and time consuming litigation or reexamination proceedings to protect our intellectual property rights, and our opponents in such proceedings may have and be willing to expend, substantially greater resources than we are able to. In addition, the results of such proceedings may result in our patents being invalidated or reduced in scope. These developments could cause a decrease in our operating income and reduce our available cash flow, which could harm our business and cause our stock price to decline.

We also utilize processes and technology that constitute trade secrets, such as our outcomes database, and we must implement appropriate levels of security for those trade secrets to secure the protection of applicable laws, which we may not do effectively. In addition, the laws of many foreign countries do not protect proprietary rights as fully as the laws of the United States.

While we have not had any significant issues to date, the loss of any of our trade secrets or proprietary rights which may be protected under the foregoing intellectual property safeguards may result in the loss of our competitive advantage over present and potential competitors.

Confidentiality agreements with employees, licensees and others may not adequately prevent disclosure of trade secrets and other proprietary information.

In order to protect our proprietary technology and processes, we rely in part on confidentiality provisions in our agreements with employees, licensees, treating physicians and psychiatrists and others. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. Moreover, policing compliance with our confidentiality agreements and non-disclosure agreements, and detecting unauthorized use of our technology is difficult, and we may be unable to determine whether piracy of our technology has occurred. In addition, others may independently discover our trade secrets and proprietary information. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

The Liability of Our Directors Is Limited.

The applicable provisions of the Delaware General Corporate Law and our Certificate of Incorporation limit the liability of our directors to the Company and our stockholders for monetary damages for breaches of their fiduciary duties, with certain exceptions, and for other specified acts or omissions of such persons. In addition, the applicable provisions of the Delaware General Corporate Law and of our Certificate of Incorporation and Bylaws provide for indemnification of such persons under certain circumstances. In the event we are required to indemnify any of our directors, our financial strength may be harmed, which may in turn lower our stock price.

Although we believe we are not currently subject to regulatory pre-market approval for the sale of our rEEG Reports, regulations are constantly changing, and in the future our business may be subject to regulation.

As further discussed in Item 1 of this report under the heading "Government Regulation", we do not believe that sales of our Laboratory Information Services, including our rEEG Reports, are subject to regulatory pre-market approval. However, federal, state and foreign laws and regulations relating to the sale of our rEEG Reports are subject to future changes, as are administrative interpretations of regulatory agencies. In the event that we do not resolve the status of our Laboratory Information Services with the FDA, or in the event that federal, state or foreign laws and regulations change, we may need to incur additional costs to seek governmental approvals for the sale of our Laboratory Information Services. There is no guarantee that we will be able to obtain such approvals in a timely manner or at all, and as a result, our business would be significantly harmed. If we fail to comply with applicable federal, state or foreign laws or regulations, we could be subject to enforcement actions, including injunctions preventing us from conducting our business, withdrawal of clearances or approvals and civil and criminal penalties.

If we do not retain our senior management and other key employees, we may not be able to successfully implement our business strategy.

Our future success depends on the ability, experience and performance of our senior management and our key professional personnel. Our success therefore depends to a significant extent on retaining the services of George Carpenter, our Chief Executive Officer, our senior product development and clinical managers, and others. Because of their ability and experience, if we lose one or more of the members of our senior management or other key employees, our ability to successfully implement our business strategy could be seriously harmed. While we believe our relationships with our executives are good and do not anticipate any of them leaving in the near future, the loss of the services of any of our senior management could have a material adverse effect on our ability to manage our business. We do not carry key man life insurance on any of our key employees.

If we do not attract and retain skilled personnel, we may not be able to expand our business.

Our products and services are based on a complex database of information. Accordingly, we require skilled medical, scientific and administrative personnel to sell and support our products and services. Our future success will depend largely on our ability to continue to hire, train, retain and motivate additional skilled personnel, particularly sales representatives who are responsible for customer education and training and customer support. In the future, if we pursue our pharmaceutical opportunities, we will also likely need to hire personnel with experience in clinical testing and matters relating to obtaining regulatory approvals. If we are not able to attract and retain skilled personnel, we will not be able to continue our development and commercialization activities.

In the future we could be subject to personal injury claims, which could result in substantial liabilities that may exceed our insurance coverage.

All significant medical treatments and procedures, including treatment that is facilitated through the use of our rEEG Reports, involve the risk of serious injury or death. While we have not been the subject of any personal injury claims for patients treated by providers using our rEEG Reports, our business entails an inherent risk of claims for personal injuries, which are subject to the attendant risk of substantial damage awards. We cannot control whether individual physicians and psychiatrists will properly select patients, apply the appropriate standard of care, or conform to our procedures in determining how to treat their patients. A significant source of potential liability is negligence or alleged negligence by physicians treating patients with the aid of the rEEG Reports that we provide. There can be no assurance that a future claim or claims will not be successful or, including the cost of legal defense, will not exceed the limits of available insurance coverage.

We currently have general liability and medical professional liability insurance coverage for up to $5 million per year for personal injury claims. We may not be able to maintain adequate liability insurance, in accordance with standard industry practice, with appropriate coverage based on the nature and risks of our business, at acceptable costs and on favorable terms. Insurance carriers are often reluctant to provide liability insurance for new healthcare services companies and products due to the limited claims history for such companies and products. In addition, based on current insurance markets, we expect that liability insurance will be more difficult to obtain and that premiums will increase over time and as the volume of patients treated by physicians that are guided by our rEEG Reports increases. In the event of litigation, regardless of its merit or eventual outcome, or an award against us during a time when we have no available insurance or insufficient insurance, we may sustain significant losses of our operating capital which may substantially reduce stockholder equity in the company.

If government and third-party payers fail to provide coverage and adequate payment rates for treatments that are guided by our rEEG Reports, our revenue and prospects for profitability will be harmed.

Our future revenue growth will depend in part upon the availability of reimbursement from third-party payers for psychiatrists and physicians who use our rEEG Reports to guide the treatment of their patients. Such third-party payers include government health programs such as Medicare and Medicaid, managed care providers, private health insurers and other organizations. These third-party payers are increasingly attempting to contain healthcare costs by demanding price discounts or rebates and limiting both coverage on which procedures they will pay for and the amounts that they will pay for new procedures. As a result, they may not cover or provide adequate payment for treatments that are guided by our rEEG Reports, which will discourage psychiatrists and physicians from utilizing the information services we provide. We may need to conduct studies in addition to those we have already announced to demonstrate the cost-effectiveness of treatments that are guided by our products and services to such payers' satisfaction. Such studies might require us to commit a significant amount of management time and financial and other resources. Adequate third-party reimbursement might not be available to enable us to realize an appropriate return on investment in research and product development, and the lack of such reimbursement could have a material adverse effect on our operations and could adversely affect our revenues and earnings.

We are subject to evolving and expensive corporate governance regulations and requirements. Our failure to adequately adhere to these requirements or the failure or circumvention of our controls and procedures could seriously harm our business.

Because we are a publicly traded company we are subject to certain federal, state and other rules and regulations, including applicable requirements of the Sarbanes-Oxley Act of 2002. Compliance with these evolving regulations is costly and requires a significant diversion of management time and attention, particularly with regard to our disclosure controls and procedures and our internal control over financial reporting. Although we have reviewed our disclosure and internal controls and procedures in order to determine whether they are effective, our controls and procedures may not be able to prevent errors or frauds in the future. Faulty judgments, simple errors or mistakes, or the failure of our personnel to adhere to established controls and procedures may make it difficult for us to ensure that the objectives of the control system are met. A failure of our controls and procedures to detect other than inconsequential errors or fraud could seriously harm our business and results of operations.

Our senior management's limited recent experience managing a publicly traded company may divert management's attention from operations and harm our business.

Our management team has relatively limited recent experience managing a publicly traded company and complying with federal securities laws, including compliance with recently adopted disclosure requirements on a timely basis. Our management will be required to design and implement appropriate programs and policies in responding to increased legal, regulatory compliance and reporting requirements, and any failure to do so could lead to the imposition of fines and penalties and harm our business.

We are currently in litigation with our former Chief Executive Officer and former director, Leonard Brandt, relating to his attempt to replace the Board of Directors with his own nominees.

Since June of 2009, we have been involved in litigation against Leonard J. Brandt, a stockholder, former director and our former Chief Executive Officer in the Delaware Chancery Court and the United States District Court for the Central District of California. We have expended substantial resources in connection with this litigation. As further described below under "Item 3 Legal Proceedings", on December 2, 2009, following a two day trial before the Delaware Court of Chancery, we prevailed in certain actions that were pending between the Company and Mr. Brandt. As a result of the victory in the Chancery Court, we are currently evaluating whether to continue to pursue our pending action in the United States District Court against Mr. Brandt. Mr. Brandt has filed counterclaims in that action and may choose to proceed with his counterclaims. We believe these counterclaims are without merit, and intend to vigorously defend against them if necessary. Although the December 2, 2009 post-trial ruling by the Delaware Chancery Court appears to us to be definitive and dispositive, we do not know whether Mr. Brandt will appeal the decision or attempt to institute new claims against us. The defense of any claims, whether in the Delaware courts or the United States district court, could involve the expenditure of additional resources by the Company. If the litigation continues, these costs could impact the expected use of proceeds of our recent offering that closed on December 24, 2009, and could make it more difficult for us to raise any additional funds needed to finance our corporate and working capital needs.

Risks Related To Our Industry

The healthcare industry in which we operate is subject to substantial regulation by state and federal authorities, which could hinder, delay or prevent us from commercializing our products and services.

Healthcare companies are subject to extensive and complex federal, state and local laws, regulations and judicial decisions governing various matters such as the licensing and certification of facilities and personnel, the conduct of operations, billing policies and practices, policies and practices with regard to patient privacy and confidentiality, and prohibitions on payments for the referral of business and self-referrals. There are federal and state laws, regulations and judicial decisions that govern patient referrals, physician financial relationships, submission of healthcare claims and inducement to beneficiaries of federal healthcare programs. Many states prohibit business corporations from practicing medicine, employing or maintaining control over physicians who practice medicine, or engaging in certain business practices, such as splitting fees with healthcare providers. Many healthcare laws and regulations applicable to our business are complex, applied broadly and subject to interpretation by courts and government agencies. Our failure, or the failure of physicians and psychiatrists to whom we sell our rEEG Reports, to comply with these healthcare laws and regulations could create liability for us and negatively impact our business.

In addition, the FDA regulates development, testing, labeling, manufacturing, marketing, promotion, distribution, record-keeping and reporting requirements for prescription drugs. Compliance with laws and regulations enforced by the FDA and other regulatory agencies may be required in relation to future products or services developed or used by us. Failure to comply with applicable laws and regulations may result in various adverse consequences, including withdrawal of our products and services from the market, or the imposition of civil or criminal sanctions.

We believe that this industry will continue to be subject to increasing regulation, political and legal action and pricing pressures, the scope and effect of which we cannot predict. Legislation is continuously being proposed, enacted and interpreted at the federal, state and local levels to regulate healthcare delivery and relationships between and among participants in the healthcare industry. Any such changes could prevent us from marketing some or all of our products and services for a period of time or permanently.

We may be subject to regulatory and investigative proceedings, which may find that our policies and procedures do not fully comply with complex and changing healthcare regulations.

While we have established policies and procedures that we believe will be sufficient to ensure that we operate in substantial compliance with applicable laws, regulations and requirements, the criteria are often vague and subject to change and interpretation. We may become the subject of regulatory or other investigations or proceedings, and our interpretations of applicable laws and regulations may be challenged. The defense of any such challenge could result in substantial cost and a diversion of management's time and attention. Thus, any such challenge could have a material adverse effect on our business, regardless of whether it ultimately is successful. If we fail to comply with any applicable laws, or a determination is made that we have failed to comply with these laws, our financial condition and results of operations could be adversely affected.

Failure to comply with the Federal Trade Commission Act or similar state laws could result in sanctions or limit the claims we can make.

The Company's promotional activities and materials, including advertising to consumers and physicians, and materials provided to third parties for their use in promoting our products and services, are regulated by the Federal Trade Commission (FTC) under the FTC Act, which prohibits unfair and deceptive acts and practices, including claims which are false, misleading or inadequately substantiated. The FTC typically requires competent and reliable scientific tests or studies to substantiate express or implied claims that a product or service is effective. If the FTC were to interpret our promotional materials as making express or implied claims that our products and services are effective for the treatment of mental illness, it may find that we do not have adequate substantiation for such claims. Failure to comply with the FTC Act or similar laws enforced by state attorneys general and other state and local officials could result in administrative or judicial orders limiting or eliminating the claims we can make about our products and services, and other sanctions including fines.

Our business practices may be found to constitute illegal fee-splitting or corporate practice of medicine, which may lead to penalties and adversely affect our business.

Many states, including California, in which our principal executive offices are located, have laws that prohibit business corporations, such as us, from practicing medicine, exercising control over medical judgments or decisions of physicians, or engaging in certain arrangements, such as employment or fee-splitting, with physicians. Courts, regulatory authorities or other parties, including physicians, may assert that we are engaged in the unlawful corporate practice of medicine through our ownership of the Neuro-Therapy Clinic or by providing administrative and ancillary services in connection with our rEEG Reports. These parties may also assert that selling our rEEG Reports for a portion of the patient fees constitutes improper fee-splitting. If asserted, such claims could subject us to civil and criminal penalties and substantial legal costs, could result in our contracts being found legally invalid and unenforceable, in whole or in part, or could result in us being required to restructure our contractual arrangements, all with potentially adverse consequences to our business and our stockholders.

Our business practices may be found to violate anti-kickback, self-referral or false claims laws, which may lead to penalties and adversely affect our business.

The healthcare industry is subject to extensive federal and state regulation with respect to financial relationships and "kickbacks" involving healthcare providers, physician self-referral arrangements, filing of false claims and other fraud and abuse issues. Federal anti-kickback laws and regulations prohibit certain offers, payments or receipts of remuneration in return for (i) referring patients covered by Medicare, Medicaid or other federal health care program, or (ii) purchasing, leasing, ordering or arranging for or recommending any service, good, item or facility for which payment may be made by a federal health care program. In addition, federal physician self-referral legislation, commonly known as the Stark law, generally prohibits a physician from ordering certain services reimbursable by Medicare, Medicaid or other federal healthcare program from any entity with which the physician has a financial relationship. In addition, many states have similar laws, some of which are not limited to services reimbursed by federal healthcare programs. Other federal and state laws govern the submission of claims for reimbursement, or false claims laws. One of the most prominent of these laws is the federal False Claims Act, and violations of other laws, such as the anti-kickback laws or the FDA prohibitions against promotion of off-label uses of medications, may also be prosecuted as violations of the False Claims Act.

While we believe we have structured our relationships to comply with all applicable requirements, federal or state authorities may claim that our fee arrangements, agreements and relationships with contractors and physicians violate these anti-kickback, self-referral or false claims laws and regulations. These laws are broadly worded and have been broadly interpreted by courts. It is often difficult to predict how these laws will be applied, and they potentially subject many typical business arrangements to government investigation and prosecution, which can be costly and time consuming. Violations of these laws are punishable by monetary fines, civil and criminal penalties, exclusion from participation in government-sponsored health care programs and forfeiture of amounts collected in violation of such laws. Some states also have similar anti-kickback and self-referral laws, imposing substantial penalties for violations. If our business practices are found to violate any of these provisions, we may be unable to continue with our relationships or implement our business plans, which would have an adverse effect on our business and results of operations.

We may be subject to healthcare anti-fraud initiatives, which may lead to penalties and adversely affect our business.

State and federal governments are devoting increased attention and resources to anti-fraud initiatives against healthcare providers, taking an expansive definition of fraud that includes receiving fees in connection with a healthcare business that is found to violate any of the complex regulations described above. While to our knowledge we have not been the subject of any anti-fraud investigations, if such a claim were made defending our business practices could be time consuming and expensive, and an adverse finding could result in substantial penalties or require us to restructure our operations, which we may not be able to do successfully.

Our use and disclosure of patient information is subject to privacy and security regulations, which may result in increased costs.

In conducting research or providing administrative services to healthcare providers in connection with the use of our rEEG Reports, as well as in our Clinical Services business, we may collect, use, maintain and transmit patient information in ways that will be subject to many of the numerous state, federal and international laws and regulations governing the collection, dissemination, use and confidentiality of patient-identifiable health information, including the federal Health Insurance Portability and Accountability Act (HIPAA) and related rules. The three rules that were promulgated pursuant to HIPAA that could most significantly affect our business are the Standards for Electronic Transactions, or Transactions Rule; the Standards for Privacy of Individually Identifiable Health Information, or Privacy Rule; and the Health Insurance Reform: Security Standards, or Security Rule. HIPAA applies to covered entities, which include most healthcare facilities and health plans that may contract for the use of our services. The HIPAA rules require covered entities to bind contractors like us to compliance with certain burdensome HIPAA rule requirements.

The HIPAA Transactions Rule establishes format and data content standards for eight of the most common healthcare transactions. If we perform billing and collection services on behalf of psychiatrists and physicians, we may be engaging in one of more of these standard transactions and will be required to conduct those transactions in compliance with the required standards. The HIPAA Privacy Rule restricts the use and disclosure of patient information, requires entities to safeguard that information and to provide certain rights to individuals with respect to that information. The HIPAA Security Rule establishes elaborate requirements for safeguarding patient information transmitted or stored electronically. We may be required to make costly system purchases and modifications to comply with the HIPAA rule requirements that are imposed on us and our failure to comply may result in liability and adversely affect our business.

Numerous other federal and state laws protect the confidentiality of personal and patient information. These laws in many cases are not preempted by the HIPAA rules and may be subject to varying interpretations by courts and government agencies, creating complex compliance issues for us and the psychiatrists and physicians who purchase our services, and potentially exposing us to additional expense, adverse publicity and liability.

Risks Relating To Investment In Our Common Stock

We have a limited trading volume and shares eligible for future sale by our current stockholders may adversely affect our stock price.

Bid and ask prices for shares of our Common Stock are quoted on NASD's Over-the-Counter Bulletin Board under the symbol CNSO.OB. There is currently no broadly followed, established trading market for our Common Stock and an established trading market for our shares of Common Stock may never develop or be maintained. Active trading markets generally result in lower price volatility and more efficient execution of buy and sell orders. The absence of an active trading market reduces the liquidity of our Common Stock. Also, as a result of this lack of trading activity, the quoted price for our Common Stock on the Over-the-Counter Bulletin Board is not necessarily a reliable indicator of its fair market value. Further, if we cease to be quoted, holders would find it more difficult to dispose of, or to obtain accurate quotations as to the market value of, our Common Stock, and the market value of our Common Stock would likely decline.

If and when a larger trading market for our Common Stock develops, the market price of our Common Stock is likely to be highly volatile and subject to wide fluctuations, and you may be unable to resell your shares at or above the price at which you acquired them.

The market price of our Common Stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including:

- quarterly variations in our revenues and operating expenses;
- developments in the financial markets and worldwide or regional economies;
- announcements of innovations or new products or services by us or our competitors;
- announcements by the government relating to regulations that govern our industry;
- significant sales of our Common Stock or other securities in the open market;
- variations in interest rates;
- changes in the market valuations of other comparable companies; and
- changes in accounting principles.

In the past, stockholders have often instituted securities class action litigation after periods of volatility in the market price of a company's securities. If a stockholder were to file any such class action suit against us, we would incur substantial legal fees and our management's attention and resources would be diverted from operating our business to respond to the litigation, which could harm our business.

Substantial future sales of our Common Stock in the public market could cause our stock price to fall.

In connection with the closing of our private placement transaction in August 2009, we entered into a Registration Rights Agreement, as amended, with the investors in the private placement. The Registration Rights Agreement obligates us to file a Registration Statement on Form S-1 to register for resale the common stock issued to the investors in the private placement, as well as the common stock issuable upon the exercise of certain warrants issued to the investors and placement agent. The sale of these shares or other shares eligible for resale pursuant to Rule 144 of the Securities Act of 1933, as amended, could depress the market price of our Common Stock. A reduced market price for our Common Stock could make it more difficult to raise funds through future offering of Common Stock.

The sale of securities by us in any equity or debt financing could result in dilution to our existing stockholders and have a material adverse effect on our earnings.

Any sale of Common Stock by us in a future private placement could result in dilution to our existing stockholders as a direct result of our issuance of additional shares of our capital stock. In addition, our business strategy may include expansion through internal growth, by acquiring complementary businesses, by acquiring or licensing additional products and services, or by establishing strategic relationships with targeted customers and suppliers. In order to do so, or to finance the cost of our other activities, we may issue additional equity securities that could dilute our stockholders' stock ownership. We may also assume additional debt and incur impairment losses related to goodwill and other tangible assets if we acquire another company and this could negatively impact our earnings and results of operations.

The trading of our Common Stock on the Over-the-Counter Bulletin Board and the potential designation of our Common Stock as a "penny stock" could impact the trading market for our Common Stock.

Our securities, as traded on the Over-the-Counter Bulletin Board, may be subject to SEC rules that impose special sales practice requirements on broker-dealers who sell these securities to persons other than established customers or accredited investors. For the purposes of the rule, the phrase "accredited investors" means, in general terms, institutions with assets in excess of $5,000,000, or individuals having a net worth in excess of $1,000,000 or having an annual income that exceeds $200,000 (or that, when combined with a spouse's income, exceeds $300,000). For transactions covered by the rule, the broker-dealer must make a special suitability determination for the purchaser and receive the purchaser's written agreement to the transaction before the sale. Consequently, the rule may affect the ability of broker-dealers to sell our securities and also may affect the ability of purchasers to sell their securities in any market that might develop therefor.

In addition, the SEC has adopted a number of rules to regulate "penny stock" that restrict transactions involving these securities. Such rules include Rules 3a51-1, 15g-1, 15g-2, 15g-3, 15g-4, 15g-5, 15g-6, 15g-7, and 15g-9 under the Securities and Exchange Act of 1934, as amended. These rules may have the effect of reducing the liquidity of penny stocks. "Penny stocks" generally are equity securities with a price of less than $5.00 per share (other than securities registered on certain national securities exchanges or quoted on the NASDAQ Stock Market if current price and volume information with respect to transactions in such securities is provided by the exchange or system). Because our securities may constitute "penny stock" within the meaning of the rules, the rules would apply to us and to our securities. If our securities become subject to the penny stock rules, our stockholders may find it more difficult to sell their securities.

Stockholders should be aware that, according to SEC, the market for penny stocks has suffered in recent years from patterns of fraud and abuse. Such patterns include (i) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (ii) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (iii) "boiler room" practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (iv) excessive and undisclosed bid-ask differentials and markups by selling broker-dealers; and (v) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, resulting in investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities.

We have not paid dividends in the past and do not expect to pay dividends for the foreseeable future, and any return on investment may be limited to potential future appreciation on the value of our Common Stock.

We currently intend to retain any future earnings to support the development and expansion of our business and do not anticipate paying cash dividends in the foreseeable future. Our payment of any future dividends will be at the discretion of our Board of Directors after taking into account various factors, including without limitation, our financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that we may be a party to at the time. To the extent we do not pay dividends, our stock may be less valuable because a return on investment will only occur if and to the extent our stock price appreciates, which may never occur. In addition, investors must rely on sales of their Common Stock after price appreciation as the only way to realize their investment, and if the price of our stock does not appreciate, then there will be no return on investment. Investors seeking cash dividends should not purchase our Common Stock.

Our officers, directors and principal stockholders can exert significant influence over us and may make decisions that are not in the best interests of all stockholders.

Our officers, directors and principal stockholders (greater than 5% stockholders) collectively control approximately 53% of our issued and outstanding Common Stock. As a result, these stockholders are able to affect the outcome of, or exert significant influence over, all matters requiring stockholder approval, including the election and removal of directors and any change in control. In particular, this concentration of ownership of our Common Stock could have the effect of delaying or preventing a change of control of us or otherwise discouraging or preventing a potential acquirer from attempting to obtain control of us. This, in turn, could have a negative effect on the market price of our Common Stock. It could also prevent our stockholders from realizing a premium over the market prices for their shares of Common Stock. Moreover, the interests of this concentration of ownership may not always coincide with our interests or the interests of other stockholders, and accordingly, they could cause us to enter into transactions or agreements that we would not otherwise consider.

Transactions engaged in by our largest stockholders, our directors or executives involving our common stock may have an adverse effect on the price of our stock.

Our officers, directors and principal stockholders (greater than 5% stockholders) collectively control approximately 53% of our issued and outstanding Common Stock. Subsequent sales of our shares by these stockholders could have the effect of lowering our stock price. The perceived risk associated with the possible sale of a large number of shares by these stockholders, or the adoption of significant short positions by hedge funds or other significant investors, could cause some of our stockholders to sell their stock, thus causing the price of our stock to decline. In addition, actual or anticipated downward pressure on our stock price due to actual or anticipated sales of stock by our directors or officers could cause other institutions or individuals to engage in short sales of our Common Stock, which may further cause the price of our stock to decline.

From time to time our directors and executive officers may sell shares of our common stock on the open market. These sales will be publicly disclosed in filings made with the SEC. In the future, our directors and executive officers may sell a significant number of shares for a variety of reasons unrelated to the performance of our business. Our stockholders may perceive these sales as a reflection on management's view of the business and result in some stockholders selling their shares of our common stock. These sales could cause the price of our stock to drop.

Anti-takeover provisions may limit the ability of another party to acquire us, which could cause our stock price to decline.

Delaware law contains provisions that could discourage, delay or prevent a third party from acquiring us, even if doing so may be beneficial to our stockholders, which could cause our stock price to decline. In addition, these provisions could limit the price investors would be willing to pay in the future for shares of our Common Stock.

ITEM 1B. Unresolved Staff Comments

Not applicable.

ITEM 2. Properties

Our lease for our headquarters and Laboratory Information Services business, located at 2755 Bristol St., Suite 285, Costa Mesa, California, expired in November 2009. We continue to lease this space on a month to month basis.

We lease space for our Clinical Services operations under a lease which expires in February 2010. The facility is approximately 3,500 square feet, and is located in Denver, Colorado. This lease is currently in the process of being renegotiated. In addition, we sublease approximately 1,000 square feet of space at a site adjacent to the primary suite on a month-to-month basis for our Clinical Services business.

We believe that our current space is adequate for our needs and that suitable additional or substitute space will be available to accommodate the foreseeable expansion of our operations.

ITEM 3. Legal Proceedings

From time to time, we may be involved in litigation relating to claims arising out of our operations in the ordinary course of business. Other than as set forth below, we are not currently party to any legal proceedings, the adverse outcome of which, in our management's opinion, individually or in the aggregate, would have a material adverse effect on our results of operations or financial position.

Since June of 2009, we have been involved in litigation against Leonard J. Brandt, a stockholder, former director and our former Chief Executive Officer ("Brandt") in the Delaware Chancery Court and the United States District Court for the Central District of California. At the conclusion of a two-day trial that commenced December 1, the Chancery Court entered judgment for the Company and dismissed with prejudice Brandt's action brought pursuant to Section 225 of the Delaware General Corporation Law, which sought to oust the incumbent directors other than Brandt. The Chancery Court thereby found that the purported special meeting of stockholders convened by Brandt on September 4, 2009 was not valid and that the directors purportedly elected at that meeting are not entitled to be seated.

The Chancery Court also denied an injunction sought by Mr. Brandt to prevent the voting of shares issued by the Company in connection with our bridge financing in June 2009 and securities offering in August 2009, and dismissed Brandt's claims regarding those financings and stock issuances. The Chancery Court also dismissed with prejudice another action brought by Mr. Brandt, in which he claimed he had not been provided with information owed to him.

An action before the United States District Court for the Central District of California remains outstanding. We are evaluating our options in connection with this lawsuit.

The following is a summary of the litigation proceedings involving the Company and Brandt:

Delaware Chancery Court – CNS Response, Inc. v. Leonard Brandt, Meyerlen LLC, EAC Investment Limited Partnership and "John Does 1-20" (Any CNS Stockholder Purporting to be Among Holders of Shares Constituting 25% Of the Company's Stock As Referenced In the June 20, 2009 Notice Of Special Meeting) – C.A. No. 4688-CC

On June 26, 2009, we commenced an action in the Delaware Court of Chancery against Leonard Brandt and certain other parties in connection with Brandt's efforts to seize control of the Company by unseating the incumbent directors (other than Brandt). In our complaint, we alleged that Brandt's actions in connection with his purported special meeting notices and attempts to call and hold a special meeting violate certain provisions of the Delaware General Corporation Law (the "DGCL"), and we sought declaratory and injunctive relief to invalidate a special meeting called by Brandt.

On June 26, 2009, we also moved for issuance of a temporary restraining order against Brandt's holding a special meeting. Brandt opposed the motion, and on June 29 the Chancery Court heard and denied our motion for a temporary restraining order, on the grounds that we could seek relief from Brandt's actions after his special meeting occurred.

On August 12, 2009, Brandt and Defendant MeyerLen, LLC filed an answer and affirmative defenses to our June 26, 2009 complaint. In addition, Brandt filed a counterclaim and third-party complaint against us, our other directors, affiliates of one of the directors, and investors who are not employees, officers or directors of the Company. In his answer and the counterclaims and third party claims, Brandt alleged, among other things, that the other directors acted without authority in connection with his removal as the CEO in April 2009 and violated their fiduciary duties in connection with their consideration and approval of certain financings completed by us subsequent to Brandt's termination as CEO. Brandt alleged that certain defendants aided and abetted the directors in their breaches and wrongful acts. Brandt also asked the court to invalidate certain bylaw changes adopted by our board of directors.

On August 24, 2009, Brandt filed a motion seeking an injunction against our issuance of shares of our stock to John Pappajohn or Sail Ventures pursuant to existing agreements between us and those investors, and against the implementation of our previously-announced bylaw amendments.

On October 22, 2009, Brandt and Defendant MeyerLen, LLC filed an amended answer and affirmative defenses to our June 26, 2009 complaint and an amended counterclaim and third-party complaint against us, our other directors, affiliates of one of the directors, and investors who are not employees, officers or directors of the Company. On the same day, Brandt filed an amended motion for a preliminary injunction, which sought to prevent the voting of shares issued by the Company in connection with our bridge financings in May and June, 2009 and the securities offering in August, 2009. On the same day, Brandt moved to expedite proceedings in the action, coordinate discovery with his Section 225 action described below, and have the motion for a preliminary injunction argued at the conclusion of the trial of the Section 225 action.

On October 30, 2009, the Delaware Chancery Court granted the motion to expedite proceedings in the action, coordinate discovery with his Section 225 action described below, and have the motion for a preliminary injunction argued at the conclusion of the trial of the Section 225 action.

On December 2, 2009, after full briefing, evidentiary submissions, and argument of the motion for a preliminary injunction, the Chancery Court denied the injunctive relief sought by Brandt to prevent the voting of shares issued by the company in connection with our bridge financings in May and June and securities offering in August. Instead, the Court dismissed Brandt's counterclaims regarding those financings and stock issuances. On the same date, the Delaware Chancery Court dismissed the underlying Section 211 action against Brandt as moot.

Delaware Chancery Court – Leonard J. Brandt v. CNS Response, Inc., C.A.No, 4773-CC

On July 31, 2009, Brandt filed an action under Section 220 of the DGCL asking the Chancery Court to require us to provide him with certain books and records, including stockholder information. On July 31, Brandt also requested emergency injunctive relief against us compelling us to provide the records immediately. We opposed the motion. On August 3, 2009 the Chancery Court heard argument and denied the requested emergency relief. On August 24, 2009, we answered the complaint and asserted affirmative defenses to it. On December 2, 2009, the Chancery Court dismissed Brandt's action with prejudice.

Purported September 4 Stockholders Meeting and Subsequent Action Filed by Brandt Under DGCL 225— Leonard J. Brandt v. CNS Response, Inc., George Carpenter, Henry T. Harbin, M.D., David B. Jones, Jerome Vaccaro, M.D., John Pappajohn and Tommy Thompson, C.A. No. 4867-CC

Pursuant to a notice dated August 25, Brandt purported to hold a special meeting of stockholders on September 4, 2009. In his proxy materials accompanying the notice, Brandt claimed that the record date for the purported meeting was August 24. Brandt claimed that a quorum was present and proceeded to call a vote on his proposal to elect himself and his nominees as directors. He then claimed that his own shares and the shares for which he purportedly held proxies were sufficient to elect Brandt and the other nominees. We took the position that no valid stockholder action was taken on September 4, that no changes to the board of directors occurred, and that the election of the company's directors would occur at the scheduled CNS annual meeting of stockholders on September 29, 2009. While our bylaws permit stockholders to call special meetings under certain circumstances, those meetings (i) require the stockholders wishing to call the meeting to follow certain procedures that Brandt did not follow and (ii) cannot involve the election of directors. In addition, Brandt's purported record date of August 24 was invalid because our board of directors had already established August 27 as the record date and, as a result, not all of the stockholders entitled to vote at his purported meeting were permitted to do so.

On September 4, Brandt filed an action seeking relief under Section 225 of the DGCL in the Delaware Court of Chancery against us and our directors George Carpenter, Henry T. Harbin, M.D., David B. Jones, Jerome Vaccaro, M.D., John Pappajohn and former Wisconsin Governor Tommy Thompson. Section 225 provides a statutory mechanism for review of contested elections. Brandt sought to have the Court declare that his meeting and election were valid.

On September 25, 2009, the Company and its incumbent directors answered the complaint and asserted affirmative defenses. On September 29, 2009, the Chancery Court issued a "status quo" order, which maintained the Board of Directors in place immediately prior to the purported September 4 meeting (Messrs. Carpenter, Jones, Pappajohn, Thompson and Brandt, and Drs. Harbin and Vaccaro). The status quo order also placed certain restrictions on certain corporate actions during the pendency of the Section 225 action.

Later on September 29, the Company convened its Annual Meeting of Stockholders, which had been duly noticed earlier in September. At the meeting we submitted certain matters to a vote of security holders through the solicitation of proxies. At the meeting, our stockholders elected George Carpenter, Henry Harbin, M.D., David B. Jones, John Pappajohn, Tommy Thompson and Jerome Vaccaro, M.D. to serve as Directors on our Board of Directors for one year or until their respective successors have been elected.

Full discovery in the action occurred in September, October and November. On December 1 and 2, 2009, the Chancery Court conducted a trial of the matter. At the close of the trial, the court granted judgment to the Company on Brandt's complaint and dismissed Brandt's action with prejudice. The Chancery Court thereby found that the purported special meeting of stockholders convened by Brandt on September 4, 2009 was not valid and that the directors purportedly elected at that meeting are not entitled to be seated.

Delaware Chancery Court – CNS Response, Inc. v. Leonard Brandt, C.A. No. 4901-CC (Breach of Fiduciary Duty)

On September 16, 2009, we filed a complaint in the Delaware Chancery Court against Brandt for violations of his fiduciary duty of loyalty to the Company and its stockholders. On December 2, 2009, the Chancery Court dismissed the Company's breach of fiduciary duty claims without prejudice.

United States District Court for the Central District of California- CNS Response, Inc. v. Leonard Brandt, EAC Investment Limited Partnership and EAC Investment, Inc. (Case No. SACV 09-00756-CJC)

On July 2, 2009, we filed a complaint against Brandt, EAC Investment Limited Partnership and EAC Investment, Inc. (collectively, "EAC"), another stockholder of the Company. In that complaint, we allege that Brandt has violated sections 14(a) and 13(d) of the Securities Exchange Act of 1934, as amended, and related SEC rules and regulations (the "Exchange Act"), in connection with his ongoing campaign to seize control of the company by unseating the incumbent directors (other than Brandt). We allege that EAC violated Section 13(d) of the Exchange Act. The Company sought injunctive and declaratory relief to prevent the use of proxies and written consents that Brandt or the other defendants obtained in violation of law, declaring the proxies obtained by Brandt invalid, prohibiting any further unlawful proxy solicitation and any further violations of Section 13(d) and 14(a) of the Exchange Act, and requiring remedial disclosures. The Company also sought damages in an amount to be determined.

The defendants responded to our complaint by filing motions to dismiss on July 27, 2009 pursuant to Federal Rule of Civil Procedure 12(b)(6), based on two primary arguments: (i) that the defendants had filed preliminary proxy materials, preliminary consent solicitation materials and/or amended Schedule 13Ds with the SEC, and those filings cured any alleged violations, and (ii) that we faced no imminent threat of irreparable injury and, therefore, were not entitled to injunctive relief. EAC also moved to dismiss the complaint against it for improper venue. We filed our oppositions to the motions to dismiss on August 10, 2009. On August 18, 2009, the court denied the motions to dismiss, finding, among other things, that our complaint adequately pled a basis for relief and that whether Brandt's filings could cure the alleged violations of sections 14(a) and 13(d) were questions of fact that could not be resolved in a motion to dismiss.

On August 17, 2009, Brandt distributed to our stockholders by email preliminary proxy materials with a proxy card. On August 21, 2009, we filed a motion for temporary restraining order to enjoin Brandt from using any invalidly obtained proxies or consents, including any proxies or consents obtained in response to his preliminary proxy statement distribution. We asserted, among other things, that the delivery of preliminary proxy materials including a proxy card violated Rule 14a-4(f) of the Exchange Act and that the disclosures contained in, or omitted from, the materials distributed by Brandt violated Rule 14a-9 of the Exchange Act. On August 25, 2009, the court denied our motion for the temporary restraining order citing, among other things, an affidavit provided by Brandt that he would not solicit proxies until he has filed a definitive proxy statement with the Securities and Exchange Commission.

On September 17, 2009, the defendants in the case filed counterclaims against us, our Chief Executive Officer and director George Carpenter, and "Roes 1 through 10," alleging violations of Section 14 of the Exchange Act in the solicitation of proxies or the revocation of proxies. Unspecified damages and injunctive relief are sought. On December 14, 2009, the company and George Carpenter answered the counterclaims in the case.

Given our victory in the Delaware Court of Chancery, we have not determined whether or how we will pursue this action. Mr. Brandt may choose to proceed with his counterclaim.

We have expended substantial resources to pursue the defense of legal proceedings initiated by Mr. Brandt. Although the ruling by the Delaware Chancery Court appears to us to be definitive and dispositive, we do not know whether Mr. Brandt will appeal the decisions or institute new claims against us. The defense of any such claims could involve the expenditure of additional resources by the Company.

ITEM 4. Submission of Matters to a Vote of Security Holders

At our Annual Meeting of Stockholders held on September 29, 2009, we submitted certain matters to a vote of security holders through the solicitation of proxies. At the meeting, our stockholders elected George Carpenter, Henry Harbin, M.D., David B. Jones, John Pappajohn, Tommy Thompson and Jerome Vaccaro, M.D. to serve as Directors on our Board of Directors for one year or until their respective successors have been elected.

The following table provides the number of votes cast for or withheld for each director:

Name	For	Withheld
George Carpenter	26,492,372	11,015
Henry Harbin, M.D.	26,325,705	177,682
David Jones	26,492,372	11,015
John Pappajohn	26,492,370	11,017
Tommy Thompson	26,492,372	11,015
Jerome Vaccaro, M.D.	26,325,705	177,682

As discussed under Item 3, Mr. Brandt previously had purported to hold a special meeting of stockholders on September 4, 2009. Mr. Brandt claimed that a quorum was present at his September 4 meeting and proceeded to call a vote on his proposal to elect himself and his nominees as directors. He then claimed that his own shares and the shares for which he purportedly held proxies were sufficient to elect Brandt and the other nominees. On December 2, 2009, following a two day trial, the Delaware Chancery Court ruled that the purported special meeting of stockholders convened by Brandt on September 4, 2009 was not valid and therefore the directors purportedly elected at that meeting will not be seated. Therefore it is now uncontested that the directors elected at the CNS September 29, 2009 meeting are the validly elected directors of the Company.

PART II

ITEM 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Common Stock

Our common stock is currently listed for trading on the OTC Bulletin Board under the symbol CNSO.OB. The following table sets forth, for the periods indicated, the high and low bid information for Common Stock as determined from sporadic quotations on the OTC Bulletin Board. The following quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

	High*	Low*
Year Ended September 30, 2008		
First Quarter	$ 0.90	$ 0.75
Second Quarter	$ 2.25	$ 0.75
Third Quarter	$ 3.00	$ 0.55
Fourth Quarter	$ 0.75	$ 0.51
Year Ended September 30, 2009		
First Quarter	$ 1.01	$ 0.10
Second Quarter	$ 0.90	$ 0.05
Third Quarter	$ 0.69	$ 0.15
Fourth Quarter	$ 0.72	$ 0.20

On December 28, 2009, the closing sales price of our common stock as reported on the OTC Bulletin Board was $1.20 per share. As of December 28, 2009, there were 374 record holders of our common stock. The number of holders of record is based on the actual number of holders registered on the books of our transfer agent and does not reflect holders of shares in “street name” or persons, partnerships, associations, corporations or other entities identified in security position listings maintained by depository trust companies.

Dividend Rights

We have not paid or declared cash distributions or dividends on our common stock and we do not intend to pay cash dividends on our common stock in the foreseeable future. We currently intend to retain all earnings, if and when generated, to finance our operations. The declaration of cash dividends in the future will be determined by the board of directors based upon our earnings, financial condition, capital requirements and other relevant factors.

Recent Sales of Unregistered Securities—Private Placement Transactions

First Tranche: August 26, 2009

On August 26, 2009, we received gross proceeds of approximately $2,000,000 in the first closing of our private placement transaction (the “Private Placement”) from six accredited investors. Pursuant to Subscription Agreements entered into with the investors, we sold approximately 38 Investment Units at $54,000 per Investment Unit. Each “Investment Unit” consists of 180,000 shares of our Common Stock and a five year non-callable warrant to purchase 90,000 shares of our Common Stock at an exercise price of $0.30 per share. After commissions and expenses, we received net proceeds of approximately $1,792,300 in the Private Placement. These funds were used to repay outstanding liabilities, fund the clinical trial and for working capital. A FINRA member firm acted as lead placement agent (the “Placement Agent”) in connection with the Private Placement. For its services in connection with the Private Placement, the Placement Agent received (i) a cash fee of $55,980, (ii) a cash expense allowance of $40,860, and (iii) a five year non-callable warrant to purchase 274,867 shares of our Common Stock at an exercise price of $0.33 per share, first exercisable no earlier than February 26, 2010.

Pursuant to a Registration Rights Agreement entered into with each investor, we agreed to file a registration statement covering the resale of the Common Stock and the Common Stock underlying the warrants sold in the Private Placement, as well as the Common Stock underlying the warrants issued to the Placement Agent by the later of October 26, 2009 or the 20th calendar day after the termination of the offering. The Registration Rights agreement was subsequently amended to allow the filing of the registration statement by the later of 10 business days following the Company's filing of its Annual Report on Form 10-K for its September 30, 2009 year end or the 20th calendar day after termination of the offering.

In addition, the Company agreed to use its best efforts to have the registration statement declared effective no later than 180 days following the final closing of the offering and maintain such effectiveness until the earlier of the second anniversary of the date of such effectiveness or the date that all of the securities covered by the registration statement may be sold without restriction.

In issuing the shares and warrants to the investors without registration under the Securities Act of 1933, as amended (the "Securities Act"), we relied upon one or more of the exemptions from registration contained in Sections 4(2) of the Securities Act, and in Regulation D promulgated thereunder, as the shares and warrants were issued to accredited investors, without a view to distribution, and were not issued through any general solicitation or advertisement. We made this determination based on the representations of each investor which included, in pertinent part, that such investor is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act, that such investor was acquiring the shares and the warrant for investment purposes for its own account, and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act, and that such investor understood that the shares, the warrant and the securities issuable upon exercise thereof may not be sold or otherwise disposed of without registration under the Securities Act or an applicable exemption therefrom.

Events Relating to First Closing of Private Placement Transaction

(a) Conversion of March Notes

On March 30, 2009, we entered into two Senior Secured Convertible Promissory Notes, each in the principal amount of $250,000 (each a "March Note" and, collectively, the "March Notes"), with Brandt Ventures, GP ("Brandt") and SAIL Venture Partners, LP ("SAIL"). Leonard Brandt, a former member of our board of directors, is the general partner of Brandt and David B. Jones, a current member of our board of directors, is a managing member of Sail Venture Partners, LLC, which is the general partner of SAIL. The terms of the March Notes provided that in the event we consummate an equity financing transaction of at least $1,500,000 (excluding any and all other debt that is converted), then the principal and all accrued, but unpaid interest outstanding under the notes shall be automatically converted into the securities issued in the equity financing by dividing such amount by 90% of the per share price paid by the investors in such financing. In accordance with the terms of the March Notes, at the closing of the Private Placement, we issued to each of Brandt and SAIL 956,164 shares of common stock and a five year non-callable warrant to purchase 478,082 shares of our common stock at an exercise price of $0.30 per share.

(b) Conversion of May SAIL Note

On May 14, 2009, we entered into a Bridge Note and Warrant Purchase Agreement (the "SAIL Purchase Agreement") with SAIL. Pursuant to the SAIL Purchase Agreement, on May 14, 2009 SAIL purchased a Secured Promissory Note in the principal amount of $200,000 from us (the "May SAIL Note"). In order to induce SAIL to purchase the note, we issued to SAIL a warrant to purchase up to 100,000 shares of our common stock at a purchase price equal to $0.25 per share. The warrant expires on the earlier to occur of May 31, 2016 or a change of control of the company. The terms of the May SAIL Note provided that in the event we consummate an equity financing transaction of at least $1,500,000 (excluding any and all other debt that is converted), then the principal and all accrued, but unpaid interest outstanding under the note shall be automatically converted into the securities issued in the equity financing by dividing such amount by 85% of the per share price paid by the investors in such financing. In accordance with the terms of the May SAIL Note, at the closing of the Private Placement, we issued to SAIL 802,192 shares of our common stock and a five year non-callable warrant to purchase 401,096 shares of our common stock at an exercise price of $0.30 per share.

(c) Conversion of Pappajohn Note

On June 12, 2009, Mr. Pappajohn entered into a Bridge Note and Warrant Purchase Agreement (the "Pappajohn Purchase Agreement") with us. Pursuant to the Pappajohn Purchase Agreement, Mr. Pappajohn purchased a Secured Convertible Promissory Note in the principal amount of $1,000,000 from us. In order to induce Mr. Pappajohn to purchase the note, we issued to Mr. Pappajohn a warrant to purchase up to 3,333,333 shares of our common stock at a purchase price equal to $0.30 per share. The warrant expires on June 30, 2016.

The note issued pursuant to the Pappajohn Purchase Agreement provided that the principal amount of $1,000,000 together with a single payment of $90,000 (the "Premium Payment") would be due and payable, unless sooner converted into shares of our common stock (as described below), upon the earlier to occur of: (i) a declaration by Mr. Pappajohn on or after June 30, 2010 or (ii) an Event of Default (as defined in the note). The note was secured by a lien on substantially all of our assets (including all of our intellectual property). In the event of a liquidation, dissolution or winding up of the company, unless Mr. Pappajohn informed us otherwise, we were required to pay Mr. Pappajohn an amount equal to the product of 250% multiplied by the then outstanding principal amount of the note and the Premium Payment.

The Pappajohn Purchase Agreement also provided that in the event we consummated an equity financing transaction of at least $1,500,000 (excluding any and all other debt that is converted), the then outstanding principal amount of the note (but excluding the Premium Payment, which would be repaid in cash at the time of such equity financing) would be automatically converted into the securities issued in the equity financing by dividing such amount by the per share price paid by the investors in such financing. The note also provided that the securities issued upon conversion of the note would be otherwise issued on the same terms as such shares are issued to the lead investor that purchases shares of the company in the qualified financing.

At the closing of the Private Placement, we paid the Premium Payment to Mr. Pappajohn, and the outstanding principal amount of Mr. Pappajohn's note ($1,000,000 as of August 26, 2009) converted into 3,333,334 shares of our common stock. In addition, in accordance with the terms of his note, Mr. Pappajohn was issued a five year non-callable warrant to purchase 1,666,667 shares of our common stock at an exercise price of $0.30 per share.

In issuing the shares and warrants described above without registration under the Securities Act, we relied upon one or more of the exemptions from registration contained in Sections 4(2) of the Securities Act, and in Regulation D promulgated thereunder, as such shares and warrants were issued to accredited investors, without a view to distribution, and were not issued through any general solicitation or advertisement. We made this determination based on the representations of each note holder which included, in pertinent part, that such note holder is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act, that such note holder was acquiring the shares and warrants for investment purposes for its own account, and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act, and that such note holder understood that the shares, the warrants and the securities issuable upon exercise thereof may not be sold or otherwise disposed of without registration under the Securities Act or an applicable exemption therefrom.

Second Tranche: December 24, 2009

On December 24, 2009, we completed a second closing of our Private Placement (as described above, the first closing of our Private Placement occurred on August 26, 2009), resulting in additional gross proceeds to us of approximately $3.0 million.

Pursuant to Subscription Agreements entered into with investors, we sold approximately 55 Investment Units at $54,000 per Investment Unit. Each "Investment Unit" consists of 180,000 shares of our common stock and a five year non-callable warrant to purchase 90,000 shares of our common stock at an exercise price of $0.30 per share.

After commissions and expenses, we received net proceeds of approximately $2.65 million in connection with the second closing of our Private Placement. We intend to use the proceeds from the second closing for general corporate purposes, including clinical trial expenses, research and development expenses, and general and administrative expenses, including the payment of accrued legal expenses incurred in connection with successfully defending the company from actions brought in the Delaware Court of Chancery by Leonard Brandt.

A FINRA member firm acted as lead placement agent in connection with the second closing of our Private Placement. For its services in connection with the second closing, the Placement Agent received (i) a cash fee of $195,200, (ii) a cash expense allowance of $59,920, and (iii) a five year non-callable warrant to purchase 672,267 shares of our common stock at an exercise price of $0.33 per share, first exercisable no earlier than June 24, 2010.

In connection with the second closing of our Private Placement, each investor who participated in the financing became party to the Registration Rights agreement described above and will receive the same rights and benefits as the investors in the first closing of our Private Placement.

In issuing the shares and warrants to the investors without registration under the Securities Act of 1933, as amended (the "Securities Act"), we relied upon one or more of the exemptions from registration contained in Sections 4(2) of the Securities Act, and in Regulation D promulgated thereunder, as the shares and warrants were issued to accredited investors, without a view to distribution, and were not issued through any general solicitation or advertisement. We made this determination based on the representations of each investor which included, in pertinent part, that such investor is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act, that such investor was acquiring the shares and the warrant for investment purposes for its own account, and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act, and that such investor understood that the shares, the warrant and the securities issuable upon exercise thereof may not be sold or otherwise disposed of without registration under the Securities Act or an applicable exemption therefrom.

ITEM 6. Selected Financial Data.

Not applicable.

ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with the consolidated financial statements and accompanying notes provided under Part II, Item 8 of this annual report on Form 10-K. This discussion summarizes the significant factors affecting the condensed consolidated operating results, financial condition and liquidity and cash flows of CNS Response, Inc. for the fiscal years ended September 30, 2009 and 2008. Except for historical information, the matters discussed in this Management's Discussion and Analysis of Financial Condition and Results of Operations are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are subject to risks and uncertainties and are based on the beliefs and assumptions of our management as of the date hereof based on information currently available to our management. Use of words such as "believes," "expects," "anticipates," "intends," "plans," "estimates," "should," "forecasts," "goal," "likely" or similar expressions, indicate a forward-looking statement. Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and assumptions. Actual results may differ materially from the forward-looking statements we make. See "Risk Factors" elsewhere in this annual report on Form 10-K for a discussion of certain risks associated with our business. We disclaim any obligation to update forward-looking statements for any reason.

Overview

We are a life sciences company with two distinct business segments. Our Laboratory Information Services business operated by CNS California, which we consider our primary business, is focused on the commercialization of a patented system that guides psychiatrists and other physicians to determine a proper treatment for patients with behavioral (psychiatric and/or addictive) disorders. Our Clinical Services business operated by Neuro-Therapy Clinic, ("NTC") is a full service psychiatric clinic.

Laboratory Information Services

In connection with our Laboratory Information Services business, we have developed an extensive proprietary database (the "CNS Database") consisting of over 17,000 clinical outcomes across more than 2,000 patients who had psychiatric or addictive problems. For each patient, we have compiled electrocephalographic ("EEG") data, symptoms and outcomes, often across multiple treatments from multiple psychiatrists and physicians. Using this database, our technology compares a patient's EEG to the outcomes in the database and ranks treatment options based on treatment success of patients having similar neurophysiology.

Trademarked as Referenced-EEG® ("rEEG®"), this patented technology allows us to create and provide simple reports ("rEEG Reports") that specifically guide physicians to treatment strategies based on the patient's own physiology. The vast majority of these patients were considered long-term "treatment-resistant", the most challenging, high-risk and expensive category to treat.

rEEG identifies relevant neurophysiology that is variant from the norm and identifies medications that have successfully treated database patients having similar aberrant physiology. It does this by comparing a patient's standard digital EEG to an external normative database, which identifies the presence of abnormalities. The rEEG process then identifies a set of patients having similar abnormalities as recorded in our CNS Database and reports on historical relative medication success for this stratified group. Upon completion, the physician is provided the analysis in a report detailing and ranking classes of agents (and specific agents within the class) by treatment success for patients having similar abnormal electrophysiology.

Our business is focused on increasing the demand for our rEEG services. We believe the key factors that will drive broader adoption of rEEG will be acceptance by healthcare providers of its clinical benefits, demonstration of the cost-effectiveness of using our test, reimbursement by third-party payers, expansion of our sales force and increased marketing efforts.

Clinical Services

In January 2008, we acquired our largest customer, the Neuro-Therapy Clinic, Inc. Upon the completion of the transaction, NTC became a wholly-owned subsidiary of ours. NTC operates one of the largest psychiatric medication management practices in the state of Colorado, with nine full time and four part time employees including psychiatrists and clinical nurse specialists with prescribing privileges. Daniel A. Hoffman, M.D. is the medical director at NTC, and, after the acquisition, became our Chief Medical Officer and more recently, our President.

NTC, having performed a significant number of rEEG's, serves an important resource in our product development, the expansion of our CNS Database, production system development and implementation, along with the integration of our rEEG services into a medical practice. Through NTC, we also expect to successfully develop marketing and patient acquisition strategies for our Laboratory Information Services business. Specifically, NTC is learning how to best communicate the advantages of rEEG to patients and referring physicians in the local market. We will share this knowledge and developed communication programs learned through NTC with other physicians using our services, which we believe will help drive market acceptance of our services. In addition, we plan to use NTC to train practitioners across the country in the uses of rEEG technology.

We view our Clinical Services business as secondary to our LaboratoryInformation Services business, and we have no current plans to expand this business.

Business operations

Since our inception, we have generated significant net losses. As of September 30, 2009, we had an accumulated deficit of $25.2 million. We incurred operating losses of $8.5 million and $5.4 million for the fiscal years ended September 30, 2009 and 2008, respectively. We expect our net losses to continue for at least the next couple of years. We anticipate that a substantial portion of our capital resources and efforts will be focused on research and development, scale up of our commercial organization, and other general corporate purposes, including the payment of legal fees associated with our litigation. Research and development projects include the completion of more clinical trials which are necessary to further validate the efficacy of our products and services relating to our rEEG technology across different type of behavioral disorders, the enhancement of the CNS Database and, to a lesser extent, the identification of new medication that are often combinations of approved drugs.

Acquisition of Neuro-Therapy Clinic

On January 15, 2008, we acquired all of the outstanding common stock of NTC in exchange for a non-interest bearing $300,000 note payable in equal monthly installments over 36 months. The acquisition was accounted under the purchase method of accounting, and accordingly, the purchase price was allocated to NTC's net tangible assets based on their estimated fair values as of January 15, 2008. The excess purchase price over the value of the net tangible assets was recorded as goodwill. The purchase price and the allocation thereof are as follows:

Fair value of note payable issued	$	265,900
Direct transaction costs		43,700
Purchase price		309,600
Allocated to net tangible liabilities, including cash of $32,100		(10,600)
Allocated to goodwill	$	320,200

The acquisition was not material, and accordingly, no pro forma results are presented. As of September 30, 2009 the goodwill was determined to be fully impaired and was consequently written off.

The 2009 Private Placement Transaction

As more fully described under Item 5 under the heading "Recent Sales of Unregistered Securities –Private Placement Transaction", on August 26, 2009, we received gross proceeds of approximately $2,043,000 in the first closing of our private placement transaction with six investors. Pursuant to Subscription Agreements entered into with the investors, we sold approximately 38 Investment Units at $54,000 per Investment Unit. Each "Investment Unit" consists of 180,000 shares of our common stock and a five year non-callable warrant to purchase 90,000 shares of our common stock at an exercise price of $0.30 per share. After commissions and expenses, we received net proceeds of approximately $1,792,300 upon the first closing of our private placement. In connection with the first closing, and as more fully described under Item 5 under the heading "Events Related to Private Placement Transaction", certain promissory notes then outstanding were converted into shares of common stock and we issued warrants to the investors in connection with the note conversions.

On December 24, 2009, we had a second closing of our private placement in which we received additional gross proceeds of approximately $2,996,000 from approximately 30 investors. At the second closing, we sold approximately 55 Investment Units on the same terms and conditions as the Investment Units sold at the first closing. After commissions and expenses, we received net proceeds of approximately $2,650,400 in connection with the second closing of our private placement.

Prior to our private placement, we raised aggregate proceeds of $1,700,000 in 2009 through the issuance of secured convertible promissory notes on each of March 30, May 14, and June 12. Upon the first closing of our private placement on August 26, 2009, these notes were converted into shares of our common stock, as more fully described under Item 5 under the heading "Events Relating to First Closing of Private Placement Transaction".

Matters Involving our Former Chief Executive Officer and Former Director, Leonard Brandt

On April 10, 2009, our Board of Directors voted to remove Len Brandt as the CEO of the Company and appointed George Carpenter as our CEO. On the same date, Mr. Brandt resigned as Chairman of the Board, but retained his seat on the Board of Directors. On June 19, 2009, Mr. Brandt informed us of his intention to call a special meeting of Company stockholders in lieu of an annual meeting, for the purpose of unseating the other members of the Board and replacing them with his nominees. Subsequently, Mr. Brandt made multiple mailings to stockholders purporting to give notice of a meeting, scheduled multiple dates for the meeting, attempted to call and adjourn meetings on at least six occasions. Mr. Brandt failed to convene a quorum or take any action at any of these meetings.

Mr. Brandt finally attempted to call a special meeting of stockholders to be held on September 4, 2009, and purportedly held a meeting on that date, at which he claimed to have elected his own slate of directors. Subsequent to this purported meeting, Mr. Brandt filed an action under Section 225 of the Delaware General Corporation Law ("DGCL") seeking to validate the results of that purported meeting. Mr. Brandt also filed several other actions in the Delaware Chancery Court as further described under Item 3, Legal Proceedings. He filed claims for breach of fiduciary duty in connection with the approval by our Board of the May 14, 2009 and June 18, 2009 bridge loans and the first closing of the private placement on August 26, 2009, and made a motion to preliminarily enjoin the voting of certain shares of our common stock and to prevent action by written consent by such stockholders. Mr. Brandt also sought a permanent injunction against the voting of these shares and to rescind their issuance. While these actions were pending, we were operating under what is commonly referred to as a "status quo" order, which maintained the Board of Directors in place immediately prior to the purported September 4 meeting (Messrs. Carpenter, Jones, Pappajohn, Thompson and Brandt, and Drs. Harbin and Vaccaro). The status quo order also placed certain restrictions on certain corporate actions during the pendency of the Section 225 action described above.

As further described under Item 3, Legal Proceedings, on December 2, 2009, following a two day trial, the Delaware Court of Chancery entered judgment for the Company and its incumbent directors in the Section 225 action and dismissed the action with prejudice. The entry of Judgment for the Company in the Section 225 action and dismissal of that action terminated the "status quo" order, including its restrictions on the Company's ability to engage in certain corporate actions. The Chancery Court also denied Brandt's motion for an injunction that sought to prevent the voting of shares issued by us in connection with the our bridge financings in May and June of 2009 and the securities offering in August 2009, dismissed Mr. Brandt's counterclaims alleging breaches of duties in connection with those transactions, and dismissed with prejudice another action brought by Mr. Brandt that claimed he had not been provided with information owed to him. Finally, the Court dismissed the claims by us against Mr. Brandt, without prejudice.

On September 29, 2009, we held an annual meeting of Stockholders at which each of George Carpenter, Henry Harbin, M.D., David Jones, John Pappajohn, Jerome Vaccaro, M.D. and Tommy Thompson were elected.

As further described under Item 3, Legal Proceedings, we filed an action in the United States District Court for the Central District of California against Mr. Brandt and certain others in July 2009. Our complaint alleges a variety of violations of federal securities laws, including anti-fraud based claims under Rule 14a-9, solicitation of proxies in violation of the filing and disclosure dissemination requirements of Regulation 14A, and material misstatements and omissions in and failures to promptly file amendments to Schedule 13D. Mr. Brandt and the other defendants have filed counterclaims against us, alleging violations of federal securities laws relating to alleged actions and statements taken or made by us or our officers and directors in connection with Mr. Brandt's proxy and consent solicitations. Given our victory in the Delaware Court of Chancery, we have not determined whether or how we will pursue this action. Mr. Brandt may choose to proceed with his counterclaim.

We have expended substantial resources to pursue the defense of legal proceedings initiated by Mr. Brandt. Although the ruling by the Delaware Chancery Court appeared to be demonstrative, we do not know whether Mr. Brandt will appeal the decisions or institute new claims against us. The defense of any such claims could involve the expenditure of additional resources by the Company.

Publicly Announced Results of Clinical Trial

On November 2, 2009, we reported the results of a landmark study presented by Charles DeBattista, D.M.H, M.D., at the U.S. Psychiatric and Mental Health Congress. The poster presentation, titled Referenced-EEG® (rEEG) Efficacy Compared to STAR*D For Patients With Depression Treatment Failure: First Look At Final Results, highlighted a dramatic improvement in personalized medicine technology for use in treatment of patients with depression. In this study, our rEEG technology proved effective at predicting medication response for treatment-resistant patients approximately 65 percent of the time.

The study included 114 patients in 12 medical centers, including Harvard, Stanford, Cornell, UCI and Rush. The 12-week study found that rEEG significantly outperformed the modified STAR*D treatment algorithm. The difference, or separation, between rEEG and the control group was 50 and 100 percent for the study's two primary endpoints. Typically, separation between a new treatment and a control group is less than 10 percent in antidepressant studies.

The study, the largest in our history, was a randomized, blinded, controlled, parallel group, multicenter study. The patients in the study experienced depression treatment failure of one or more SSRIs and/or had failure with at least two classes of antidepressants. The patients fell into two groups: 1) those treated with rEEG medication guidance, and 2) those treated with the modified STAR*D treatment algorithm.

Financial Operations Overview

Revenues

Our Laboratory Information Services revenues are derived from the sale of rEEG Reports to physicians. Physicians are generally billed upon delivery of a rEEG Report. The list prices of our rEEG Reports to physicians range from $200 to $800 with $400 being the most frequent charge.

Patient service revenue is generated as a result of providing services to patients on an outpatient basis. Patient service revenue is recorded at our established billing rates less contractual adjustments. Generally, collection in full is not expected on our established billing rates. Contractual adjustments are recorded to state our patient service revenue at the amount we expect to collect for the services provided based on amounts due from third-party payors at contractually determined rates.

Cost of Revenues

Cost of revenues are for Laboratory Information Services and represent the cost of direct labor, costs associated with external processing, analysis and consulting review necessary to render an individualized test result and miscellaneous support expenses. Costs associated with performing our tests are expensed as the tests are performed. We continually evaluate the feasibility of hiring our own personnel to perform most of the processing and analysis necessary to render an rEEG Report.

Cost of revenues for Clinical Services are not broken out separately but are included in general and administrative expenses.

Research and Development

Research and development expenses are associated with our Laboratory Information Services and primarily represent costs incurred to design and conduct clinical studies, to recruit patients into the studies, to improve rEEG processing, to add data to the CNS Database, to improve analytical techniques and advance application of the methodology to additional clinical diagnosis. We charge all research and development expenses to operations as they are incurred.

Sales and Marketing

For our Laboratory Information Services, our selling and marketing expenses consist primarily of personnel and media cost to inform consumers of our products and services. Additional marketing expenses are the costs of educating physicians, laboratory personnel, other healthcare professionals regarding our products and services.

For our Clinical Services, selling and marketing costs relate to advertising to attract patients to the clinic.

General and Administrative

Our general and administrative expenses consist primarily of personnel, occupancy, legal, consulting and administrative and support costs for both our Laboratory Information Services and Clinical Services businesses.

Critical Accounting Policies and Significant Judgments and Estimates

This discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as revenues and expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could therefore differ materially from those estimates under different assumptions or conditions.

Our significant accounting policies are described in Note 3 to our consolidated financial statements included elsewhere in this report. We believe the following critical accounting policies reflect our more significant estimates and assumptions used in the preparation of our consolidated financial statements.

Revenue Recognition

We have generated limited revenues since our inception. Revenues for our Laboratory Service product are recognized when an rEEG Report is delivered to a Client-Physician. For our Clinical Services, revenues are recognized when the services are performed.

Stock-based Compensation Expense

Stock-based compensation expense, which is a non-cash charge, results from stock option grants. Compensation cost is measured at the grant date based on the calculated fair value of the award. We recognize stock-based compensation expense on a straight-line basis over the vesting period of the underlying option. The amount of stock-based compensation expense expected to be amortized in future periods may decrease if unvested options are subsequently cancelled or may increase if future option grants are made.

Results of Operations for the Years Ended September 30, 2009 and 2008

As earlier described, we operate in two business segments: Laboratory Information Services and Clinical Services. Our Laboratory Information Services business focuses on the delivery of reports ("rEEG Reports") that assist physicians with treatment strategies for patients with behavioral (psychiatric and/or addictive) disorders based on the patient's own physiology. Our Clinical Services business operated through NTC provides full service psychiatric services. For comparative purposes below, our Clinical Services business which represents the operations of Neuro-Therapy Clinic are only included since its acquisition on January 15, 2008.

The following table presents consolidated statement of operations data for each of the periods indicated as a percentage of revenues.

	Year Ended September 30, 2009	Year Ended September 30, 2008
Revenues	100%	100%
Cost of revenues	19	21
Gross profit	81	79
Research and development	305	271
Sales and marketing	131	114
General and administrative expenses	555	402
Goodwill impairment	46	-
Operating loss	(956)	(708)
Other income (expense), net	(261)	13
Net income (loss)	(1217)%	(695)%

Revenues

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
Laboratory Service Revenues	$ 120,400	$ 178,500	(33)%
Clinical Service Revenues	579,700	595,000	(3)%
Total Revenues	$ 700,100	$ 773,500	(9)%

With respect to our Laboratory Information Services business, the number of paid rEEG Reports delivered during the year ended September 30, 2009 decreased to 321 from 476 in 2008 while the price per report was approximately $375 in both 2009 and 2008. The reduction in revenues from the sale of our rEEG Reports is partly due to the acquisition of NTC, which was our largest customer prior to its acquisition in January 2008. Furthermore, the Company diverted its limited resources to focus on conducting and completing its clinical trial. The clinical trial was completed in September 2009 with top-line results announced in November 2009. The Company is starting to scale up its sales and marketing efforts and has entered into agreements with two payer groups to pilot the use of rEEG Reports. We expect to drive broader adoption of our rEEG technology now that the clinical trial is complete and accordingly, we anticipate that our Laboratory Service Revenues will increase in fiscal 2010.

Our Clinical Services Revenues are a result of patient billings for psychiatric services rendered. Revenues fell in 2009 compared to 2008 due to staff turnover and the focus by key staff members on the clinical trial. Currently, we anticipate that the Clinical Services business will become self-sustaining and profitable, however, we do not anticipate a significant increase in revenues generated by this business segment.

Cost of Revenues

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
Cost of Laboratory Information Services revenues	$ 131,600	$ 163,200	(19)%

Cost of Laboratory Information Services revenues consists of payroll, consulting, and other miscellaneous costs. Consulting costs primarily represent external costs associated with the processing and analysis of rEEG Reports and range between $75 and $100 per rEEG Report. For the year ended September 30, 2009, cost of revenues of $131,600 consist primarily of direct labor and benefit costs of $99,600, which includes stock-based compensation and consulting fees of $29,200. For the year ended September 30, 2008, cost of revenues of $163,200 consisted primarily of direct labor and benefit costs of $108,400, including stock-based compensation and consulting fees of $48,600. We expect costs of revenues will increase as an absolute number as more rEEG Reports are processed. However, we expect cost of revenues to decrease as a percentage of revenues as we improve our operating efficiency.

Research and Development

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
Laboratory Information Services research and development	$ 2,137,200	$ 2,097,300	2%

Research and development expenses consist of clinical study patient expenses, payroll and benefit costs (including stock-based compensation), patents costs, consulting fees, marketing and recruitment costs, database enhancements and maintenance, travel and conference and other miscellaneous costs. Research and development costs for the year ended September 30, 2009 totaled $2,137,200 and were largely comprised of the following: clinical study patient costs of $789,300, payroll and benefit costs of $792,100, patent costs of $213,100, consulting costs of $105,700, marketing and recruiting costs $161,100, database costs of $16,800 and travel and conference costs of $15,600. For the year ended September 30, 2008 research and development costs totaled $2,097,300 and were largely comprised of the following: clinical study patient costs of $579,100, payroll and benefit costs of $855,600, patent costs of $108,800, consulting costs of $285,000, marketing and recruiting costs $136,200, database costs of $36,400 and travel and conference costs of $50,200.

Clinical study patient costs increased by $210,200 in fiscal 2009 as our clinical trial was running for twelve months in fiscal 2009 compared to approximately nine months in fiscal 2008. Patent costs also increased in fiscal 2009 by $104,300 as a result of filing patent applications in Western Europe and marketing and recruitment expenses increased by $25,000 in fiscal 2009 as we accelerated patient enrollment in our clinical study. Conversely, payroll and benefit costs declined in fiscal 2009 by $63,500 due to changes in the staff-mix and reduced stock compensation and bonus expenses and consulting expenses declined by $179,300 as expertise was brought in-house and the clinical trial moved beyond the design stage which involved the use of consultants. In fiscal 2009, database costs fell by $19,600 compared to fiscal 2008 as the company reduced development efforts relating to the CNS Database.

The level of research and development costs are anticipated to remain at a high level as the Company will continue to conduct clinical studies and plans to expand the pharmacological range and improve the functionality of its CNS Database. The Company is also applying for grants which, if obtained, will help the Company accelerate its research and development efforts.

Sales and marketing

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
Sales and Marketing			
Laboratory Information Services	$ 908,500	$ 847,600	7%
Clinical Services	7,300	33,800	(78)%
Total Sales and Marketing	$ 915,800	$ 881,400	4%

Sales and marketing expenses associated with our Laboratory Information Services business consist primarily of payroll and benefit costs, consulting fees, marketing costs, computer services, travel and conference costs and miscellaneous costs. Sales and marketing expenses for fiscal 2009 were comprised of the following: payroll and benefit costs of $596,200, consulting fees of $82,400, marketing costs of $147,600, computer services costs of $31,700, and travel and conference costs of $40,600. For fiscal 2008 the company incurred: payroll and benefit costs of $403,000, consulting fees of $221,100, marketing costs of $18,500, computer services costs of $25,000, and travel and conference costs of $110,900.

In fiscal 2009, payroll and benefits increased by $193,200 principally as a result of the hiring of a Vice President for commercial operations and additional sales and support staff. This increase was partially offset by a reduction in consulting fees of $138,900 as marketing expertise was brought in house. Marketing expenses increased in fiscal 2009 by $129,100 in an effort to advertise our rEEG technology to service providers and consumers. This was partly offset by a reduction in travel and conference costs of $70,300.

In fiscal 2010, we anticipate that sales and marketing expenses for Laboratory Information Services will increase as we plan to increase our Direct-to-Consumer marketing. Additionally, with the successful completion of our clinical trial, we plan to introduce our rEEG technology to additional psychiatric providers and medical insurance payers in fiscal 2010, which will also increase our sales and marketing costs.

Clinical Services sales and marketing expenses consist of advertising in various media so as to attract patients to our clinic in Denver. We do not anticipate materially increasing sales and marketing expenses relating to our Clinical Services business in fiscal 2010.

General and administrative

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
General and administrative			
Laboratory Information Services	3,217,800	$ 2,349,000	35%
Clinical Services	669,600	756,700	(12)%
Total General and administrative	$ 3,887,400	$ 3,105,700	25%

General and administrative expenses for our Laboratory Information Services business are primarily related to salaries and benefits (including stock-based compensation), legal and other professional fees, consulting services, general administration and occupancy costs, dues and fees, marketing and investor relations, and travel and conferences. For the year ended September 30, 2009 these expenses were as follows: Salaries and benefits $792,700, legal fees $1,362,000, other professional fees $151,300, consulting costs $369,700, general administration and occupancy costs $183,000, dues and fees $80,000, marketing and investor relations $86,500, and travel and conference costs $69,800. For the year ended September 30, 2008 these expenses were: Salaries and benefits $1,420,900, legal fees $193,900, other professional fees $157,800, consulting costs $94,600, general administration and occupancy costs $189,300, dues and fees $46,300, marketing and investor relations $112,800, and travel and conference costs of $78,100.

Changes in general and administrative expenditures in 2009 were as follows: Salaries and benefit costs decreased by $628,200 as a result of staff reductions, including the termination of our former CEO Leonard Brandt in April 2009, a non-recurring bonus expense of $69,900 declared in 2008 that did not reoccur in 2009 and as a result of stock based compensation charges falling $214,900 in fiscal 2009 compared to the prior year period. Partly offsetting the reduction in salaries and benefits was an increase in consulting fees of $275,100 as a result of the hiring of consultants to perform functions previous undertaken by salaried employees. Legal fees increased by $1,168,100 in 2009 principally due to costs associated with defending against lawsuits brought by our former CEO and Chairman of the Board, Leonard Brandt, as well as our fund raising efforts. Dues and fees increased by $33,800 in 2009 as a result of the payment of Delaware Franchise taxes for 2009, Blue Sky filings necessitated by our private placement, and increased transfer agent fees associated with the holding of our annual stockholders' meeting. Certain other costs categories decreased in 2009 including marketing and investor relations costs which decreased by $26,300.

The company incurred certain miscellaneous charges in 2009 which included Delaware Franchise Tax assessments for fiscal 2007 and 2008 totaling $74,400; additionally, the company accrued for a $34,800 payroll tax assessment which was related to 2006, and a write-off of $22,600 of doubtful debts. In 2008 the company wrote off $56,900 in costs associated with a financing effort that did not materialize.

General and administrative expenses for our Clinical Services business for the year ended September 30, 2009 were $669,600 which includes all costs associated with running the clinic, including all payroll costs, medical supply costs, occupancy costs and other general and administrative costs. These costs declined $87,100 from $756,700 in 2008 primarily due to lower patient volume.

Goodwill impairment charges

During the fiscal year 2009, we conducted a goodwill impairment test and determined that all of the goodwill related to the NTC acquisition was impaired. Accordingly, we recorded a goodwill impairment charge of $320,200 for the year ended September 30, 2009.

Other income (expense)

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
Laboratory Information Services (Expense), net	$ (1,822,700)	$ 104,600	*
Clinical Services (Expense)	(200)	(600)	33%
Total interest income (expense)	$ (1,822,900)	$ 104,000	*

** not meaningful*

With respect to our Laboratory Information Services business, we incurred a $90,000 financing fee in connection with the bridge note issued to Mr. Pappajohn on June 12, 2009, $20,900 in interest expenses on the bridge notes issued to Mr. Brandt and Sail Venture Partners. Additionally, $1,058,000 of expenses associated with the valuation of bridge warrants and $642,000 associated with the value of the beneficial conversion feature of the bridge notes were written off to interest expense upon conversion of the bridge notes. Furthermore, $13,300 of interest expense was incurred on long-term debt issued in connection with our acquisition of NTC. These expenses were offset by interest income of $9,500 for the fiscal year ended September 30, 2009 from interest bearing accounts. For the fiscal year ended September 30, 2008, interest income of $127,000 was earned on cash in interest bearing accounts. This was offset by $22,000 of interest expense on long term debt.

Net Loss

	Year Ended September 30, 2009	Year Ended September 30, 2008	Percent Change
Laboratory Information Services net loss	$ (8,451,300)	$ (5,166,200)	64%
Clinical Services net loss	(70,900)	(205,300)	(35)%
Total Net Loss	$ (8,522,200)	$ (5,371,500)	59%

The increase in net loss for Laboratory Information Services of $3.28 million for the year ended September 30, 2009 is due primarily to charges associated with our bridge note financings of $1.83 million, including the discount on bridge notes and the value of the beneficial conversion features of the notes; and a $1.17 million increase in legal fees primarily relating to costs incurred in defending against lawsuits brought by our former CEO and Chairman of the Board, Leonard Brandt. The impairment write down of goodwill associated with our acquisition of NTC added a further $320,200 to the loss.

The decrease in the net loss for Clinical Services of $134,400 for the year ended September 30, 2009 is primarily due to reduced marketing expenses and reduced general and administrative expenses.

We expect to incur a net loss in fiscal 2010 as we continue improving our rEEG technology and focus on the commercialization of our products.

Liquidity and Capital Resources

Since our inception, we have incurred significant losses and, as of September 30, 2009, we had an accumulated deficit of approximately $25.2 million. We have not yet achieved profitability and anticipate that we will continue to incur net losses for the next year. We expect that our research and development, selling and marketing and general and administrative expenses will continue to grow and, as a result, we will need to generate significant product revenues to achieve profitability. We may never achieve profitability.

As of September 30, 2009 we had approximately $0.99 million in cash and cash equivalents and a working capital deficit of approximately $1.1 million compared to approximately $2.0 million in cash and cash equivalents and a working capital balance of approximately $0.83 million at September 30, 2008.

Upon closing of the second tranche of our private placement on December 24, 2009, we raised a further $2.65 million net of closing costs.

Sources of Liquidity

Since our inception substantially all of our operations have been financed primarily from equity and debt financings. Through September 30, 2009, we had received proceeds of $10.6 million from the sale of stock, $4.8 million from the issuance of convertible promissory notes and $220,000 from the issuance of common stock to employees in connection with expenses paid by such employees on behalf of the company.

Cash Flows

Net cash used in operating activities was $4.6 million for the fiscal year ended September 30, 2009 compared to $3.7 million for fiscal year ended September 30, 2008. The increase in cash used of $0.9 million was primarily attributable to increased legal fees associated with the Brandt litigation, our private placement and bridge financings, investigation of FDA licensure issues and the filing of patent applications.

Net cash used in investing activities was $2,000 for the purchase of office equipment for the fiscal year ended September 30, 2009 as compared to $74,600 for the fiscal year ended September 30, 2008. Our 2008 investing activities related to the acquisition of the Neuro-Therapy Clinic and the purchase of furniture and equipment for our office located in Costa Mesa, California.

Net cash proceeds from financing activities for the fiscal year ended September 30, 2009 were $1.8 million, net of offering costs, raised on August 26, 2009 in connection with the first closing of our private placement transaction; $1.7 million raised in bridge financing transactions (which ultimately converted into equity as further described under Item 5), and $295,500 due to the exercise of options and warrants. These proceeds were partly offset by the repayment of a convertible promissory note, with accrued interest, totaling $92,600 and the repayment of $86,700 on a promissory note issued to Daniel Hoffman in connection with our acquisition of NTC. Net cash used by financing activities in 2008 primarily related to the payment of $60,600 on a promissory note in connection with our NTC acquisition.

Contractual Obligations and Commercial Commitments

As of September 30, 2009, we have a contractual obligation to pay the remaining balance on a promissory note of $118,600 issued in connection with our acquisition of NTC, which bears interest at a rate of 8% per annum. As our leases are expiring within the next few months (or have expired in the case of the lease for our head office location), contractual obligations associated with our leases are immaterial. As of September 30, 2008, the balance outstanding on the aforementioned promissory note was $225,000 and our obligations for leased space were $129,800. Please see Note 10 to our Consolidated Financial Statements included elsewhere in this report for further details.

Operating Capital and Capital Expenditure Requirements

We expect to continue to incur operating losses in the future and to make capital expenditures to expand our research and development programs (including upgrading our CNS Database) and to scale up our commercial operations and marketing efforts. We expect that our existing cash will be used to fund working capital and for capital expenditures and other general corporate purposes, including the repayment of debt incurred as a result of our litigation with Brandt. Although we recently received net proceeds of $2.65 million on December 24, 2009 upon the second closing of our private placement, we anticipate that our cash on hand (including the proceeds received from the second closing) and cash generated through our operations will not be sufficient to fund our operations for at least the next 12 months. We therefore anticipate raising additional funds in the future.

The amount of capital we will need to conduct our operations and the time at which we will require such capital may vary significantly depending upon a number of factors, such as:

- the amount and timing of costs we incur in connection with our research and product development activities, including enhancements to our CNS Database and costs we incur to further validate the efficacy of our rEEG technology;

- the amount and timing of costs we incur in connection with the expansion of our commercial operations, including our selling and marketing efforts;

- whether we incur additional legal fees in our litigation with Brandt in relation to his pending counterclaims in the United States District Court or any appeals that he may bring in Delaware; and

- if we expand our business by acquiring or investing in complimentary businesses.

Until we can generate a sufficient amount of revenues to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through public or private equity offerings, debt financings, borrowings or strategic collaborations. The issuance of equity securities may result in dilution to stockholders. We do not know whether additional funding will be available on acceptable terms, or at all, especially given the economic conditions that currently prevail. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more research and development programs or selling and marketing initiatives, and implement other cost saving measures.

Income Taxes

Since inception, we have incurred operating losses and, accordingly, have not recorded a provision for federal income taxes for any periods presented. As of September 30, 2009, we had net operating loss carryforwards for federal income tax purposes of $20.8 million. If not utilized, the federal net operating loss carryforwards will expire beginning in 2028. Utilization of net operating loss and credit carryforwards may be subject to a substantial annual limitation due to restrictions contained in the Internal Revenue Code that are applicable if we experience an “ownership change”. The annual limitation may result in the expiration of our net operating loss and tax credit carryforwards before they can be used.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements or financing activities with special purpose entities.

ITEM 7A. Quantitative and Qualitative Disclosures about Market Risk.

Not applicable.

ITEM 8. Financial Statements and Supplementary Data

Index to financial statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors
CNS Response, Inc.
2755 Bristol St., Suite 285
Costa Mesa, CA 92626

We have audited the accompanying consolidated balance sheets of CNS Response, Inc. (the "Company") and its subsidiaries as of September 30, 2009 and 2008, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended September 30, 2009. CNS Response, Inc.'s management is responsible for these financial statements. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (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. The company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, 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 consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of September 30, 2009 and 2008, and the results of its operations and its cash flows for each of the years in the two-year period ended September 30, 2009 in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company's continued operating losses and limited capital raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to this matter are also described in Note 1. The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Cacciamatta Accountancy Corporation

Santa Ana, California
December 29, 2009

CNS RESPONSE, INC.

CONSOLIDATED BALANCE SHEETS AT SEPTEMBER 30, 2009 and 2008

	As at September 30, 2009	2008
ASSETS		
CURRENT ASSETS:		
Cash	$ 988,100	$ 1,997,000
Accounts receivable (net of allowance for doubtful accounts of $11,700 and $17,200 in 2009 and 2008 respectively)	61,700	98,200
Prepaids and other	89,500	189,400
Total current assets	1,139,300	2,284,600
Other Assets	21,600	28,700
Goodwill	-	320,200
TOTAL ASSETS	$ 1,160,900	$ 2,633,500
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable (including $7,000 and $6,800 to related parties in 2009 and 2008 respectively)	$ 1,285,600	$ 335,700
Accrued liabilities	261,400	207,500
Deferred compensation (including $81,200 and $107,000 to related parties in 2009 and 2008 respectively)	220,100	264,900
Accrued patient costs	305,500	397,500
Accrued consulting fees (including $18,000 and $0 to related parties in 2009 and 2008, respectively)	72,100	67,600
Accrued interest	-	42,600
Convertible promissory notes	-	50,000
Current portion of long-term debt	95,900	88,500
Total current liabilities	2,240,600	1,454,300
LONG-TERM LIABILITIES		
Note payable to officer	24,800	118,600
Capital lease	5,600	7,700
Total long-term liabilities	30,400	126,300
TOTAL LIABILITIES	2,271,000	1,580,600
COMMITMENTS AND CONTINGENCIES	-	-
STOCKHOLDERS' EQUITY:		
Common stock, $0.001 par value; authorized 750,000,000 shares; 41,781,129 and 25,299,547 shares outstanding as of September 30, 2009 and 2008	41,800	25,300
Additional paid-in capital	24,044,000	17,701,300
Accumulated deficit	(25,195,900)	(16,673,700)
Total stockholders' equity	(1,110,100)	1,052,900
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 1,160,900	$ 2,633,500

See accompanying Notes to Consolidated Financial Statements

CNS RESPONSE, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS FOR THE YEARS ENDED SEPTEMBER 30, 2009 AND 2008

	YEARS ENDED SEPTEMBER 30,	
	2009	**2008**
REVENUES		
Laboratory Information Services	120,400	178,500
Clinical Services	579,700	595,000
	$ 700,100	$ 773,500
OPERATING EXPENSES:		
Cost of Laboratory Service revenues	131,600	163,200
Research and development	2,137,200	2,097,300
Sales and marketing	915,800	881,400
General and administrative	3,887,400	3,105,700
Goodwill impairment charges	320,200	-
Total operating expenses	7,392,200	6,247,600
OPERATING LOSS	(6,692,100)	(5,474,100)
OTHER INCOME (EXPENSE):		
Interest income (expense), net	(1,732,900)	104,000
Financing premium	(90,000)	-
Total other income (expense)	(1,822,900)	104,000
LOSS BEFORE PROVISION FOR INCOME TAXES	(8,515,000)	(5,370,100)
PROVISION FOR INCOME TAXES	7,200	1,400
NET LOSS	$ (8,522,200)	$ (5,371,500)
BASIC NET LOSS PER SHARE	$ (0.31)	$ (0.21)
DILUTED NET LOSS PER SHARE	$ (0.31)	$ (0.21)
WEIGHTED AVERAGE SHARES OUTSTANDING:		
Basic	27,778,171	25,299,547
Diluted	27,778,171	25,299,547

See accompanying Notes to Consolidated Financial Statements

CNS RESPONSE, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT) FOR THE YEARS ENDED SEPTEMBER 30, 2009 AND 2008

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Total
Balance at October 1, 2007	25,299,547	$ 25,300	$ 16,630,000	$(11,302,200)	$ 5,353,100
Stock- based compensation	-	-	1,071,300	-	1,071,300
Net loss for the year ended September 30, 2008	-	-	-	(5,371,500)	(5,371,500)
Balance at September 30, 2008	25,299,547	$ 25,300	$ 17,701,300	$(16,673,700)	$ 1,052,900
Stock- based compensation	-	-	850,500	-	850,500
Issuance of 3,433,333 bridge warrants	-	-	1,058,000	-	1,058,000
Exercise of 1,498,986 $0.01 warrants	1,498,986	1,500	13,500	-	15,000
Exercise of 2,124,740 $0.132 options	2,124,740	2,100	278,400	-	280,500
Issuance of stock in connection with the Maxim PIPE net of offering costs of $250,700	6,810,002	6,800	1,785,500	-	1,792,300
Value of beneficial conversion feature of bridge notes	-	-	642,000	-	642,000
Issuance of stock on conversion $1,720,900 of bridge notes and accrued interest	6,047,854	6,100	1,714,800	-	1,720,900
Warrants issued in association with the Maxim PIPE	-	-	1,607,000	-	1,607,000
Offering cost pertaining to the Maxim PIPE	-	-	(1,607,000)	-	(1,607,000)
Net loss for the year ended September 30, 2009	-	-		(8,522,200)	(8,522,200)
Balance at September 30, 2009	41,781,129	$ 41,800	$ 24,044,000	$(25,195,900)	$ (1,110,100)

See accompanying Notes to Consolidated Financial Statements

CNS RESPONSE, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS FOR YEARS ENDED SEPTEMBER 30, 2009 AND 2008

	YEAR ENDED SEPTEMBER 30, 2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (8,522,200)	$ (5,371,500)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation & amortization	9,100	6,300
Discount on bridge notes issued	1,058,000	-
Value of beneficial conversion feature of bridge notes	642,000	-
Stock based compensation	850,500	1,071,300
Non-cash interest expense	20,900	-
Goodwill impairment	320,200	-
Write-off of doubtful accounts	22,700	-
Changes in operating assets and liabilities:		
Accounts receivable	13,800	(39,000)
Prepaids and other	99,900	(30,400)
Accounts payable and accrued liabilities	1,003,800	116,300
Deferred compensation and others	(40,300)	192,600
Accrued patient costs	(92,000)	397,500
Net cash used in operating activities	(4,613,600)	(3,656,900)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Deferred offering relating to acquisition	-	(43,700)
Furniture & Fixtures	(2,000)	(30,900)
Net cash used in investing activities	(2,000)	(74,600)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayment of convertible debt with accrued interest	(92,600)	-
Repayment of debt	(86,700)	(60,600)
Repayment of lease payable	(1,800)	(1,000)
Proceeds from the sale of common stock, net of offering costs	1,792,300	-
Proceeds from bridge notes	1,700,000	-
Proceeds from exercise of warrants and options	295,500	-
Net cash provided (used) by financing activities	3,606,700	(61,600)
NET INCREASE (DECREASE) IN CASH	(1,008,900)	(3,793,100)
CASH- BEGINNING OF YEAR	1,997,000	5,790,100
CASH- END OF YEAR	$ 988,100	$ 1,997,000
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest	$ 64,100	$ 22,440
Income taxes	$ 7,200	$ 5,972
Fair value of note payable to officer issued for acquisition	$ 118,600	$ 265,900
Fair value of equipment acquired through lease	$ 7,600	$ 10,500
Conversion of bridge notes and related accrued interest into common stock	$ 1,720,900	$ -

See accompanying Notes to Consolidated Financial Statements

1. NATURE OF OPERATIONS

Organization and Nature of Operations

CNS Response, Inc. (the "Company") was incorporated in Delaware on July 10, 1984. The Company utilizes a patented system that guides psychiatrists and other physicians to determine a proper treatment for patients with mental, behavioral and/or addictive disorders. The Company also intends to identify, develop and commercialize new indications of approved drugs and drug candidates for this patient population.

In addition, as a result of its acquisition of Neuro-Therapy Clinic, Inc. ("NTC") on January 15, 2008, the Company provides behavioral health care services. NTC is a center for highly-advanced testing and treatment of neuropsychiatric problems, including learning, attentional and behavioral challenges, mild head injuries, as well as depression, anxiety, bipolar and all other common psychiatric disorders. Through this acquisition, the Company expects to advance neurophysiology data collection, beta-test planned technological advances in rEEG, advance physician training in rEEG and investigate practice development strategies associated with rEEG.

Going Concern Uncertainty

The Company has a limited operating history and its operations are subject to certain problems, expenses, difficulties, delays, complications, risks and uncertainties frequently encountered in the operation of a new business. These risks include the failure to develop or supply technology or services to meet the demands of the marketplace, the ability to obtain adequate financing on a timely basis, the failure to attract and retain qualified personnel, competition within the industry, government regulation and the general strength of regional and national economies.

To date, the Company has financed its cash requirements primarily from debt and equity financings. It will be necessary for the Company to raise additional funds. The Company's liquidity and capital requirements depend on several factors, including the rate of market acceptance of its services, the future profitability of the Company, the rate of growth of the Company's business and other factors described elsewhere in this Annual Report. The Company is currently exploring additional sources of capital but there can be no assurances that any financing arrangement will be available in amounts and terms acceptable to the Company.

2. CONVERTIBLE DEBT AND EQUITY FINANCINGS

Prior to September 30, 2006, CNS California issued convertible promissory notes with detachable warrants from time to time to fund its operations. The notes bear interest at 8% per year, compounded annually, and are payable on demand. The terms of the notes provide for the (i) conversion of principal and accrued interest into the same type of securities issued by CNS California upon a qualified institutional financing, the amount of which financing varies between notes and ranges from $1 to $4 million, and (ii) conversion price to be equal to the same price as the shares sold in the financing. The notes provide for an aggregate of $2,196,000 in principal to convert automatically and $920,700 to convert at the note holders' options based upon certain financing requirements (as defined).

In October 2006, CNS California and the note holders of certain convertible promissory notes converted notes with an aggregate outstanding balance of $3,061,700 and related accrued and unpaid interest of $1,005,300 at September 30, 2006 into 5,993,515 shares of CNS California Series A Preferred Stock. In addition, the exercise price of warrants to purchase 1,062,116 shares of the CNS California common stock issued to such note holders was changed to $0.59 per share. Upon completion of the reverse merger pursuant to which CNS California became a subsidiary of the Company, the preferred shares were converted into 5,993,515 shares of the Company's common stock and the warrants were converted into warrants to purchase 1,062,116 shares of the Company's common stock at an exercise price of $0.59 per share. The consolidated financial statements of the Company presented reflect the issuance of these shares as common stock.

As of September 30, 2008, one note issued by CNS California with a principal balance of $49,950 was outstanding. In May 2009, the Company entered into a settlement and release agreement with this note holder and fully repaid the promissory note with accrued interest on June 30, 2009.

Between March 30 and June 12, 2009 the Company entered into three rounds of bridge financings in the form of secured convertible promissory notes. These three rounds are referred to as:

(a) the March 30, 2009 SAIL/Brandt Notes
(b) the May 14, 2009 SAIL Note
(c) the June 12, 2009 Pappajohn Note

All these notes were converted to equity as a result of the private placement transaction that closed on August 26, 2009 and are fully described in the section below.

The Private Placement Transaction

On August 26, 2009, CNS Response, Inc. (the "Company") received gross proceeds of approximately $2,043,000 in a private placement transaction (the "Private Placement") with six investors. Pursuant to Subscription Agreements entered into with the investors, the Company sold approximately 38 Investment Units at $54,000 per Investment Unit. Each "Investment Unit" consists of 180,000 shares of the Company's common stock and a five year non-callable warrant to purchase 90,000 shares of the Company's common stock at an exercise price of $0.30 per share. After commissions and expenses, the Company received net proceeds of approximately $1,792,300 in the Private Placement. These funds were used to repay outstanding liabilities, fund the Company's recent clinical trial and for general working capital purposes.

A FINRA member firm, the Maxim Group LLC ("Maxim Group"), acted as lead placement agent in connection with the Private Placement. For its services in connection with the first closing of the offering, Maxim Group received (i) a cash fee of $ 55,980, (ii) a cash expense allowance of $40,860, and (iii) a five year non-callable warrant to purchase 274,867 shares of the Company's common stock at an exercise price of $0.33 per share, first exercisable no earlier than February 26, 2010.

Pursuant to a Registration Rights agreement entered into with each investor, the Company agreed to file a registration statement covering the resale of the common stock and the common stock underlying the warrants sold in the Private Placement, as well as the common stock underlying the warrants issued to Maxim Group by the later of October 26, 2009 or the 20th calendar day after the termination of the offering. The Registration Rights agreement was subsequently amended to permit the filing of the registration statement no later that 10 business days following the Company's filing of its Annual Report on Form 10-K for its September 30, 2009 year end, or the 20th calendar day after termination of the private offering.

In addition, the Company agreed to use its best efforts to have the registration statement declared effective no later than 180 days following the final closing of the offering and maintain such effectiveness until the earlier of the second anniversary of the date of such effectiveness or the date that all of the securities covered by the registration statement may be sold without restriction.

Events Relating to Private Placement Transaction

(a) Conversion of the March 30, 2009 SAIL/Brandt Notes

On March 30, 2009, the Company entered into two Senior Secured Convertible Promissory Notes, each in the principal amount of $250,000 (each a "March Note" and, collectively, the "March Notes"), with Brandt Ventures, GP ("Brandt") and SAIL Venture Partners, LP ("SAIL"). Leonard Brandt, a former member of the Company's board of directors, is the general partner of Brandt and David B. Jones, a current member of the Company's board of directors, is a managing member of Sail Venture Partners, LLC, which is the general partner of SAIL. The terms of the March Notes provided that in the event the Company consummates an equity financing transaction of at least $1,500,000 (excluding any and all other debt that is converted), then the principal and all accrued, but unpaid interest outstanding under the notes shall be automatically converted into the securities issued in the equity financing by dividing such amount by 90% of the per share price paid by the investors in such financing. In accordance with the terms of the March Notes, at the closing of the Private Placement, the Company issued to each of Brandt and SAIL 956,164 shares of common stock and a five year non-callable warrant to purchase 478,082 shares of its common stock at an exercise price of $0.30 per share.

(b) Conversion of the May 14, 2009 SAIL Note

On May 14, 2009, the Company entered into a Bridge Note and Warrant Purchase Agreement (the "SAIL Purchase Agreement") with SAIL. Pursuant to the SAIL Purchase Agreement, on May 14, 2009 SAIL purchased a Secured Promissory Note in the principal amount of $200,000 from the Company (the "May SAIL Note"). In order to induce SAIL to purchase the note, the Company issued to SAIL a warrant to purchase up to 100,000 shares of the Company's common stock at a purchase price equal to $0.25 per share. The warrant expires on May 31, 2016.

The terms of the May SAIL Note provided that in the event the Company consummates an equity financing transaction of at least $1,500,000 (excluding any and all other debt that is converted), then the principal and all accrued, but unpaid interest outstanding under the note shall be automatically converted into the securities issued in the equity financing by dividing such amount by 85% of the per share price paid by the investors in such financing. In accordance with the terms of the May SAIL Note, at the first closing of the Private Placement on August 26, 2009, the Company issued to SAIL 802,192 shares of its common stock and a five year non-callable warrant to purchase 401,096 shares of its common stock at an exercise price of $0.30 per share.

(c) Conversion of the June 12, 2009 Pappajohn Note

On June 12, 2009, John Pappajohn entered into a Bridge Note and Warrant Purchase Agreement (the "Pappajohn Purchase Agreement") with the Company. Pursuant to the Pappajohn Purchase Agreement, Mr. Pappajohn purchased a Secured Convertible Promissory Note in the principal amount of $1,000,000 from the Company. In order to induce Mr. Pappajohn to purchase the note, the Company issued to Mr. Pappajohn a warrant to purchase up to 3,333,333 shares of the Company's common stock at a purchase price equal to $0.30 per share. The warrant expires on June 30, 2016.

The note issued pursuant to the Pappajohn Purchase Agreement provided that the principal amount of $1,000,000 together with a single payment of $90,000 (the "Premium Payment") would be due and payable, unless sooner converted into shares of the Company's common stock (as described below), upon the earlier to occur of: (i) a declaration by Mr. Pappajohn on or after June 30, 2010 or (ii) an Event of Default (as defined in the note). The note was secured by a lien on substantially all of the assets (including all intellectual property) of the Company. In the event of a liquidation, dissolution or winding up of the Company, unless Mr. Pappajohn informed the Company otherwise, the Company was required to pay Mr. Pappajohn an amount equal to the product of 250% multiplied by the then outstanding principal amount of the note and the Premium Payment.

The Pappajohn Purchase Agreement also provided that in the event the Company consummated an equity financing transaction of at least $1,500,000 (excluding any and all other debt that is converted), the then outstanding principal amount of the note (but excluding the Premium Payment, which would be repaid in cash at the time of such equity financing) would be automatically converted into the securities issued in the equity financing by dividing such amount by the per share price paid by the investors in such financing. The note also provided that the securities issued upon conversion of the note would be otherwise issued on the same terms as such shares are issued to the lead investor that purchases shares of the Company in the qualified financing.

On August 26, 2009, at the closing of the Private Placement, the Company paid the Premium Payment to Mr. Pappajohn, and the outstanding principal amount of Mr. Pappajohn's note ($1,000,000 as of August 26, 2009) converted into 3,333,334 shares of the Company's common stock. In addition, in accordance with the terms of his note, Mr. Pappajohn was issued a five year non-callable warrant to purchase 1,666,667 shares of the Company's common stock at an exercise price of $0.30 per share.

Upon the abovementioned conversions, the Company evaluated the terms and calculated the fair value of the common stocks (by using the close market price at the respective original issuance date of the convertible notes) and warrants (by running the Black-Scholes Model) issued upon the conversions and so determined that the notes were converted with a beneficial conversion feature amounting to $642,000. As a result, for the year ended September 30, 2009, the Company recorded $642,000 as interest expense.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Consolidation

The consolidated financial statements include the accounts of CNS Response, Inc., an inactive parent company, and its wholly owned subsidiaries CNS California and NTC. All significant intercompany transactions have been eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expense, and related disclosure of contingent assets and liabilities. On an ongoing basis, the Company evaluates its estimates, including those related to revenue recognition, doubtful accounts, intangible assets, income taxes, valuation of equity instruments, contingencies and litigation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates.

Cash

The Company deposits its cash with major financial institutions and may at times exceed federally insured limit of $250,000. At September 30, 2009 cash exceeded the federally insured limit by $819,600. The Company believes that the risk of loss is minimal. To date, the Company has not experienced any losses related to cash deposits with financial institutions.

Fair Value of Financial Instruments

ASC 825-10 (formerly SFAS 107, "Disclosures about Fair Value of Financial Instruments") defines financial instruments and requires disclosure of the fair value of financial instruments held by the Company. The Company considers the carrying amount of cash, accounts receivable, other receivables, accounts payable and accrued liabilities, to approximate their fair values because of the short period of time between the origination of such instruments and their expected realization.

The Company also analyzes all financial instruments with features of both liabilities and equity under ASC 480-10 (formerly SFAS 150, "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity"), ASC 815-10 (formerly SFAS No 133, "Accounting for Derivative Instruments and Hedging Activities") and ASC 815-40 (formerly EITF 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock").

The Company adopted ASC 820-10 (formerly SFAS 157, "Fair Value Measurements") on January 1, 2008. ASC 820-10 defines fair value, establishes a three-level valuation hierarchy for disclosures of fair value measurement and enhances disclosure requirements for fair value measures. The three levels are defined as follow:

- Level 1 inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2 inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the assets or liability, either directly or indirectly, for substantially the full term of the financial instruments.
- Level 3 inputs to the valuation methodology are unobservable and significant to the fair value.

As of September 30, 2009 the Company did not identify any assets or liabilities that are required to be presented on the balance sheet at fair value in accordance with ASC 820-10.

Accounts Receivable

The Company estimates the collectability of customer receivables on an ongoing basis by reviewing past-due invoices and assessing the current creditworthiness of each customer. Allowances are provided for specific receivables deemed to be at risk for collection.

Fixed Assets

Fixed assets, which are recorded at cost, consist of office furniture and equipment and are depreciated over their estimated useful life on a straight-line basis. The useful life of these assets is estimated to be from 3 to 5 years. Depreciation and accumulated depreciation for the years ended September 2009 and 2008 is $9,100 and $6,300 respectively.

Goodwill

In accordance with ASC 350-20 (formerly Statement of Financial Accounting Standards ("SFAS") No. 142, *Goodwill and Other Intangible Assets*) ("ASC 350-10"), goodwill is not amortized but instead is measured for impairment at least annually, or more frequently if certain indicators are present.

The Company measures for impairment by applying fair value-based tests at the reporting unit level. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, then goodwill is not impaired and no further testing is performed. The Company, if necessary, measures the amount of impairment by applying fair value-based tests to individual assets and liabilities within each reporting unit. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, the Company records an impairment loss equal to the difference.

To determine the reporting unit's fair values, the Company uses the income approach. The income approach provides an estimate of fair value based on discounted expected future cash flows ("DCF"). Estimates and assumptions with respect to the determination of the fair value of the Company's reporting units using the income approach include the Company's operating forecasts, revenue growth rates and risk-commensurate discount rates.

The Company's estimates of revenues and costs are based on historical data, various internal estimates and a variety of external sources, and are developed by the Company's regular long-range planning process.

During the fourth quarter of fiscal year 2009, the Company conducted a goodwill impairment test and determined that the amount of the recorded goodwill related to the NTC acquisition was fully impaired. Accordingly, the Company recorded a goodwill impairment charge of $320,200 for the year ended September 30, 2009.

Long-Lived Assets

As required by ASC 350-30 (formerly SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*) ("ASC 350-30"), the Company reviews the carrying value of its long-lived assets whenever events or changes in circumstances indicate that the historical cost-carrying value of an asset may no longer be appropriate. The Company assesses recoverability of the carrying value of the asset by estimating the future net cash flows expected to result from the asset, including eventual disposition. If the future net cash flows are less than the carrying value of the asset, an impairment loss is recorded equal to the difference between the asset's carrying value and fair value. No impairment loss, apart from the abovementioned goodwill impairment, was recorded for the years ended September 30, 2009 and 2008.

Revenues

The Company recognizes revenue as the related services are delivered.

Research and Development Expenses

The Company charges all research and development expenses to operations as incurred.

Advertising Expenses

The Company charges all advertising expenses to operations as incurred.

Stock-Based Compensation

The Company has adopted ASC 718-20 (formerly SFAS No. 123R, *Share-Based Payment* -revised 2004) ("ASC718-20") and related interpretations which establish the accounting for equity instruments exchanged for employee services. Under ASC 718-20, share-based compensation cost is measured at the grant date based on the calculated fair value of the award. The expense is recognized over the employees' requisite service period, generally the vesting period of the award.

Income Taxes

The Company accounts for income taxes to conform to the requirements of ASC 740-20 (formerly SFAS No. 109,*Accounting for Income Taxes*) ("ASC 740-20"). Under the provisions of ASC_740-20, an entity recognizes deferred tax assets and liabilities for future tax consequences of events that have already been recognized in the Company's financial statements or tax returns. The measurement of deferred tax assets and liabilities is based on provisions of the enacted tax law. The effects of future changes in tax laws or rates are not anticipated. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

Comprehensive Income (Loss)

ASC 220-10 (formerly, SFAS No. 130, *Reporting Comprehensive Income*) ("ASC 220-10"), requires disclosure of all components of comprehensive income (loss) on an annual and interim basis. Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. The Company's comprehensive income (loss) is the same as its reported net income (loss) for the years ended September 30, 2009 and 2008.

Income (Loss) per Share

Basic and diluted net income (loss) per share has been computed using the weighted average number of shares of common stock outstanding during the period.

Segment Information

The Company uses the management approach for determining which, if any, of its products and services, locations, customers or management structures constitute a reportable business segment. The management approach designates the internal organization that is used by management for making operating decisions and assessing performance as the source of any reportable segments. Management uses two measurements of profitability and does disaggregate its business for internal reporting and therefore operates two business segments which are comprised of a reference laboratory and a clinic. The Reference Laboratory provides reports ("rEEG Reports") that assist physicians with treatment strategies for patients with behavioral (psychiatric and/or addictive) disorders based on the patient's own physiology. The Clinic operates NTC, a full service psychiatric practice.

Reclassifications

Certain amounts in prior years have been reclassified to conform to current year presentation. These reclassifications had no effect on previously reported operating loss or net income.

Recent Accounting Pronouncements

In April 2009, the FASB issued ASC 825-10 (formerly FASB Staff Position No. FAS 107-1 and APB 28-1, Interim Disclosures about Fair Value of Financial Instruments) ("ASC 825") , which requires that the fair value disclosures required for all financial instruments within the scope of SFAS 107, "Disclosures about Fair Value of Financial Instruments", be included in interim financial statements. This FSP also requires entities to disclose the method and significant assumptions used to estimate the fair value of financial instruments on an interim and annual basis and to highlight any changes from prior periods. FSP 107-1 was effective for interim periods ending after June 15, 2009, with early adoption permitted. The adoption of FSP 107-1 did not have a material impact on the Company's consolidated financial statements.

In May 2009, the FASB issued ASC 855-10 (formerly Statement No. 165, Subsequent Events) ("ASC 855"). ASC 855 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. In accordance with this Statement, entities should apply the requirements to interim or annual financial periods ending after June 15, 2009. The adoption of this statement did not have a material impact on the Company's consolidated financial statements.

In June 2009, the FASB approved its Accounting Standards Codification, or Codification, as the single source of authoritative United States accounting and reporting standards applicable for all non-governmental entities, with the exception of the SEC and its staff. The Codification, which changes the referencing of financial standards, is effective for interim or annual financial periods ending after September 15, 2009. Therefore, starting from fiscal year end 2009, all references made to US GAAP will use the new Codification numbering system prescribed by the FASB. As the Codification is not intended to change or alter existing US GAAP, it did not have any impact on the Company's consolidated financial statements.

As a result of the Company's implementation of the Codification during the year ended September 30, 2009, previous references to new accounting standards and literature are no longer applicable. In the current annual financial statements, the Company will provide reference to both new and old guidance to assist in understanding the impact of recently adopted accounting literature, particularly for guidance adopted since the beginning of the current fiscal year but prior to the Codification.

In August 2009, the FASB issued Accounting Standards Update No. 2009-05 (ASU 2009-05), "Fair Value Measurements and Disclosures (Topic 820) – Measuring Liabilities at Fair Value." ASU 2009-05 amends Subtopic 820-10, "Fair Value Measurements and Disclosures – Overall," and provides clarification for the fair value measurement of liabilities. ASU 2009-05 is effective for the first reporting period including interim period beginning after issuance. The Company does not expect the adoption of ASU 2009-05 to have a material impact on its consolidated financial statements.

4. STOCKHOLDERS' EQUITY

Common and Preferred Stock

As of September 30, 2009 the Company is authorized to issue 750,000,000 shares of common stock.

As of September 30, 2009, CNS California is authorized to issue 100,000,000 shares of two classes of stock, 80,000,000 of which was designated as common shares and 20,000,000 of which was designated as preferred shares.

As of September 30, 2009, Colorado CNS Response, Inc. is authorized to issue 1,000,000 shares of common stock.

As of September 30, 2009, Neuro-Therapy Clinic, Inc., a wholly-owned subsidiary of Colorado CNS Response, Inc., is authorized to issue ten thousand (10,000) shares of common stock, no par value per share.

Stock-Option Plan

On August 3, 2006, CNS California adopted the CNS California 2006 Stock Incentive Plan (the "2006 Plan"). The 2006 Plan provides for the issuance of awards in the form of restricted shares, stock options (which may constitute incentive stock options(ISO) or non-statutory stock options (NSO)), stock appreciation rights and stock unit grants to eligible employees, directors and consultants and is administered by the board of directors. A total of 10 million shares of stock are reserved for issuance under the 2006 Plan. As of September 30, 2009, 2,124,740 options were exercised and there were 6,662,014 options and 183,937 restricted shares outstanding under the 2006 Plan and 1,029,309 shares available for issuance of awards.

The 2006 Plan provides that in any calendar year, no eligible employee or director shall be granted an award to purchase more than 3 million shares of stock. The option price for each share of stock subject to an option shall be (i) no less than the fair market value of a share of stock on the date the option is granted, if the option is an ISO, or (ii) no less than 85% of the fair market value of the stock on the date the option is granted, if the option is a NSO; provided, however, if the option is an ISO granted to an eligible employee who is a 10% shareholder, the option price for each share of stock subject to such ISO shall be no less than 110% of the fair market value of a share of stock on the date such ISO is granted. Stock options have a maximum term of ten years from the date of grant, except for ISOs granted to an eligible employee who is a 10% shareholder, in which case the maximum term is five years from the date of grant. ISOs may be granted only to eligible employees. The Company has adopted ASC 718-20 (formerly, SFAS No. 123R -revised 2004, "Share-Based Payment"), and related interpretations. Under ASC 718-10, share-based compensation cost is measured at the grant date based on the calculated fair value of the award. The Company estimates the fair value of each option on the grant date using the Black-Scholes model. The following assumptions were made in estimating the fair value:

Options granted in:	Dividend Yield	Risk-free interest rate	Expected volatility	Expected life
Fiscal 2006	0%	5.46%	100%	5 years
November 2006	0%	5.00%	100%	10 years
August 2007	0%	4.72%	91%	5 years
October 2007	0%	4.60%	105%	5 years
December 2007	0%	4.00%	113%	5 years
April 2008	0%	3.78%	172%	5 years
September 2008	0%	3.41%	211%	5 years
October 2008	0%	3.77%	211%	5 years
March 2009	0%	3.00%	385%	5 years

The expense is recognized over the employees' requisite service period, generally the vesting period of the award. Stock-based compensation expense included in the accompanying statements of operations for the years ended September 30, 2009 and 2008 is as follows:

	For the fiscal year ended September 30, 2009	2008
Operations	$ 16,100	$ 16,100
Research and development	260,800	321,100
Sales and marketing	137,500	83,100
General and administrative	436,100	651,000
Total	$ 850,500	$ 1,071,300

Total unrecognized compensation as of September 30, 2009 amounted to $1,094,100.

A summary of stock option activity is as follows:

	Number of Shares	Weighted Average Exercise Price
Outstanding at September 30, 2007	7,436,703	$ 0.57
Granted	1,880,621	$ 0.85
Exercised	-	-
Forfeited	(352,757)	$ 1.09
Outstanding at September 30, 2008	8,964,567	$ 0.60
Granted	80,000	$ 0.43
Exercised	(2,124,740)	$ 0.132
Forfeited	(257,813)	$ 0.51
Outstanding at September 30, 2009	6,662,014	$ 0.76
Weighted average fair value of options granted during:		
Year ended September 30, 2008		$ 0.73
Year ended September 30, 2009		$ 0.43

Following is a summary of the status of options outstanding at September 30, 2009:

Exercise Price	Number of Shares	Weighted Average Contractual Life	Weighted Average Exercise Price
$ 0.12	859,270	10 years	$ 0.12
$ 0.132	987,805	7 years	$ 0.132
$ 0.30	135,700	10 years	$ 0.30
$ 0.59	28,588	10 years	$ 0.59
$ 0.80	140,000	10 years	$ 0.80
$ 0.89	968,875	10 years	$ 0.89
$ 0.96	496,746	10 years	$ 0.96
$ 1.09	2,614,232	10 years	$ 1.09
$ 1.20	333,611	5 years	$ 1.20
$ 0.51	275,000	10 years	$ 0.51
$ 0.40	56,000	10 years	$ 0.40
Total	6,662,014		$ 0.76

Warrants to Purchase Common Stock

At September 30, 2007, there were warrants outstanding to purchase 6,899,353 shares of the Company's common stock at exercise prices ranging from $0.01 to $1.812 with a weighted average exercise price of $1.04. The warrants expire at various times through 2017. No warrants were issued or exercised during the 12 months ended September 30, 2008.

During the year ended September 30, 2009, 1,498,986 warrants with an exercise price of $0.01 were exercised.

During the year ended September 30, 2009, the following additional 10,137,118 warrants were granted and are outstanding as of September 30, 2009:

Warrants to Purchase	Exercise Price	Issued in Connection With:
100,000 shares	$ 0.25	A $200,000 bridge note with SAIL on May 14, 2009 as described in Note 2
3,333,333 shares	$ 0.30	A $1,000,000 bridge note with Pappajohn on June 12, 2009 as described in Note 2
3,404,991 shares	$ 0.30	Associated with the private placement transaction of 6,810,002 shares at $0.30 with 50% warrant coverage as described in Note 2
956,164 shares 401,096 shares 1,666,667 shares	$ 0.27 $ 0.255 $ 0.30	Associated with the automatic conversion of $1,700,000 of convertible promissory notes and $20,900 accrued interest upon completion an equity financing in excess of $1,500,000 as described in Note 2
274,867 shares	$ 0.33	The placement agent for private placement as described in Note 2

At September 30, 2009, there were warrants outstanding to purchase 15,537,485 shares of the Company's common stock at exercise prices ranging from $0.01 to $1.812 with a weighted average exercise price of $0.65. The warrants expire at various times through 2017

5. INCOME TAXES

The Company accounts for income taxes under the liability method. Deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities, and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We provide a valuation allowance to reduce our deferred tax assets to their estimated realizable value.

Reconciliations of the provision (benefit) for income taxes to the amount compiled by applying the statutory federal income tax rate to profit (loss) before income taxes is as follows for each of the years ended September 30:

	2009	2008
Federal income tax (benefit) at statutory rates	(34)%	(34)%
Stock-based compensation	0%	20%
Non deductible interest expense	0%	0%
Change in valuation allowance	37%	14%
Goodwill write off	(3)%	0%

Temporary differences between the financial statement carrying amounts and tax bases of assets and liabilities that give rise to significant portions of deferred taxes relate to the following at September 30, 2009 and 2008:

	2009	2008
Deferred income tax assets:		
Net operating loss carryforward	$ 8,765,900	$ 4,953,000
Deferred interest, consulting and compensation liabilities	987,500	17,000
Amortization	(24,300)	223,300
Deferred income tax assets - other	7,800	-
	9,736,900	5,193,300
Deferred income tax liabilities—other	-	(12,300)
Deferred income tax asset—net before valuation allowance	9,736,900	5,181,000
Valuation allowance	(9,736,900)	(5,181,000)
Deferred income tax asset—net	$ -	$ -

Current and non-current deferred taxes have been recorded on a net basis in the accompanying balance sheet. As of September 30, 2009, the Company has net operating loss carryforwards of approximately $20.8 million. The net operating loss carryforwards expire by 2028. Utilization of net operating losses and capital loss carryforwards may be subject to the limitations imposed by Section 382 of the Internal Revenue Code. The Company has placed a valuation allowance against the deferred tax assets in excess of deferred tax liabilities due to the uncertainty surrounding the realization of such excess tax assets. Management periodically evaluates the recoverability of the deferred tax assets and the level of the valuation allowance. At such time as it is determined that it is more likely than not that the deferred tax assets are realizable, the valuation allowance will be reduced accordingly.

6. ACQUISITION OF NEURO THERAPY CLINIC, PC

On January 15, 2008, the Company, through its wholly owned subsidiary, Colorado CNS Response, Inc., acquired all of the outstanding common stock of Neuro-Therapy Clinic, PC (“NTC”) in exchange for a non-interest bearing note payable of $300,000 payable in equal monthly installments over 36 months. Upon the completion of the acquisition, the sole shareholder of NTC was appointed Chief Medical Officer of the Company. Prior to the acquisition, NTC was the Company’s largest customer.

The acquisition was accounted under the purchase method of accounting, and accordingly, the purchase price was allocated to NTC's net tangible assets based on their estimated fair values as of January 15, 2008. The excess purchase price over the value of the net tangible assets was recorded as goodwill. The purchase price and the allocation thereof are as follows:

Fair value of note payable issued	$ 265,900
Direct transaction costs	43,700
Purchase price	309,600
Allocated to net tangible liabilities, including cash of $32,100	(10,600)
Allocated to goodwill	$ 320,200

The acquisition was not material, and accordingly, no pro forma results are presented. As of September 30, 2009, goodwill was measured and determined to be fully impaired and consequently written off.

7. LONG-TERM DEBT

As described in Note 6 above, during the year ended September 30, 2008 the Company issued a note payable to an officer in connection with the acquisition of NTC. The note is non-interest bearing and the Company determined its fair value by imputing interest at an annual rate of 8%. As of September 30, 2009 the note has an outstanding principal balance in the amount of $118,600, of which $93,800 is current.

8. REPORTABLE SEGMENTS

The Company operates in two business segments: reference laboratory and clinic. Reference laboratory provide reports ("rEEG Reports") that assist physicians with treatment strategies for patients with behavioral (psychiatric and/or addictive) disorders based on the patient's own physiology. Clinic operates NTC, a full service psychiatric practice.

The following tables show operating results for our reportable segments, along with reconciliation from segment gross profit to (loss) from operations, the most directly comparable measure in accordance with generally accepted accounting principles in the United States, or GAAP:

	Year ended September 30,2009			
	Reference Laboratory	Clinic	Eliminations	Total
Revenues	138,900	628,200	(67,000)	700,100
Operating expenses:				
Cost of revenues	131,600	18,500	(18,500)	131,600
Research and development	2,137,200	-	-	2,137,200
Sales and marketing	908,500	7,300	-	915,800
General and administrative	3,266,300	669,600	(48,500)	3,887,400
Goodwill impairment charges	320,000	-	-	320,000
Total operating expenses	6,763,800	695,400	(67,000)	7,392,200
Loss from operations	$ (6,624,900)	$ (67,200)	$ 0	$ (6,692,100)

The following table includes selected segment financial information as of September 30, 2009, related to goodwill and total assets:

	Reference Laboratory	Clinic	Total
Goodwill	$ -	$ -	$ -
Total assets	$ 1,118,000	$ 42,900	$ 1,160,900

9. EARNINGS PER SHARE

In accordance with ASC 260-10 (formerly SFAS 128, "Computation of Earnings Per Share"), basic net income (loss) per share is computed by dividing the net income (loss) to common stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by dividing the net income (loss) for the period by the weighted average number of common and dilutive common equivalent shares outstanding during the period. For the years ended September 30, 2009 and 2008, the Company has excluded all common equivalent shares from the calculation of diluted net loss per share as such securities are anti-dilutive.

A summary of the net income (loss) and shares used to compute net income (loss) per share for the years ended September 30, 2009 and 2008 is as follows:

	2009	2008
Net loss for computation of basic net income (loss) per share	$ (8,522,200)	$ (5,371,500)
Net income (loss) for computation of dilutive net income (loss) per share	$ (8,522,200)	$ (5,371,500)
Basic net income (loss) per share	$ (0.31)	$ (0.21)
Diluted net income (loss) per share	$ (0.31)	$ (0.21)
Basic weighted average shares outstanding	27,778,171	25,299,547
Dilutive common equivalent shares	-	-
Diluted weighted average common shares	27,778,171	25,299,547
Anti-dilutive common equivalent shares not included in the computation of dilutive net loss per share:		
Convertible debt	-	4,995,000
Warrants	8,318,310	6,899,353
Options	8,548,206	8,767,212

10. COMMITMENTS AND CONTINGENT LIABILITIES

Litigation

From time to time, we may be involved in litigation relating to claims arising out of our operations in the ordinary course of business. Other than as set forth above, we are not currently party to any legal proceedings, the adverse outcome of which, in our management's opinion, individually or in the aggregate, would have a material adverse effect on our results of operations or financial position.

Since June of 2009, the Company has been involved in litigation against Leonard J. Brandt, a stockholder, former director and the Company's former Chief Executive Officer ("Brandt") in both the Delaware Chancery Court and the United States District Court for the Central District of California. For a full description of the events associated with the Brandt Litigation please refer to Item 3, Legal Proceeding of Part I of this document which is incorporated herein by reference.

Lease Commitments

The Company's lease for its headquarters and Laboratory Information Services business, located at 2755 Bristol St., Suite 285, Costa Mesa, California, expired in November 2009. The Company continues to lease this space on a month to month basis at a cost of $4,410 per month.

The Company leases space for its Clinical Services operations under an operating lease. The base rental as of September 2009 is $6,021 per month. This lease terminates on February 28, 2010.

The Company also sub-leases space for its Clinical Services operations on a month-to-month basis for $1,075 per month.

The Company leases a copier for $216 per month which it accounts for as a capital lease with an interest rate of 9% per year. The lease terminates in February 2013 at which time the copier can be purchased at fair value.

Future Minimum Lease Payment and Debt Maturities

At September 30, 2009, the estimated future minimum lease payment under non-cancelable operating and capital leases and debt maturities were as follows:

Year ending September 30,	Operating Leases	Capital Lease	Debt Maturities	Total
2010	36,000	2,600	100,000	138,600
2011	-	2,600	25,000	27,600
2012	-	2,600		2,600
2013	-	1,100		1,100
Total	$ 36,000	$ 8,900	$ 125,000	$ 169,900
Less interest	(700)	(1,200)	(6,400)	(8,300)
Net present value	35,300	7,700	118,600	161,600
Less current portion	(35,300)	(2,100)	(93,800)	(131,200)
Long-term debt and lease obligation	$ -	$ 5,600	$ 24,800	$ 30,400

11. SIGNIFICANT CUSTOMERS

For the year ended September 30, 2009, three customers accounted for 39% of Laboratory Information Services revenue and 45% of accounts receivable at September 30, 2009.

For the year ended September 30, 2008, two customers accounted for 29% of Laboratory Information Services revenue and 24% of accounts receivable at September 30, 2008.

12. SUBSEQUENT EVENTS

The following key events occurred after the end of the fiscal year dated September 30, 2009:

Results of Clinical Trial Announced

On November 2, 2009, the Company reported the results of its landmark study presented by Charles DeBattista, D.M.H, M.D., at the U.S. Psychiatric and Mental Health Congress. The poster presentation, titled Referenced-EEG® (rEEG) Efficacy Compared to STAR*D For Patients With Depression Treatment Failure: First Look At Final Results, highlighted a dramatic improvement in personalized medicine technology for use in treatment of patients with depression. In this study, rEEG proved effective at predicting medication response for treatment-resistant patients approximately 65 percent of the time.

The study included 114 patients in 12 medical centers, including Harvard, Stanford, Cornell, UCI and Rush. The 12-week study found that rEEG significantly outperformed the modified STAR*D treatment algorithm. The difference, or separation, between rEEG and the control group was 50 and 100 percent for the study's two primary endpoints. Typically, separation between a new treatment and a control group is less than 10 percent in antidepressant studies.

The study, the largest in the Company's history, was a randomized, blinded, controlled, parallel group, multicenter study. The patients in the study experienced depression treatment failure of one or more SSRIs and/or had failure with at least two classes of antidepressants. The patients fell into two groups: 1) those treated with rEEG medication guidance, and 2) those treated with the modified STAR*D treatment algorithm.

Ruling from Delaware Chancery Court in Relation to Company's Litigation with Leonard Brandt

On December 2, 2009, the Delaware Chancery Court dismissed complaints brought against the Company by Brandt. At the conclusion of a two-day trial that commenced December 1, the Chancery Court entered judgment for the Company and dismissed with prejudice Brandt's action brought pursuant to Section 225 of the Delaware General Corporation Law. The Chancery Court thereby found that the purported special meeting of stockholders convened by Brandt on September 4, 2009 was not valid and that the directors purportedly elected at that meeting will not be seated. For a full description of the events associated with the Brandt Litigation please refer to Item 3, Legal Proceeding of Part I of this document which is incorporated herein by reference.

Completion of Second Closing of Private Placement Transaction

On December 24, 2009, the Company completed a second closing of its private placement (the first closing having occurred on August 26, 2009), resulting in additional gross proceeds to the Company of approximately $3.0 from accredited investors.

Pursuant to Subscription Agreements entered into with the investors, the Company sold approximately 55 Investment Units at $54,000 per Investment Unit. Each "Investment Unit" consists of 180,000 shares of the Company's common stock and a five year non-callable warrant to purchase 90,000 shares of the Company's common stock at an exercise price of $0.30 per share.

After commissions and expenses, the Company received net proceeds of approximately $2.65 million at the second closing. The Company intends to use the proceeds from the second closing of its private placement for general corporate purposes, including clinical trial expenses, research and development expenses, and general and administrative expenses, including the payment of accrued legal expenses incurred in connection with the Company's litigation with Leonard Brandt.

A FINRA member firm acted as lead placement agent (the "Placement Agent") in connection with the second closing of the private placement. For its services in connection with the second closing, the Placement Agent received (i) a cash fee of $195,200, (ii) a cash expense allowance of $59,920, and (iii) a five year non-callable warrant to purchase 672,267 shares of the Company's common stock at an exercise price of $0.33 per share, first exercisable no earlier than June 24, 2010.

In connection with the second closing of the Company's private placement, each investor who participated in the financing became party to the Registration Rights agreement described above under Note 2 and will receive the same rights and benefits as the investors in the first closing of the Company's Private Placement on August 26, 2009.

Receipt of letter from Food and Drug Administration

On December 28, 2009, the Company's regulatory counsel received a letter ("the Letter") from the FDA in response to its prior correspondence relating to the possible classification of the Company's rEEG, as a medical device. The Company will continue its ongoing dialogue with the FDA regarding its rEEG (which may be subject to pre-market review). If pre-market review is required the Company's revenue could be negatively impacted until such review is completed and clearance to market or approval is obtained. The Letter does not have any impact on the consolidated financial statements as of and for the years ended September 30, 2009 and 2008. See "Government Regulation" section for detailed discussion.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

ITEM 9A(T). Controls and Procedures

Disclosure Controls and Procedures

Our management, including our principal executive officer (PEO) and principal financial officer (PFO), conducted an evaluation of the effectiveness of our disclosure controls and procedures, as defined by paragraph (e) of Exchange Act Rules 13a-15, as of September 30, 2009, the end of the period covered by this report. Based on this evaluation, our PEO and PFO concluded that our disclosure controls and procedures were not effective as of September 30, 2009 for the reasons described below.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. As defined in Rule 13a-15(f) under the Exchange Act, internal control over financial reporting is a process designed by, or under the supervision of, our PEO and PFO and effected by our board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and procedures that:

1. Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;

2. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorization of our management and directors; and

3. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Management, including our Chief Executive Officer (who is our Principal Executive Officer and Principal Financial Officer), do not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors or all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management's override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Also, over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate.

Assessment of Internal Controls Over Financial Reporting

Members of our management, including George Carpenter our PEO and PFO, have evaluated the effectiveness of our internal control over financial reporting as of September 30, 2009, based on the framework and criteria established by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), and we concluded that our internal controls over financial reporting were not effective.

The following significant deficiencies (as defined below) were identified, which in combination with other deficiencies may constitute a material weakness (as defined below):

- We do not have proper segregation of duties within the accounting and finance function.
- We do not have a comprehensive and formalized accounting and procedures manual.
- We do not have personnel with sufficient financial expertise in the capacity of CFO.

A "material weakness" is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

A "significant deficiency" is a deficiency, or combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of our financial reporting.

To the knowledge of our management, including our PEO and PFO, none of the aforementioned significant deficiencies led to a misstatement of our results of operations for the year ended September 30, 2009, or statement of financial position as of September 30, 2009.

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit us to provide only management's report in this annual report.

Changes in Internal Control Over Financial Reporting

During the quarterly period ending September 30, 2009, there were no changes in our internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information

None.

PART III

ITEM 10. Directors, Executive Officers and Corporate Governance.

Information regarding directors and executive officers will appear in the definitive proxy statement for the 2010 annual meeting of CNS Response stockholders, and is incorporated herein by reference.

ITEM 11. Executive Compensation

Information regarding executive compensation will appear in the definitive proxy statement for the 2010 annual meeting of CNS Response stockholders, and is incorporated herein by reference.

ITEM 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information regarding security ownership of certain beneficial owners and management and related stockholder matters will appearin the definitive proxy statement for the 2010 annual meeting of CNS Response stockholders, and is incorporated herein by reference.

ITEM 13. Certain Relationships and Related Transactions, and Director Independence

Information regarding certain relationships and related transactions will appear in the definitive proxy statement for the 2010 annual meeting of CNS Response stockholders, and is incorporated herein by reference.

ITEM 14. Principal Accounting Fees and Services

Information regarding principal accounting fees and services will appear in the definitive proxy statement for the 2010 annual meeting of CNS Response stockholders, and is incorporated herein by reference.

PART IV

ITEM 15. Exhibits, Financial Statement Schedules

(a) 1. The information required by this item is included in Item 8 of Part II of this annual report.

2. The information required by this item is included in Item 8 of Part II of this annual report.

3. Exhibits: See Index to Exhibits, which is incorporated by reference in this Item. The Exhibits listed in the accompanying Index to Exhibits are filed or incorporated by reference as part of this annual report.

(b) Exhibits. See Index to Exhibits, which is incorporated by reference in this Item. The Exhibits listed in the accompanying Index to Exhibits are filed or incorporated by reference as part of this annual report.

(c) Not applicable.

SIGNATURES

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

CNS RESPONSE, INC.

By: /s/ George Carpenter
George Carpenter
Chief Executive Officer

Date: December 29, 2009

POWER OF ATTORNEY

The undersigned directors and officers of CNS Response, Inc. do hereby constitute and appoint George Carpenter with full power of substitution and resubstitution, as their true and lawful attorney and agent, to do any and all acts and things in their name and behalf in their capacities as directors and officers and to execute any and all instruments for them and in their names in the capacities indicated below, which said attorney and agent, may deem necessary or advisable to enable said corporation to comply with the Securities Exchange Act of 1934, as amended and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this Annual Report on Form 10-K, including specifically but without limitation, power and authority to sign for them or any of them in their names in the capacities indicated below, any and all amendments hereto, and they do hereby ratify and confirm all that said attorneys and agents, or either of them, shall do or cause to be done by virtue hereof.

In accordance with the Exchange Act, this report 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/ George Carpenter George Carpenter	Chief Executive Officer, Director (Principal Executive, Financial and Accounting Officer)	December 29, 2009
/s/ David B. Jones David B. Jones	Director	December 29, 2009
/s/ Jerome Vaccaro Jerome Vaccaro, M.D.	Director	December 29, 2009
/s/ Henry Harbin Henry T. Harbin, M. D.	Director	December 29, 2009
/s/ John Pappajohn John Pappajohn	Director	December 29, 2009
/s/ Tommy Thompson Tommy Thompson	Director	December 29, 2009

INDEX TO EXHIBITS

Exhibit Number	Exhibit Title
2.1	Agreement and Plan of Merger between Strativation, Inc., CNS Merger Corporation and CNS Response, Inc. dated as of January 16, 2007. Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on January 22, 2007.
2.2	Amendment No. 1 to Agreement and Plan of Merger by and among Strativation, Inc., CNS Merger Corporation, and CNS Response, Inc. dated as of February 28, 2007. Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 1, 2007.
3.1.1	Certificate of Incorporation, dated March 17, 1987. Incorporated by reference to Exhibit No. 3(i) to the Registrant's Form 10-SB (File No. 000-26285) filed with the Commission on June 7, 1999.
3.1.2	Certificate of Amendment of Certificate of Incorporation, dated June 1, 2004. Incorporated by reference to Exhibit 16 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on June 8, 2004.
3.1.3	Certificate of Amendment of Certificate of Incorporation, dated August 2, 2004. Incorporated by reference to Exhibit 16 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on August 5, 2004.
3.1.4	Certificate of Amendment of Certificate of Incorporation, dated September 7, 2005. Incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 (File No. 333-150398) filed with the Commission on April 23, 2008.
3.1.5	Certificate of Ownership and Merger Merging CNS Response, Inc., a Delaware corporation, with and into Strativation, Inc., a Delaware corporation, dated March 7, 2007. Incorporated by reference to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 13, 2007.
3.2.1	Bylaws. Incorporated by reference to Exhibit No. 3(ii) to the Registrant's Form 10-SB (File No. 000-26285) filed with the Commission on June 7, 1999.
3.2.2	Amendment No. 1 to Bylaws of CNS Response, Inc. Incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on July 2, 2009.
3.2.3	Amendment No. 2 to Bylaws of CNS Response, Inc. Incorporated by reference to Exhibit 3.3 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on July 23, 2009.
4.1	2006 CNS Response, Inc. Option Plan. Incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 10-QSB (File No. 000-26285) filed with the Commission on May 15, 2007.*
10.1	Amended and Restated Registration Rights Agreement, dated January 16, 2007 by and among the Registrant and the stockholders signatory thereto. Incorporated by reference to Exhibit No. 10.2 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on January 16, 2007.
10.2	Form of Subscription Agreement between the Registrant and certain investors, dated March 7, 2007. Incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 13, 2007.
10.3	Form of Indemnification Agreement by and among the Registrant, CNS Response, Inc., a California corporation, and certain individuals, dated March 7, 2007. Incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 13, 2007.
10.4	Form of Registration Rights Agreement by and among the Registrant and certain Investors signatory thereto dated March 7, 2007. Incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 13, 2007.

Exhibit Number	Exhibit Title
10.5	Form of Registration Rights Agreement by and among the Registrant and certain stockholders of the Company signatory thereto dated March 7, 2007. Incorporated by reference to Exhibit 10.7 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 13, 2007.
10.6	Employment Agreement by and between the Registrant and George Carpenter dated October 1, 2007. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on October 3, 2007.*
10.7	Employment Agreement by and between the Registrant and Daniel Hoffman dated January 11, 2008. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on January 17, 2008.*
10.8	Stock Purchase Agreement by and among Colorado CNS Response, Inc., Neuro-Therapy, P.C. and Daniel A. Hoffman, M.D. dated January 11, 2008. Incorporated by reference to the Registrant's Annual report on Form 10-K (File No. 000-26285) filed with the Commission on January 13, 2009.
10.9	Form of Warrant issued to Investors in Private Placement. Incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on March 13, 2007.
10.10	Senior Secured Convertible Promissory Note, dated March 30, 2009, by and between the Company and Brandt Ventures, GP. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on April 3, 2009.
10.11	Senior Secured Convertible Promissory Note, dated March 30, 2009, by and between the Company and SAIL Venture Partners, LP. Incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K (File No. 000-26285) filed with the Commission on April 3 2009.
10.12	Bridge Note and Warrant Purchase Agreement, dated May 14, 2009 by and between the Company and SAIL Venture Partners, LP. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File Number 000-26285) filed with the Securities and Exchange Commission on May 20, 2009.
10.13	Form of Secured Convertible Promissory Note. Incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K (File Number 000-26285) filed with the Securities and Exchange Commission on May 20, 2009.
10.14	Form of Warrant to Purchase Shares. Incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K (File Number 000-26285) filed with the Securities and Exchange Commission on May 20, 2009.
10.15	Bridge Note and Warrant Purchase Agreement, dated June 12, 2009, by and between the Company and John Pappajohn. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File Number 000-26285) filed with the Securities and Exchange Commission on June 18, 2009.
10.16	Form of Secured Convertible Promissory Note. Incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K (File Number 000-26285) filed with the Securities and Exchange Commission on June 18, 2009.
10.17	Form of Warrant to Purchase Shares. Incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K (File Number 000-26285) filed with the Securities and Exchange Commission on June 18, 2009.
10.18	Form of Subscription Agreement.
10.19	Form of Warrant.
10.20	Registration Rights Agreement.
10.21	Amendment No. 1 to Registration Rights Agreement.

Exhibit Number	Exhibit Title
10.22	Form of Indemnification Agreement.
14.1	Code of Ethics. Incorporated by reference to Exhibit 14.1 to the Registrant's Annual Report on Form 10-KSB/A (File No. 000-26285) filed with the Commission on January 24, 2008.
21.1	Subsidiaries of the Registrant. Incorporated by reference to the Registrant's Annual report on Form 10-K (File No. 000-26285) filed with the Commission on January 13, 2009.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included as part of the Signature Page).
31.1	Certification by Chief Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, as amended.
31.2	Certification by Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, as amended.
32.1	Certification of Chief Executive Officer (Principal Accounting and Financial Officer) pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Management contract or compensatory plan or arrangement.

CNS RESPONSE, INC.

SUBSCRIPTION AGREEMENT

The undersigned (hereinafter "Subscriber") hereby confirms his/her/its subscription for the purchase of Units, each Unit to consist of: (i) 180,000 shares of the Company's Common Stock ("Shares"), and (ii) a five year non-callable Investor Warrant to purchase 90,000 shares of the Company's Common Stock, at an exercise price of $0.30 per share (each, an "Investor Warrant" and, collectively, the "Investor Warrants"), on the terms described below:

Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Private Placement Memorandum of the Company, dated as of August 20, 2009, and its attachments thereto (the "Memorandum"). The Units are sometimes referred to herein as the "Securities."

In connection with this subscription, Subscriber and the Company agree as follows:

1. Purchase and Sale of the Units.

(a) The Company hereby agrees to issue and to sell to Subscriber, and Subscriber hereby agrees to purchase from the Company, such number of Units at a price of $54,000 per Unit (the "Unit Price") and for the aggregate subscription amount set forth on the signature page hereto. The Subscriber understands that this subscription is not binding upon the Company until the Company accepts it. The Subscriber acknowledges and understands that acceptance of this Subscription will be made only by a duly authorized representative of the Company executing and mailing or otherwise delivering to the Subscriber at the Subscriber's address set forth herein, a counterpart copy of the signature page to this Subscription Agreement indicating the Company's acceptance of this Subscription. The Company reserve the right, in its sole discretion for any reason whatsoever, to accept or reject this subscription in whole or in part. Following the acceptance of this Subscription Agreement by the Company, and the receipt and acceptance by the Company of subscriptions to the Minimum Offering (defined below), the Company shall instruct its transfer agent to issue and deliver to Subscriber (i) a share certificate evidencing the applicable number of Shares subscribed for hereunder against payment in U.S. Dollars of the Purchase Price (as defined below), and (ii) a Common Stock purchase warrant exercisable at $0.30 per share. If this subscription is rejected, the Company and the Subscriber shall thereafter have no further rights or obligations to each other under or in connection with this Subscription Agreement. If this subscription is not accepted by the Company on or before the last day of the Offering Period, this subscription shall be deemed rejected.

(b) Subscriber has hereby delivered and paid concurrently herewith the aggregate purchase price for the Units set forth on the signature page hereof in an amount required to purchase and pay for the Units subscribed for hereunder (the "Purchase Price"), which amount has been paid in U.S. Dollars by wire transfer or check, subject to collection, to "American Stock Transfer & Trust Co. LLC, as Agent for CNS Response, Inc.", if delivered by wire transfer, or to the order of "Maxim Group LLC, as Agent for CNS Response, Inc.", if delivered by check.

(c) Subscriber understands and acknowledges that this subscription is part of a private placement by the Company of up to $6,426,000 of Units, which offering is being made on an "all or none" basis with respect to $1,512,000 (the "Minimum Amount") and on a "best efforts" basis with respect to the Maximum Amount, for a minimum of approximately 28 Units (the "Minimum Offering") and a maximum of approximately 119 Units (the "Maximum Offering"). Subscriber understands that payments hereunder as to the Minimum Offering will be held in a non-interest bearing escrow account established by the Company with American Stock Transfer & Trust Co. LLC, as escrow agent, and will be released to the Company if subscriptions for the Minimum Offering are received and accepted by the Company within the Offering Period (as described in the Memorandum), including any extended period. If subscriptions for the Minimum Offering are not received and accepted by the Company within the Offering Period (including any extended period), the funds held in such escrow account will be promptly returned to the subscribers in full without interest or deduction. If the Company rejects all or a portion of any subscription, a check will be promptly mailed to the subscriber for all, or the appropriate portion of, the amount submitted with such subscriber's subscription, without interest or deduction. All subscriptions received after subscriptions for the Minimum Offering have been received and accepted by the Company and the Placement Agent will be deposited in such escrow account until accepted by the Company and the Placement Agent, whereupon such subscription proceeds will be released by the escrow agent to the Company.

2. Representations and Warranties of Subscriber. Subscriber represents and warrants to the Company and the Placement Agent as follows:

(a) Subscriber is an "accredited investor" as defined by Rule 501 under the Securities Act of 1933, as amended (the "Act"), and Subscriber is capable of evaluating the merits and risks of Subscriber's investment in the Units and has the ability and capacity to protect Subscriber's interests.

(b) Subscriber understands that the Securities are not presently registered, but Subscriber is entitled to certain rights with respect to the registration of the common stock underlying the Units (see Section 5 below). Subscriber understands that the Securities will not be registered under the Act on the ground that the issuance thereof is exempt under Section 4(2) of the Act as a transaction by an issuer not involving any public offering and that, in the view of the United States Securities and Exchange Commission (the "SEC") the statutory basis for the exemption claimed would not be present if any of the representations and warranties of Subscriber contained in this Subscription Agreement or those of other purchasers of the Securities are untrue or, notwithstanding the Subscriber's representations and warranties, the Subscriber currently has in mind acquiring any of the Securities for resale upon the occurrence or non-occurrence of some predetermined event.

(c) Subscriber is purchasing the Securities subscribed for hereby for investment purposes and not with a view to distribution or resale, nor with the intention of selling, transferring or otherwise disposing of all or any part thereof for any particular price, or at any particular time, or upon the happening of any particular event or circumstance, except selling, transferring, or disposing the Securities made in full compliance with all applicable provisions of the Act, the rules and regulations promulgated by the SEC thereunder, and applicable state securities laws; and that an investment in the Securities is not a liquid investment.

(d) Subscriber acknowledges that there exists no public market for the Securities, that no such public market may develop in the future and as a result, Subscriber acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or unless an exemption from such registration is available. Subscriber is aware of the provisions of Rule 144 promulgated under the Act which permit resales of common stock purchased in a private placement subject to certain limitations and to the satisfaction of certain conditions provided for thereunder, including, among other things, the existence of a public market for the common stock, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares of common stock being sold during any three-month period not exceeding specified limitations.

(e) Subscriber acknowledges that Subscriber has had the opportunity to ask questions of, and receive answers from the Company, or any authorized person acting on behalf of the Company concerning the Company and its business and to obtain any additional information, to the extent possessed by the Company (or to the extent it could have been acquired by the Company without unreasonable effort or expense) necessary to verify the accuracy of the information received by Subscriber. In connection therewith, Subscriber acknowledges that Subscriber has had the opportunity to discuss the Company's business, management and financial affairs with such entity's management or any authorized person acting on its behalf. Subscriber has received and reviewed the Memorandum and all the information concerning the Company and the Units, both written and oral, that Subscriber desires. Without limiting the generality of the foregoing, Subscriber has been furnished with or has had the opportunity to acquire, and to review: (i) copies if all of the Company's publicly available documents and the Memorandum, and (ii) all information, both written and oral, that Subscriber desires with respect to the Company's business, management, financial affairs and prospects. In determining whether to make this investment, Subscriber has relied solely on (i) Subscriber's own knowledge and understanding of the Company and the business of the Company based upon Subscriber's own due diligence investigations and the information furnished pursuant to this paragraph, and (ii) the information described in subparagraph 2(g) below. Subscriber understands that no person has been authorized to give any information or to make any representations which were not contained in the Memorandum and Subscriber has not relied on any other representations or information.

(f) Subscriber has all requisite legal and other power and authority to execute and deliver this Subscription Agreement and to carry out and perform Subscriber's obligations under the terms of this Subscription Agreement. This Subscription Agreement constitutes a valid and legally binding obligation of Subscriber, enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other general principals of equity, whether such enforcement is considered in a proceeding in equity or law.

(g) Subscriber has carefully considered and has discussed with the Subscriber's legal, tax, accounting and financial advisors, to the extent the Subscriber has deemed necessary, the suitability of this investment and the transactions contemplated by this Subscription Agreement for the Subscriber's particular federal, state, local and foreign tax and financial situation and has independently determined that this investment and the transactions contemplated by this Subscription Agreement are a suitable investment for the Subscriber. Subscriber has relied solely on such advisors and not on any statements or representations of the Company or any of its agents. Subscriber understands that Subscriber (and not the Company) shall be responsible for Subscriber's own tax liability that may arise as a result of this investment or the transactions contemplated by this Subscription Agreement.

(h) This Subscription Agreement and the Confidential Purchaser Questionnaire accompanying this Subscription Agreement do not contain any untrue statement of a material fact or omit any material fact concerning Subscriber.

(i) There are no actions, suits, proceedings or investigations pending against Subscriber or Subscriber's assets before any court or governmental agency (nor, to Subscriber's knowledge, is there any threat thereof) which would impair in any way Subscriber's ability to enter into and fully perform Subscriber's commitments and obligations under this Subscription Agreement or the transactions contemplated hereby.

(j) The execution, delivery and performance of and compliance with this Subscription Agreement and the issuance of the Securities will not result in any violation of, or conflict with, or constitute a default under, any of Subscriber's articles of incorporation or by-laws, if applicable, or any agreement to which Subscriber is a party or by which it is bound, nor result in the creation of any mortgage, pledge, lien, encumbrance or charge against any of the assets or properties of Subscriber or the Securities.

(k) Subscriber acknowledges that an investment in the Securities is speculative and involves a high degree of risk and that Subscriber can bear the economic risk of the purchase of the Securities, including a total loss of his/her/its investment.

(l) Subscriber acknowledges that he/she/it has carefully reviewed and considered the risk factors discussed in the "Risk Factors" section of the Memorandum.

(m) Subscriber recognizes that no federal, state or foreign agency has recommended or endorsed the purchase of the Securities.

(n) Subscriber is aware that the Securities are and will be, when issued, "restricted securities" as that term is defined in Rule 144 of the general rules and regulations under the Act.

(o) Subscriber understands that any and all certificates representing the Securities and any and all securities issued in replacement thereof or in exchange therefor shall bear the following legend or one substantially similar thereto, which Subscriber has read and understands:

> "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THIS CORPORATION, IS AVAILABLE."

(p) In addition, Subscriber understands that the certificates representing the Securities, and any and all securities issued in replacement thereof or in exchange therefor, shall bear such legend as may be required by the securities laws of the jurisdiction in which Subscriber resides.

(q) Because of the legal restrictions imposed on resale, Subscriber understands that the Company shall have the right to note stop-transfer instructions in its stock transfer records, and Subscriber has been informed of the Company's intention to do so. Any sales, transfers, or other dispositions of the Securities by Subscriber, if any, will be made in compliance with the Act and all applicable rules and regulations promulgated thereunder.

(r) Subscriber acknowledges that Subscriber has such knowledge and experience in financial and business matters that Subscriber is capable of evaluating the merits and risks of an investment in the Securities and of making an informed investment decision with respect thereto.

(s) Subscriber represents that: (i) Subscriber is able to bear the economic risks of an investment in the Securities and to afford a complete loss of the investment, and (ii) (A) Subscriber could be reasonably assumed to have the ability and capacity to protect his/her/its interests in connection with this subscription; or (B) Subscriber has a pre-existing personal or business relationship with either the Company or any affiliate thereof of such duration and nature as would enable a reasonably prudent purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or such affiliate and is otherwise personally qualified to evaluate and assess the risks, nature and other aspects of this subscription.

(t) Subscriber further represents that the address of Subscriber set forth below is his/her principal residence (or, if Subscriber is a company, partnership or other entity, the address of its principal place of business); that Subscriber is purchasing the Securities for Subscriber's own account and not, in whole or in part, for the account of any other person; Subscriber is purchasing the Securities for investment and not with a view to the resale or distribution thereof; and that Subscriber has not formed any entity, and is not an entity formed, for the purpose of purchasing the Securities.

(u) Subscriber understands that the Company and the Placement Agent shall have the unconditional right to accept or reject this subscription, in whole or in part, for any reason or without a specific reason, in the sole and absolute discretion of the Company (even after receipt and clearance of Subscriber's funds). This Subscription Agreement is not binding upon the Company until accepted in writing by an authorized officer of the Company. In the event that this subscription is rejected, then Subscriber's subscription funds (to the extent of such rejection) will be promptly returned in full without interest thereon or deduction therefrom.

(v) Subscriber has not been furnished with any oral representation or oral information in connection with the offering of the Securities that is not contained in, or is in any way contrary to or inconsistent with, statements made in the Memorandum and this Subscription Agreement.

(w) Subscriber represents that Subscriber is not subscribing for the Securities as a result of or subsequent to any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over the Internet, television or radio or presented at any seminar or meeting or any public announcement or filing of or by the Company.

(x) Subscriber has carefully read this Subscription Agreement and the Memorandum, and Subscriber has accurately completed the Confidential Purchaser Questionnaire which accompanies this Subscription Agreement.

(y) No representations or warranties have been made to Subscriber by the Company, or any officer, employee, agent, affiliate or subsidiary of the Company, other than the representations of the Company contained herein, and in subscribing for the Securities the Subscriber is not relying upon any representations other than those contained in the Memorandum or in this Subscription Agreement.

(z) Subscriber represents and warrants, to the best of Subscriber's knowledge, that other than the Placement Agent, no finder, broker, agent, financial advisor or other intermediary, nor any purchaser representative or any broker-dealer acting as a broker, is entitled to any compensation in connection with the transactions contemplated by this Subscription Agreement.

(aa) Subscriber represents and warrants that Subscriber has: (i) not distributed or reproduced the Memorandum, in whole or in part, at any time, without the prior written consent of the Company and the Placement Agent, (ii) kept confidential and non-public the existence of the Memorandum and the information contained therein or made available in connection with any further investigation of the Company, and Subscriber has not used such information for the Subscriber's personal benefit (other than in connection with this subscription), nor has disclosed such information to any third party for any reason, notwithstanding that the Subscriber's subscription may not be accepted by the Company, and (iii) refrained and shall refrain from trading in the publicly-traded securities of the Company for so long as such recipient has been in possession of the material non-public information contained in the Memorandum.

(bb) If the Subscriber is a corporation, partnership, limited liability company, trust, or other entity, the person executing this Subscription Agreement hereby represents and warrants that the above representations and warranties shall be deemed to have been made on behalf of such entity and the Subscriber has made the same after due inquiry to determine the truthfulness of such representations and warranties.

(cc) If the Subscriber is a corporation, partnership, limited liability company, trust, or other entity, it represents that: (i) it is duly organized, validly existing and in good standing in its jurisdiction of incorporation or organization and has all requisite power and authority to execute and deliver this Subscription Agreement and purchase the Shares as provided herein; (ii) its purchase of the Shares will not result in any violation of, or conflict with, any term or provision of the charter, By-Laws or other organizational documents of Subscriber or any other instrument or agreement to which the Subscriber is a party or is subject; (iii) the execution and delivery of this Subscription Agreement and Subscriber's purchase of the Shares has been duly authorized by all necessary action on behalf of the Subscriber; and (iv) all of the documents relating to the Subscriber's subscription to the Shares have been duly executed and delivered on behalf of the Subscriber and constitute a legal, valid and binding agreement of the Subscriber.

(dd) The Subscriber acknowledges that if he or she is a registered representative of a FINRA member firm, he or she must give such firm the notice required by the FINRA Rules of Fair Practice, receipt of which must be acknowledged by such firm.

(ee) The Subscriber understands that all information regarding the Offering is confidential and represents that it will not be used for any purpose other than in connection with his, her or its consideration of a purchase of the Securities and agrees to treat it in a confidential manner. The Subscriber has not, during the last thirty (30) days prior to the date hereof, directly or indirectly, nor has any party acting on behalf of or pursuant to any understanding with such Subscriber, effected or agreed to effect any short sale, whether or not against the box, established any "put equivalent position" (as defined in Rule 16(a)-1(h) under the Exchange Act) with respect to any security of the Company, granted any other right (including, without limitation, any put or call option) with respect to any security of the Company or with respect to any security that includes, relates to, or derives any significant part of its value from any security of the Company or otherwise sought to hedge its positioning of the Company's Securities. For purposes of this Section 2(ee), short sales and hedging activities include, without limitation, all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers having the effect of hedging the securities or investment made under this Agreement. The Subscriber acknowledges and agrees that in order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to any shares Preferred Stock or the common stock underlying such shares or any other securities exchangeable, convertible or exercisable for shares of Preferred Stock.

(ff) Subscriber represents and warrants that he/she/it will have no open position in theCompany's common stock at the time a Registration Statement is filed with the SEC to register the Securities (the "Registration Statement") and is aware of the following Telephone Interpretation in the SEC Manual of Publicly Available Telephone Interpretations (July 1997):

A.65. Section 5

An issuer filed a Form S-3 registration statement for a secondary offering of common stock which is not yet effective. One of the selling shareholders wanted to do a short sale of common stock "against the box" and cover the short sale with registered shares after the effective date. The issuer was advised that the short sale could not be made before the registration statement becomes effective, because the shares underlying the short sale are deemed to be sold at the time such sale is made. There would, therefore, be a violation of section 5 if the shares were effectively sold prior to the effective date.

(gg) Subscriber acknowledges that it will execute and deliver to the Company a completed selling stockholder questionnaire in connection with the filing of the Registration Statement, prior to the filing thereof.

(hh) Subscriber represents and warrants that he/she/it has complied with all applicable provisions of the Act, the rules and regulations promulgated by the SEC thereunder, including Regulation M and applicable state securities laws, and will comply at the time of sale pursuant to the Registration Statement

(ii) The Subscriber acknowledges that the Placement Agent (including any of its members, managers, employees, agents or representatives) has not made any representations or warranties to the Subscriber concerning the Company or any subsidiary and their respective businesses, condition (financial or otherwise) or prospects.

(jj) The Subscriber understands and agrees that the securities are anticipated to be sold by the Company through the Selling Agent , a licensed broker-dealer, in an "best efforts" offering and that the Company has engaged the Selling Agent to sell the securities on its behalf, and will pay the Selling Agent the fees, expenses and Selling Agent's Warrants set forth in the Memorandum in connection with the sale of the Securities.

(kk) The Subscriber should check the Office of Foreign Assets Control ("OFAC") website at <http://www.treas.gov/ofac> before making the following representations. The Subscriber represents that the amounts invested by it in the Company in the Offering were not and are not directly or indirectly derived from activities that contravene federal, state or international laws and regulations, including anti-money laundering laws and regulations. Federal regulations and Executive Orders administered by OFAC prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals. The lists of OFAC prohibited countries, territories, persons and entities can be found on the OFAC website at <http://www.treas.gov/ofac>. In addition, the programs administered by OFAC (the "OFAC Programs") prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on the OFAC lists;

To the best of the Subscriber's knowledge, none of: (1) the Subscriber; (2) any person controlling or controlled by the Subscriber; (3) if the Subscriber is a privately-held entity, any person having a beneficial interest in the Subscriber; or (4) any person for whom the Subscriber is acting as agent or nominee in connection with this investment is a country, territory, individual or entity named on an OFAC list, or a person or entity prohibited under the OFAC Programs. Please be advised that the Company may not accept any amounts from a prospective investor if such prospective investor cannot make the representation set forth in the preceding paragraph. The Subscriber agrees to promptly notify the Company and the Selling Agent should the Subscriber become aware of any change in the information set forth in these representations. The Subscriber understands and acknowledges that, by law, the Company may be obligated to "freeze the account" of the Subscriber, either by prohibiting additional subscriptions from the Subscriber, declining any redemption requests and/or segregating the assets in the account in compliance with governmental regulations, and Selling Agent may also be required to report such action and to disclose the Subscriber's identity to OFAC. The Subscriber further acknowledges that the Company may, by written notice to the Subscriber, suspend the redemption rights, if any, of the Subscriber if the Company reasonably deems it necessary to do so to comply with anti-money laundering regulations applicable to the Company and Selling Agent or any of the Company's other service providers. These individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanctions and embargo programs;

To the best of the Subscriber's knowledge, none of: (1) the Subscriber; (2) any person controlling or controlled by the Subscriber; (3) if the Subscriber is a privately-held entity, any person having a beneficial interest in the Subscriber; or (4) any person for whom the Subscriber is acting as agent or nominee in connection with this investment is a senior foreign political figure , or any immediate family member or close associate of a senior foreign political figure; and

If the Subscriber is affiliated with a non-U.S. banking institution (a "Foreign Bank"), or if the Subscriber receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank, the Subscriber represents and warrants to the Company that: (1) the Foreign Bank has a fixed address, other than solely an electronic address, in a country in which the Foreign Bank is authorized to conduct banking activities; (2) the Foreign Bank maintains operating records related to its banking activities; (3) the Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities; and (4) the Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated affiliate.

3. Representations and Warranties of the Company. The Company represents and warrants to Subscriber as follows:

(a) The Company is duly organized and validly exists as a corporation in good standing under the laws of the State of Delaware and has the requisite power and authority to own its properties and to carry on its business as presently conducted. The Company is qualified to transact business as a foreign corporation and is in good standing under the laws of each jurisdiction where the location of its properties or the conduct of its business makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a material and adverse effect on the business, condition (financial or otherwise), operations, prospects or property of the Company or any of its subsidiaries, taken as a whole ("Material Adverse Effect").

(b) The Company has all such corporate power and authority to enter into, deliver and perform this Subscription Agreement.

(c) All necessary corporate action has been duly and validly taken by the Company to authorize the execution, delivery and performance of this Subscription Agreement by the Company, and the issuance and sale of the Securities to be sold by the Company pursuant to this Subscription Agreement. This Subscription Agreement has been duly and validly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. The Company has full corporate power and authority necessary to conduct its business as presently conducted and to enter into and deliver the transaction documents and to perform its obligations thereunder.

(d) In addition to the foregoing, Subscriber shall be entitled to rely on all of the representations, warranties and covenants made by the Company to the Placement Agent in that certain Placement Agency Agreement, as the same may be amended, entered into between the Placement Agent and the Company in connection with the Offering as if such representations, warranties and covenants were made directly to the Subscriber.

(e) Non Contravention. None of the execution and delivery of, or performance by the Company under, any of the transaction documents or the consummation of the transactions herein or therein contemplated conflicts with or violates, or will result in the creation or imposition of any lien, charge or other encumbrance upon any of the assets of the Company under, any agreement or other instrument to which the Company is a party or by which the Company or its assets may be bound, any term of the certificate of incorporation or by-laws of the Company, or any license, permit, judgment, decree, order, statute, rule or regulation applicable to the Company or any of its assets, except where such conflict, violation or creation would not have a Material Adverse Effect.

(f) Anti-Dilution. The transaction contemplated hereby will not result in the application of any anti-dilution or price protection provisions attributable to any of the Company's existing and outstanding securities, whether equity, debt or a hybrid thereof.

(g) Conduct of Business. The conduct of business by the Company as presently conducted is not subject to continuing oversight, supervision, regulation or examination by any governmental official or body of the United States or any other jurisdiction wherein the Company conducts or proposes to conduct such business, except as such regulation as is applicable to commercial enterprises generally. The Company has obtained all requisite licenses, permits and other governmental authorization necessary to conduct its business as presently, and as proposed to be, conducted, except where the failure to obtain such license, permit or other governmental authorization would result in a Material Adverse Effect.

(h) No Defaults. No default by the Company exists in the due performance under any material agreement to which the Company is a party or to which any of its assets is subject (collectively, the "Company Agreements"), except where such defaults do not, individually or in the aggregate, have a Material Adverse Effect. The Company Agreements are in full force and effect in accordance with their respective terms.

(i) Intellectual Property. The Company owns all right, title and interest in, or possesses adequate and enforceable rights to use, all patents, patent applications, trademarks, trade names, service marks, copyrights, rights, licenses, franchises, trade secrets, confidential information, processes, formulations, software and source and object codes necessary for the conduct of its business (collectively, the "Intangibles"). To the knowledge of the Company, it has not infringed upon the rights of others with respect to the Intangibles and the Company has not received notice that it has or may have infringed or is infringing upon the rights of others with respect to the Intangibles, or any notice of conflict with the asserted rights of others with respect to the Intangibles that could, individually or in the aggregate, have a Material Adverse Effect.

(j) Anti-Terrorism. Neither the sale of the Units by the Company nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. Without limiting the foregoing, the Company is not (a) a person whose property or interests in property are blocked pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) or (b) a person who engages in any dealings or transactions, or be otherwise associated, with any such person. The Company and its subsidiaries are in compliance, in all material respects, with the USA Patriot Act of 2001 (signed into law October 26, 2001).

(k) Capitalization; Additional Issuances. The issued and outstanding securities of the Company as of August 5, 2009 are as set forth in the Memorandum. Except as set forth in the Memorandum, as of August 5, 2009 there are no outstanding agreements or preemptive or similar rights affecting the Company's Common Stock and no outstanding rights, warrants or options to acquire, or instruments convertible into or exchangeable for, or agreements or understandings with respect to the sale or issuance of any Common Stock of the Company.

(l) Consents. No consent, approval, authorization or order of any court, governmental agency or body or arbitrator having jurisdiction over the Company, or any of its affiliates, is required for the execution by the Company of the transaction documents and compliance and performance by the Company of its obligations under the transaction documents, including, without limitation, the issuance and sale of the Securities, other than such consents, approvals and authorizations as shall have been received by the Company as of the closing date.

(m) The Securities. The Securities upon issuance:

(i) are, or will be, free and clear of any security interests, liens, claims or other encumbrances, subject to restrictions upon transfer under the Act and any applicable state securities laws;

(ii) have been, or will be, duly and validly authorized and on the date of issuance of the Securities, such Securities will be duly and validly issued, fully paid and non-assessable;

(iii) will not have been issued or sold in violation of any preemptive or other similar rights of the holders of any securities of the Company;

(iv) will have been issued in reliance upon an exemption from the registration requirements of and, assuming the representations and warranties of the Subscriber herein is true and accurate, will have been issued in compliance with Section 5 under the 1933 Act.

(n) Litigation. Except as disclosed in the Memorandum, there are no material legal proceedings, other than routine litigation incidental to the business, pending or, to the knowledge of the Company, threatened against or involving the Company or any of its respective property or assets. There are no outstanding orders, judgments, injunctions, awards or decrees of any court, governmental or regulatory body or arbitration tribunal against or involving the Company.

4. Indemnification. Subscriber agrees to indemnify and hold harmless the Company, the Placement Agent, and their respective officers, directors, employees, shareholders, agents, attorneys, representatives and affiliates, and any person acting for or on behalf of the Company or the Placement Agent, from and against any and all damage, loss, liability, cost and expense (including reasonable attorneys' fees and disbursements) which any of them may incur by reason of the failure by Subscriber to fulfill any of the terms and conditions of this Subscription Agreement, or by reason of any breach of the representations and warranties made by Subscriber herein, or in any other document provided by Subscriber to the Company in connection with this investment. All representations, warranties and covenants of each of Subscriber and the Company contained herein shall survive the acceptance of this subscription and the Closings.

5. Registration Rights.

(a) In consideration of the investment in the Units described in this Subscription Agreement and the Memorandum, the Company hereby grants to the Subscriber, and Subscriber hereby agrees to and accepts from the Company, the registration rights set forth in the Registration Rights Agreement, substantially in the form attached hereto as Exhibit A (the "Registration Rights Agreement").

(b) In connection with the exercise by Subscriber of the registration rights set forth in the Registration Rights Agreement, and with respect to the Securities held by such Subscriber, Subscriber hereby covenants that, prior to filing a Registration Statement or Prospectus (each as defined in Registration Rights Agreement) or any amendments or supplements thereto, Subscriber shall promptly and truthfully complete and execute a selling security-holder questionnaire provided by the Company, and provide any and all such other material information as the Company may require in order to prepare and file such Registration Statement, Prospectus or any amendment or supplement thereto.

6. Miscellaneous.

(a) Subscriber agrees not to transfer or assign this Subscription Agreement or any of Subscriber's interest herein and further agrees that the transfer or assignment of the Securities acquired pursuant hereto shall be made only in accordance with all applicable laws.

(b) Subscriber agrees that Subscriber cannot cancel, terminate, or revoke this Subscription Agreement or any agreement of Subscriber made hereunder, and this Subscription Agreement shall survive the death or legal disability of Subscriber and shall be binding upon Subscriber's heirs, executors, administrators, successors, and permitted assigns.

(c) Subscriber has read and has accurately completed this entire Subscription Agreement.

(d) This Subscription Agreement, the Confidential Purchaser Questionnaire and the Investor Warrants, together with the Memorandum, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended or waived only by a written instrument signed by all parties.

(e) Subscriber acknowledges that it has been advised and has had the opportunity to consult with Subscriber's own attorney regarding this subscription and Subscriber has done so to the extent that Subscriber deems appropriate.

(f) Any notice or other document required or permitted to be given or delivered to the parties hereto shall be in writing and sent: (i) by fax if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (ii) by registered or certified mail with return receipt requested (postage prepaid) or (iii) by a recognized overnight delivery service (with charges prepaid).

If to the Company:

CNS Response, Inc.
2755 Bristol St., Suite 285
Costa Mesa, CA 96626
Attn: George Carpenter

With a copy to:

Sonnenschein Nath & Rosenthal LLP
101 JFK Parkway
Short Hills, New Jersey 07078
Attn: Jeffrey A. Baumel, Esq.
Tel: (973) 912-7189

If to the Subscriber, to the Address Set Forth In the Records of the Company

With copies to:

Maxim Group LLC
405 Lexington Avenue
New York, New York 10174
Tel: (212) 895-3500
Fax: (212) 895-3555
Attn: Andrew Scott

(g) Failure of the Company to exercise any right or remedy under this Subscription Agreement or any other agreement between the Company and the Subscriber, or otherwise, or any delay by the Company in exercising such right or remedy, will not operate as a waiver thereof. No waiver by the Company will be effective unless and until it is in writing and signed by the Company.

(h) This Subscription Agreement shall be enforced, governed and construed in all respects in accordance with the laws of the State of New York, as such laws are applied by the New York courts except with respect to the conflicts of law provisions thereof, and shall be binding upon the Subscriber and the Subscriber's heirs, estate, legal representatives, successors and permitted assigns and shall inure to the benefit of the Company, and its successors and assigns.

(i) Any legal suit, action or proceeding arising out of or relating to this Subscription Agreement or the transactions contemplated hereby shall be instituted exclusively in New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York. The parties hereto hereby: (i) waive any objection which they may now have or hereafter have to the venue of any such suit, action or proceeding, and (ii) irrevocably consent to the jurisdiction of the New York Supreme Court, County of New York, and the United States District Court for the Southern District of New York in any such suit, action or proceeding. The parties further agree to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agree that service of process upon a party which is mailed by certified mail to such party's address shall be deemed in every respect effective service of process upon such party in any such suit, action or proceeding.

(j) If any provision of this Subscription Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed modified to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provisions hereof.

(k) The parties understand and agree that money damages would not be a sufficient remedy for any breach of this Subscription Agreement by the Company or the Subscriber and that the party against which such breach is committed shall be entitled to equitable relief, including an injunction and specific performance, as a remedy for any such breach, without the necessity of establishing irreparable harm or posting a bond therefor. Such remedies shall not be deemed to be the exclusive remedies for a breach by either party of this Subscription Agreement but shall be in addition to all other remedies available at law or equity to the party against which such breach is committed.

(l) All pronouns and any variations thereof used herein shall be deemed to refer to the masculine, feminine, singular or plural, as identity of the person or persons may require.

(m) This Subscription Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Signature Page for Individuals:

IN WITNESS WHEREOF, Subscriber has caused this Subscription Agreement to be executed as of the date indicated below.

$ _____ Purchase Price	_____ Number of Units
_____ Print or Type Name	_____ Print or Type Name (Joint-owner)
_____ Signature	_____ Signature (Joint-owner)
_____ Date	_____ Date (Joint-owner)
_____ Social Security Number	_____ Social Security Number (Joint-owner)
_____ _____ Address	_____ _____ Address (Joint-owner)
_____ Joint Tenancy	_____ Tenants in Common

Signature Page for Partnerships, Corporations or Other Entities:

IN WITNESS WHEREOF, Subscriber has caused this Subscription Agreement to be executed as of the date indicated below.

$ _____ _____
Total Purchase Price Number of Units

_____
Print or Type Name of Entity

_____
Address

_____ _____
Taxpayer I.D. No. (if applicable) Date

_____ _____
Signature Print or Type Name and Indicate
Title or Position with Entity

_____ _____
Signature (other authorized signatory) Print or Type Name and Indicate
Title or Position with Entity

Acceptance:

IN WITNESS WHEREOF, the Company has caused this Subscription Agreement to be executed, and the foregoing subscription accepted, as of the date indicated below, as to _____ Units.

CNS RESPONSE, INC.

By: _____
Name: George Carpenter
Title: Chief Executive Officer

Date: _____, 20__

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

No. _____ Void after: [five years from date of issuance]

THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. EASTERN TIME
ON _____ (THE "EXPIRATION DATE")

WARRANT TO PURCHASE SHARES

This Warrant is issued to _____ ("Investor") by CNS Response, Inc., a Delaware corporation (the "Company"), pursuant to the terms of that certain Subscription Agreement (the "Agreement"), dated _____. All capitalized terms not defined in this Warrant shall have the meaning ascribed to them in the Agreement.

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth and set forth in the Agreement, the holder of this Warrant is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the holder hereof in writing), to purchase from the Company _____ fully paid and nonassessable Shares (as defined below) at the Exercise Price (as defined below).

2. Definitions.

(a) Exercise Price. The exercise price for the Shares initially shall be $0.30 per share (such price, as adjusted from time to time, is herein referred to as the "Exercise Price").

(b) Exercise Period. This Warrant shall be exercisable, in whole or in part, during the term commencing on the date hereof and ending on the Expiration Date.

(c) The Shares. The term "Shares" shall mean shares of the Company's common stock, par value $0.001 per share.

3. Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with Section 2 above, the holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

(i) the surrender of the Warrant, together with a notice of exercise to the Secretary of the Company at its principal offices; and

(ii) the payment to the Company of an amount equal to the aggregate Exercise Price for the number of Shares being purchased.

4. Certificates for Shares. Upon the exercise of the purchase rights evidenced by this Warrant, one or more certificates for the number of Shares so purchased shall be issued as soon as practicable thereafter, and in any event within thirty (30) days of the delivery of the subscription notice.

5. Issuance of Shares. The Company covenants that the Shares, when issued pursuant to the exercise of this Warrant, will be duly and validly issued, fully paid and nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

6. Adjustment of Exercise Price and Number of Shares. The number of and kind of securities purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) Subdivisions, Combinations and Other Issuances. If the Company shall at any time prior to the expiration of this Warrant subdivide the Shares, by split-up or otherwise, or combine its Shares, or issue additional shares of its Shares as a dividend, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 6(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) Reclassification, Reorganization and Consolidation. In case of any reclassification, capital reorganization, or change in the capital stock of the Company (other than as a result of a subdivision, combination, or stock dividend provided for in Section 6(a) above), then the Company shall make appropriate provision so that the holder of this Warrant shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization, or change by a holder of the same number of Shares as were purchasable by the holder of this Warrant immediately prior to such reclassification, reorganization, or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the holder of this Warrant so that the provisions hereof, including Sections 6(a), shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise hereof, and appropriate adjustments shall be made to the purchase price per share payable hereunder, provided the aggregate purchase price shall remain the same.

(c) Notice of Adjustment. When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly notify the holder of such event and of the number of Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

7. No Fractional Shares. No fractional shares shall be issued upon the exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor on the basis of the Exercise Price then in effect.

8. Representations of the Company. The Company represents and warrants to Holder that the representations and warranties made by the Company in Section 3 of the Agreement are true, correct and complete as of the date hereof. In addition, the Company represents that the Shares necessary for a cash exercise of this Warrant are duly reserved.

9. Representations and Warranties by the Holder. The Holder represents and warrants to the Company that the representations and warranties made by the Holder in Section 2 of the Agreement are true, correct and complete as of the date hereof.

10. Restrictive Legend.

The Shares (unless registered under the Securities Act of 1933, as amended (the "Act")) shall be stamped or imprinted with a legend in substantially the following form:

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.
>
> THE SALE OF SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED UNLESS THE SALE IS SO EXEMPT.

11. Warrants Transferable. Subject to compliance with the terms and conditions of this Section 11, this Warrant and all rights hereunder are transferable, in whole or in part, without charge to the holder hereof (except for transfer taxes), upon surrender of this Warrant properly endorsed or accompanied by written instructions of transfer. With respect to any offer, sale or other disposition of this Warrant or any Shares acquired pursuant to the exercise of this Warrant prior to registration of such Warrant or Shares, the holder hereof agrees to give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of such holder's counsel, or other evidence, if requested by the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Act as then in effect or any federal or state securities law then in effect) of this Warrant or the Shares and indicating whether or not under the Act certificates for this Warrant or the Shares to be sold or otherwise disposed of require any restrictive legend as to applicable restrictions on transferability in order to ensure compliance with such law. Upon receiving such written notice and reasonably satisfactory opinion or other evidence, if so requested, the Company, as promptly as practicable, shall notify such holder that such holder may sell or otherwise dispose of this Warrant or such Shares, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 12 that the opinion of counsel for the holder or other evidence is not reasonably satisfactory to the Company, the Company shall so notify the holder promptly with details thereof after such determination has been made. Each certificate representing this Warrant or the Shares transferred in accordance with this Section 12 shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with such laws, unless in the aforesaid opinion of counsel for the holder, such legend is not required in order to ensure compliance with such laws. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Notwithstanding the foregoing, Holder may assign this Warrant or the Shares into which such Warrant may be converted to an affiliated entity without the prior written consent of the Company so long as such assignment complies with applicable law.

12. Rights of Stockholders. No holder of this Warrant shall be entitled, as a Warrant holder, to vote or receive dividends or be deemed the holder of the Shares or any other securities of the Company which may at any time be issuable on the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value, consolidation, merger, conveyance, or otherwise) or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until the Warrant shall have been exercised and the Shares purchasable upon the exercise hereof shall have become deliverable, as provided herein.

13. Notices. All notices and other communications given or made hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, with a copy to be sent by United States first class mail, postage prepaid, (c) five (5) days after being sent by registered or certified mail, return receipt required, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address or fax number as set forth on the signature page to the Agreement or to such electronic mail address, facsimile number or address as subsequently modified by written notice given in according with this Section 14.

14. Governing Law. This Warrant and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions of the State of New York or of any other state.

15. Rights and Obligations Survive Exercise of Warrant. Unless otherwise provided herein, the rights and obligations of the Company, of the holder of this Warrant and of the holder of the Shares issued upon exercise of this Warrant, shall survive the exercise of this Warrant.

[Signature Page Follows]

Issued this __ day of _____, 2009.

CNS RESPONSE, INC.

By: _____
Name: George Carpenter
Its: Chief Executive Officer

Address: 2755 Bristol Street, Suite 285
Costa Mesa, CA 92626

Accepted and agreed:

_____

Address:

EXHIBIT A

NOTICE OF EXERCISE

TO: CNS Response, Inc.

Attention: Chief Executive Officer

1. The undersigned hereby elects to purchase _____ Shares of _____ pursuant to the terms of the attached Warrant.

2. The undersigned elects to exercise the attached Warrant by means of a cash payment, and tenders herewith payment in full for the purchase price of the shares being purchased, together with all applicable transfer taxes, if any.

3. Please issue a certificate or certificates representing said Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

4. The undersigned hereby represents and warrants that the aforesaid Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale, in connection with the distribution thereof, and that the undersigned has no present intention of distributing or reselling such shares and all representations and warranties of the undersigned set forth in the attached Warrant are true and correct as of the date hereof.

_____
(Signature)

_____
(Name)

_____ _____
(Date) (Title)

FORM OF TRANSFER

(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right represented by the attached Warrant to purchase _____ shares of _____ of CNS Response, Inc. to which the attached Warrant relates, and appoints _____ Attorney to transfer such right on the books of _____, with full power of substitution in the premises.

Dated: _____

_____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Address: _____

_____

_____

Signed in the presence of:

_____

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of August 24, 2009 among CNS Response, Inc., a Delaware corporation (the "Company"), and the several purchasers signatory hereto (each such purchaser is a "Purchaser" and collectively, the "Purchasers").

This Agreement is made pursuant to the Subscription Agreement, dated as of the date hereof between the Company and each Purchaser (the "Subscription Agreement").

The Company and each Purchaser hereby agrees as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Subscription Agreement shall have the meanings given such terms in the Subscription Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Effectiveness Date" means no later than the 180th calendar day following the final closing of the Offering; provided, however, that in the event the Company is notified by the Commission that the Registration Statement will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the date required above.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(b).

"Event Date" shall have the meaning set forth in Section 2(b).

"Filing Date" means no later than the later of (i) the 60th calendar day following the closing at which the Minimum Amount has been raised; or (ii) the 20th calendar day after the termination of the Offering.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 424(b) promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means, the Shares, the Shares issuable upon the exercise of the Investor Warrants and the Shares issuable upon the exercise of the warrants to be issued to Maxim Group LLC, as placement agent for the Company in connection with the Offering.

"Registration Statement" means the registration statement required to be filed hereunder, including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"Rule 415" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Selling Shareholder Questionnaire" shall have the meaning set forth in Section 3(a).

2 . Registration. On or prior to the Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of the Registrable Securities on such Filing Date for an offering to be made on a continuous basis pursuant to Rule 415. The Registration Statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith) and shall contain (unless otherwise directed by at least an 85% majority in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A. Subject to the terms of this Agreement, the Company shall use its best efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event prior to the applicable Effectiveness Date, and shall use its best efforts to keep the Registration Statement continuously effective under the Securities Act until the sooner of the second anniversary of the date of such effectiveness or the date that all Registrable Securities covered by the Registration Statement have been sold, or may be sold without volume restrictions pursuant to Rule 415, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected Holders (the "Effectiveness Period"). Notwithstanding anything to the contrary contained herein, the amount of Registrable Securities required to be included in the Registration Statement as described in this Section 2 shall not exceed the maximum amount of Registrable Securities which may be included in a Registration Statement without exceeding registration limitations imposed by the SEC pursuant to Rule 415 under the Securities Act (the "Rule 415 Amount"). In the event that less than all of the Registrable Securities are included in the Registration Statement as a result of such limitations, then the Company will file additional Registration Statements each registering the Rule 415 Amount, seriatim, until all of the Registrable Securities have been registered. The Company shall telephonically request effectiveness of the Registration Statement as of 5:00 pm Eastern time on a Trading Day. The Company shall immediately notify the Holders via facsimile of the effectiveness of the Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of the Registration Statement. The Company shall, by 9:30 am Eastern time on the second Trading Day after the Effective Date (as defined in the Subscription Agreement), file a final Prospectus with the Commission as required by Rule 424. All selling shareholders included on the applicable Registration Statement shall be given notice of the effectiveness of such Registration Statement substantially at the same time.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of the Registration Statement and not less than one Trading Day prior to the filing of the related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall, (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent certified public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file the Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of the Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of the related Prospectus or amendment or supplement thereto. Each Holder agrees to furnish to the Company a completed Questionnaire in the form attached to this Agreement as Annex B (a "Selling Shareholder Questionnaire") not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4th) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to the Registration Statement and the Prospectus used in connection therewith as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and as so supplemented or amended to be filed pursuant to Rule 424; (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and as promptly as reasonably possible provide the Holders true and complete copies of all correspondence from and to the Commission relating to the Registration Statement (provided that the Company may excise any information contained therein which would constitute material non-public information as to any Holder which has not executed a confidentiality agreement with the Company); and (iv) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by the Registration Statement during the Effectiveness Period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in the Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, shall also be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i) (A) when a Prospectus or any Prospectus supplement or post-effective amendment to the Registration Statement is proposed to be filed; (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement; and (C) with respect to the Registration Statement or any post-effective amendment, when the same has become effective; (ii) of any request by the Commission or any other Federal or state governmental authority for amendments or supplements to the Registration Statement or Prospectus or for additional information; (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement covering the Registrable Securities or the initiation of any Proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; (v) of the occurrence of any event or passage of time that makes the financial statements included in the Registration Statement ineligible for inclusion therein or any statement made in the Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to the Registration Statement, Prospectus or other documents so that, in the case of the Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and (vi) the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of the Registration Statement or Prospectus; provided that any and all of such information shall remain confidential to each Holder until such information otherwise becomes public, unless disclosure by a Holder is required by law; provided, further, that notwithstanding each Holder's agreement to keep such information confidential, the Holders make no acknowledgement that any such information is material, non-public information.

(d) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of the Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(e) Furnish to each Holder, without charge, at least one (1) conformed copy of the Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission.

(f) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(g) (i) In the time and manner required by the NYSE Amex and any other market on which the Registrable Securities are traded (each, a "Principal Market"), prepare and file with each Principal Market an additional shares listing application covering all of the Registrable Securities and a notification form regarding the change in the number of the Company's outstanding Shares; (ii) take all steps necessary to cause such Registrable Securities to be approved for listing on each Principal Market as soon as possible thereafter; (iii) provide to each Holder notice of such listing; and (iv) maintain the listing of such Registrable Securities on each Principal Market.

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement; provided, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by the Holders, cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement, which certificates shall be free, to the extent permitted by the Subscription Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may request.

(j) Upon the occurrence of any event contemplated by this Section 3, as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither the Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(k) to suspend the availability of the Registration Statement and Prospectus, subject to the payment of partial liquidated damages pursuant to Section 2(b), for a period not to exceed sixty (60) calendar days (which need not be consecutive days) in any twelve (12) month period.

(k) Comply with all applicable rules and regulations of the Commission and each Principal Market.

(l) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the Shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three (3) Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4 . Registration Expenses. All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to the Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Principal Market on which the Common Stock is then listed for trading, and (B) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses of the Company (including, without limitation, expenses of printing certificates for Registrable Securities, (iii) messenger, telephone and delivery expenses of the Company, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, or (2) any violation or alleged violation by the Company of the Securities Act, Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of the Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: (x) such Holder's failure to comply with the prospectus delivery requirements of the Securities Act or (y) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company specifically for inclusion in such Registration Statement or such Prospectus or (ii) to the extent that such information relates to such Holder's proposed method of distribution of the Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party; provided, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is judicially determined to be not entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, except in the case of fraud by such Holder.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous

(a) Remedies. In the event of a breach by the Company or by a Holder, of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to the Registration Statement.

(c) Discontinued Disposition. Each Holder agrees by its acquisition of Registrable Securities that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as it practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(b).

(d) Piggy-Back Registrations. If at any time during the Effectiveness Period there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the stock option or other employee benefit plans, then the Company shall send to each Holder a written notice of such determination and, if within fifteen (15) days after the date of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; provided, however, that, the Company shall not be required to register any Registrable Securities pursuant to this Section 6(d) that are not eligible for resale pursuant to Rule 415 promulgated under the Securities Act or that are the subject of a then effective Registration Statement. Notwithstanding anything to the contrary contained herein, the amount of Registrable Securities required to be included in the Registration Statement as described in this Section 6(d) shall equal the lesser of (i) the amount of Registrable Securities that Holders request to have so registered pursuant to this Section 6(d) and (ii) the maximum amount of Registrable Securities which may be included in a Registration Statement without exceeding the Rule 415 Amount.

(e) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and Holders holding at least 67% of the then outstanding Registrable Securities. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders and that does not directly or indirectly affect the rights of other Holders may be given by Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence.

(f) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Subscription Agreement.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then-outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under the Subscription Agreement.

(h) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(h), neither the Company nor any of its subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(i) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(j) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Subscription Agreement.

(k) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(l) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(m) Headings. The headings in this Agreement are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(n) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert with respect to such obligations or the transactions contemplated by this Agreement. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose.

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

CNS RESPONSE, INC.

By: _____

Name: George Carpenter
Title: Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

Name of Holder: _____

Signature of Authorized Signatory of Holder: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

[SIGNATURE PAGES CONTINUE]

ANNEX A

Plan of Distribution

The shares covered by this prospectus may be offered and sold from time to time by the selling stockholders. The term "selling stockholder" includes pledgees, donees, transferees or other successors in interest selling shares received after the date of this prospectus from each selling stockholder as a pledge, gift, partnership distribution or other non-sale related transfer. The number of shares beneficially owned by a selling stockholder will decrease as and when it effects any such transfers. The plan of distribution for the selling stockholders' shares sold hereunder will otherwise remain unchanged, except that the transferees, pledgees, donees or other successors will be selling stockholders hereunder. To the extent required, we may amend and supplement this prospectus from time to time to describe a specific plan of distribution.

The selling stockholders will act independently of us in making decisions with respect to the timing, manner and size of each sale. The selling stockholders may make these sales at prices and under terms then prevailing or at prices related to the then current market price. The selling stockholders may also make sales in negotiated transactions. The selling stockholders may offer their shares from time to time pursuant to one or more of the following methods:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- one or more block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- publicly or privately negotiated transactions;
- through underwriters, brokers or dealers (who may act as agents or principals) or directly to one or more purchasers;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

In connection with distributions of the shares or otherwise, the selling stockholders may:

- enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the shares in the course of hedging the positions they assume;

- sell the shares short and redeliver the shares to close out such short positions;

- enter into option or other transactions with broker-dealers or other financial institutions which require the delivery to them of shares offered by this prospectus, which they may in turn resell; and

- pledge shares to a broker-dealer or other financial institution, which, upon a default, they may in turn resell.

In addition to the foregoing methods, the selling stockholders may offer their shares from time to time in transactions involving principals or brokers not otherwise contemplated above, in a combination of such methods or described above or any other lawful methods. The selling stockholders may also transfer, donate or assign their shares to lenders, family members and others and each of such persons will be deemed to be a selling stockholder for purposes of this prospectus. The selling stockholders or their successors in interest may from time to time pledge or grant a security interest in some or all of the shares of common stock, and if the selling stockholders default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from to time under this prospectus; provided however in the event of a pledge or then default on a secured obligation by the selling stockholder, in order for the shares to be sold under this registration statement, unless permitted by law, we must distribute a prospectus supplement and/or amendment to this registration statement amending the list of selling stockholders to include the pledgee, secured party or other successors in interest of the selling stockholder under this prospectus.

The selling stockholders may also sell their shares pursuant to Rule 144 under the Securities Act, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions.

Sales through brokers may be made by any method of trading authorized by any stock exchange or market on which the shares may be listed or quoted, including block trading in negotiated transactions. Without limiting the foregoing, such brokers may act as dealers by purchasing any or all of the shares covered by this prospectus, either as agents for others or as principals for their own accounts, and reselling such shares pursuant to this prospectus. The selling stockholders may effect such transactions directly, or indirectly through underwriters, broker-dealers or agents acting on their behalf. In effecting sales, broker-dealers or agents engaged by the selling stockholders may arrange for other broker-dealers to participate. Broker-dealers or agents may receive commissions, discounts or concessions from the selling stockholders, in amounts to be negotiated immediately prior to the sale (which compensation as to a particular broker-dealer might be in excess of customary commissions for routine market transactions).

In offering the shares covered by this prospectus, the selling stockholders, and any broker-dealers and any other participating broker-dealers who execute sales for the selling stockholders, may be deemed to be “underwriters” within the meaning of the Securities Act in connection with these sales. Any profits realized by the selling stockholders and the compensation of such broker-dealers may be deemed to be underwriting discounts and commissions.

The Company is required to pay all fees and expenses incident to the registration of the shares.

The Company has agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

Annex B

CNS RESPONSE, INC.

Selling Securityholder Notice and Questionnaire

The undersigned beneficial owner of common stock (the "Registrable Securities") of CNS Response, Inc., a Delaware corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") the Registration Statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling securityholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Securityholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Securityholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by the questionnaire):

_____

2. Address for Notices to Selling Securityholder:

Telephone:
Fax:
Contact Person:

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company.

Yes ☐ No ☐

Note: If no, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you bought the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If no, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Subscription Agreement.

(a) Type and Amount of other securities beneficially owned by the Selling Securityholder:

_____

_____

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

_____

_____

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: _____ Beneficial Owner: _____

By: _____

Name:
Title:

PLEASE FAX A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:

CNS Response, Inc.
2755 Bristol St., Suite 285
Costa Mesa, CA 92626
Attention: George Carpenter

AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

This Amendment to Registration Rights Agreement (the "***Amendment***") is entered into on October 23, 2009 by and among CNS Response, Inc., a Delaware corporation (the "***Company***") and the purchasers signatory hereto (each such purchaser is a "***Purchaser***" and collectively, the "***Purchasers***"). Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Registration Rights Agreement.

WHEREAS, on August 26, 2009, the Company entered into that certain Registration Rights Agreement with the purchasers signatory thereto, including the Purchasers (the "***Registration Rights Agreement***");

WHEREAS, the Company and Purchasers desire to enter into this Amendment to amend the definition of Filing Date in the Registration Rights Agreement;

WHEREAS, pursuant to Section 6(e) of the Registration Rights Agreement, any amendment to the Registration Rights Agreement requires the consent of Holders holding at least 67% of the then outstanding Registrable Securities; and

WHEREAS, as of the date hereof, the Purchasers, in the aggregate, hold __% of the Registrable Securities.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agree as follows:

1. **Amendment**.

The definition of Filing Date in the Registration Rights Agreement is hereby amended and restated in its entirety to read as follows:

""Filing Date" means no later than the later of (i) ten (10) business days following the Company's filing of its Annual Report on Form 10-K for its year ended September 30, 2009 with the Securities and Exchange Commission; or (ii) the 20th calendar day after termination of the Offering."

2. **No Other Amendments**. Except as amended hereby, the Registration Rights Agreement shall remain in full force and effect and unmodified.

3. **Choice of Law**. This Amendment is governed by and will be interpreted according to the laws of the State of New York, except for any conflicts of law rules. Any dispute or controversy arising out of or related to this Amendment will be resolved in accordance with the terms of the Registration Rights Agreement.

4. **Entire Agreement**. The Registration Rights Agreement, as amended by this Amendment, constitutes the entire agreement between the Company and the Holders as to the subject matter thereof and may not be altered or amended except in accordance with Section 6(e) of the Registration Rights Agreement.

5. **Counterparts**. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date of the Amendment written above.

CNS Response, Inc.

By: _____
George Carpenter, Chief Executive Officer

[SIGNATURE PAGE OF PURCHASERS]

Name of Holder: _____
Signature of Authorized Holder: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "***Agreement***") is made as of this ___ day of ____, 200__, by and between CNS Response, Inc., a Delaware corporation (the "***Company***"), and _____, an individual ("***Indemnitee***").

RECITALS

A. The Company and Indemnitee recognize the substantial increase in corporate litigation in general, subjecting directors, officers, employees, and agents to expensive litigation risk at the same time that the availability and coverage of liability insurance has been severely limited.

B. Indemnitee does not regard the current protection available as adequate under the present circumstances, and Indemnitee and other directors, officers, employers and agents of the Company may not be willing to continue to serve as directors, officers, employees and agents without additional protection.

C. The Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve as directors, officers, employees and agents of the Company and to indemnify its directors, officers, employees and agents so as to provide them with the maximum protection permitted by law.

AGREEMENT

The Company and Indemnitee hereby agree as follows:

1. **Agreement to Serve**. Indemnitee agrees to serve and/or continue to serve the Company, at the Company's will (or under separate written agreement approved by the Board of Directors of the Company (the "***Board***"), if such agreement exists), in the capacity Indemnitee currently serves the Company, as long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws of the Company or any subsidiary of the Company or (subject to any employment agreement between Indemnitee and the Company) until such time as Indemnitee, in his or her sole discretion, tenders a written resignation or is removed in accordance with the Bylaws; provided, however, that nothing contained in this Agreement is intended to or shall create any right (express or implied) to continued employment by Indemnitee.

2. **Indemnification**.

(a) **Third Party Proceedings**. The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason in whole or in part of: (i) the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, (ii) any action or inaction on the part of Indemnitee while a director, officer, employee or agent of the Company, or any subsidiary of the Company, or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including, without limitation, attorneys' fees, disbursements and retainers, accounting and witness fees, travel and deposition costs, and expenses of investigations), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company which approval shall not be unreasonably withheld) and other amounts actually incurred by Indemnitee in connection with such action, suit or proceeding to the fullest extent permissible under Delaware Law as currently in effect and as may be expanded in the future. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that indemnification is unavailable under this Agreement.

(b) **Proceedings by or in the Right of the Company**. The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Company or any subsidiary of the Company arising in whole or in part out of (i) the fact that Indemnitee is or was a director, officer, employee or agent of the Company or any subsidiary of the Company, (ii) any action or inaction on the part of Indemnitee while a director, officer, employee or agent of the Company or any subsidiary of the Company, or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including, without limitation, attorneys' fees, disbursements and retainers, accounting and witness fees, travel and deposition costs, and expenses of investigations) and amounts paid in settlement, in each case to the extent actually incurred by Indemnitee in connection with such action, suit or proceeding, to the fullest extent permissible under Delaware Law as currently in effect and as may be expanded in the future. For purposes of this Section 2(b), indemnification shall include, to the extent not prohibited by law, indemnification against all judgments, fines and amounts paid in settlement actually incurred by Indemnitee in connection with such action, suit or proceeding.

(c) **Mandatory Payment of Expenses**. Notwithstanding any limitations or conditions upon the Company's indemnification obligations set forth in Sections 2(a) and (b) above, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 2(a) or (b) or in defense of any claim, issue or matter therein, Indemnitee shall be indemnified against expenses (including, without limitation, attorneys' fees, disbursements and retainers, accounting and witness fees, travel and deposition costs, and expenses of investigations) actually incurred by Indemnitee in connection therewith.

(d) **Indemnification for Serving as a Witness.** Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's status as a director, officer, employee or agent of the Company or any subsidiary of the Company, a witness in any action, suit or proceeding, whether civil, criminal, administrative or investigative, Indemnitee shall be indemnified against expenses actually incurred by Indemnitee in connection therewith.

3. **Expenses; Indemnification Procedure**.

(a) **Advancement of Expenses**. The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil, criminal, administrative or investigative action, suit or proceeding referenced in Sections 2(a) or (b) hereof. Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby. The advances to be made hereunder shall be paid by the Company to Indemnitee within 30 days following delivery of a written request therefor by Indemnitee to the Company.

(b) **Notice/Cooperation by Indemnitee**. Indemnitee shall, as a condition precedent to his or her right to be indemnified under this Agreement, give the Company notice, in accordance with Section 15 hereof, of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the Chief Executive Officer of the Company at the principal executive offices of the Company. In addition, Indemnitee shall give the Company, at the Company's expense, such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) **Procedure**. Any indemnification and advances provided for in Section 2 and this Section 3 shall be made no later than 30 days after receipt of the written request of Indemnitee. If a claim under this Agreement is not paid in full by the Company within 30 days after a written request for payment therefor has first been received by the Company, Indemnitee may, but need not, at any time thereafter bring an action against the Company to recover the unpaid amount of the claim and, subject to Section 14 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnitee, but the burden of proving such defense shall be on the Company and Indemnitee shall be entitled to receive interim payments of expenses pursuant to Section 3(a) unless and until such defense is finally adjudicated by court order or judgment from which no further right of appeal exists. It is the intention of the parties that if the Company contests Indemnitee's right to indemnification under this Agreement or applicable law, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its officers, its Board, any committee or subgroup of its Board, independent legal counsel, or its stockholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by this Agreement or by applicable law, nor an actual determination by the Company (including its officers, its Board, any committee or subgroup of its Board, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has not met the applicable standard of conduct.

(d) **Notice to Insurers**. If, at the time of the receipt of a notice of a claim pursuant to Section 3(b) hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) **Selection of Counsel**. In the event the Company shall be obligated under Section 3(a) hereof to pay the expenses of any proceedings against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, upon the delivery to Indemnitee of written notice of its election so to do, provided, however, that (i) the Company shall have no right to assume the defense of any claim, action or other matter which seeks, in whole or in part, any remedy other than monetary damages (e.g., injunction, specific performance, criminal sanctions) or which could, if Indemnitee were not to prevail therein, materially damage Indemnitee's personal or business reputation, and (ii) the Company shall have no right to assume the defense of any claim, action or other matter unless the Company first agrees fully and unconditionally, in writing, that the Company is obligated to indemnify Indemnitee in full with respect thereto, and waives any and all defenses, counterclaims or set-offs which might otherwise be asserted in limitation or mitigation of such indemnification obligation. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that (i) Indemnitee shall have the right to employ separate counsel in any such proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company.

4. **Additional Indemnification Rights; Nonexclusivity**.

(a) **Scope**. Notwithstanding any other provision of this Agreement, in the event of any change in any applicable law, statute or rule which narrows the right of the Company to indemnify Indemnitee, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) **Nonexclusivity**. The indemnification rights provided to Indemnitee by this Agreement shall be in addition to, and not in lieu of, any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its Bylaws, any agreement, any vote of stockholders or disinterested directors, applicable law or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee with respect to (i) any action taken or not taken while serving in an indemnified capacity and (ii) any claim, action or other matter arising out of or relating to the period prior to the date upon which Indemnitee ceased to serve in an indemnified capacity, even though he may have ceased to serve in such capacity at the time of any action, suit or other covered proceeding.

5 . **Partial Indemnification**. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually incurred by him in the investigation, defense, appeal or settlement of any civil or criminal action, suit or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

6 . **Mutual Acknowledgment**. Both the Company and Indemnitee acknowledge that in certain instances, federal or state law or regulation may prohibit the Company from indemnifying Indemnitee under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under law to indemnify Indemnitee. The Company agrees to assert vigorously, in any such action pertaining to the Company's right to indemnify Indemnitee, the position that the Company has the full and unfettered right to so indemnify Indemnitee, and further agrees that Indemnitee may, at any time and in Indemnitee's sole discretion, assume control of the Company's defense of such right (including without limitation selection of counsel and determination of strategy), with such defense nonetheless being conducted at the Company's expense.

7 . **Liability Insurance**. The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the directors, officers, employees and agents of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all such policies of liability insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's employees, if Indemnitee is not a director or officer but is an employee; or of the Company's agents, if Indemnitee is not a director, officer or employee but is an agent. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Company.

8 . **Severability**. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to law, regulation or court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 8. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this entire Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

9. **Exceptions**. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Claims Initiated by Indemnitee**. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or otherwise but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board has approved the initiation or bringing of such suit;

(b) **Frivolous Proceedings**. To indemnify Indemnitee for any expenses incurred by Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceedings were frivolous;

(c) **Insured Claims**. To make any payment in connection with any claim made against Indemnitee to the extent Indemnitee has otherwise received payment (under any insurance policy, the Certificate of Incorporation or Bylaws of the Company, contract or otherwise) of the amounts otherwise indemnifiable hereunder. If the Company makes any indemnification payment to Indemnitee in connection with any particular expense indemnified hereunder and Indemnitee has already received or thereafter receives, and is entitled to retain, duplicate payments in reimbursement of the same particular expense, then Indemnitee shall reimburse the Company in an amount equal to the lesser of (i) the amount of such duplicate payment and (ii) the full amount of such indemnification payment made by the Company;

(d) **Claims Under Section 16(b)**. To indemnify Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute;

(e) **Unlawful Claims**. To indemnify Indemnitee in any manner which a court of competent jurisdiction has finally determined to be unlawful;

(f) **Failure to Settle Proceeding**. In the event that Indemnitee Fails to Pursue a Recommended Settlement of a Qualifying Claim, to indemnify Indemnitee (i) for amounts paid or payable in settlement of such Qualifying Claim in excess of the amount of such Recommended Settlement thereof, or (ii) for any cost and/or expenses directly related to such Qualifying Claim incurred by Indemnitee following the date upon which Indemnitee Fails To Pursue such Recommended Settlement. For purposes of this clause, "***Qualifying Claim***" shall mean any claim the defense of which may be assumed by the Company under Section 3(e) above (i.e., any claim that (A) is not described in the first clause (i) of said Section 3(e) and (B) with respect to which the Company has acknowledged its unconditional duty to indemnify as described in first clause (ii) of said Section 3(e)), "***Recommended Settlement***" shall mean a reasonable written settlement proposal, in full and final executable form in all material respects, and "***Fails To Pursue***" shall mean either (i) Indemnitee's failure to communicate a Recommended Settlement to the principal adverse party in the subject matter within 30 days after Indemnitee' receipt thereof from the Company, or (ii) Indemnitee's failure to agree to any Recommended Settlement that has been accepted by all adverse parties in the subject matter within 30 days after receipt thereof, provided the Company has (A) irrevocably deposited all funds necessary to satisfy all of Indemnitee's obligations under such Recommended Settlement in an account subject to Indemnitee's or a third party's control and (B) irrevocably taken all actions and given all instructions necessary or appropriate to permit such funds to be applied in satisfaction of such obligations of Indemnitee.

(g) **Breach of Employment Agreement**. To indemnify Indemnitee for any breach by Indemnitee of any employment agreement between Indemnitee and the Company or any of its subsidiaries.

10. **Legal Fees**. The Company agrees to pay or reimburse Indemnitee for Indemnitee's legal fees and costs incurred in connection with the preparation and negotiation of this Agreement.

11. **Construction of Certain Phrases**.

For purposes of this Agreement, references to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees and/or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company or any subsidiary of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries.

12. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

13. **Successors and Assigns**. This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns.

14. **Attorneys' Fees**. In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were frivolous.

15. **Notice**. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked if addressed as provided for on the signature page of this Agreement, unless sooner received, or as subsequently modified by written notice.

16. **Consent to Jurisdiction**. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of California for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of California, or in federal courts located in such State.

17. **Choice of Law**. This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of Delaware.

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

CNS Response, Inc.
a Delaware corporation, as the Company

By: _____
Name:
Title:

Notice Address:

_____

_____

AGREED TO AND ACCEPTED:

INDEMNITEE:

_____
(Signature)

_____
(Print Name)

Notice Address:

_____

_____

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders
of CNS Response, Inc.

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (File No. 333-150398) of our report, dated December 29, 2009, relating to our audits of the consolidated financial statements which appear in this Annual Report on Form 10-K of CNS Response, Inc. for the year ended September 30, 2009.

/s/ Cacciamatta Accountancy Corporation

Cacciamatta Accountancy Corporation

Santa Ana, California

December 29, 2009

Exhibit 31.1

CERTIFICATION OF CEO PURSUANT TO
SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, George Carpenter, certify that:

1. I have reviewed this annual report on Form 10-K of CNS Response, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 29, 2009

/s/ George Carpenter
George Carpenter
Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, George Carpenter, certify that:

1. I have reviewed this annual report on Form 10-K of CNS Response, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 29, 2009

/s/ George Carpenter
George Carpenter
Principal Financial Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in connection with the filing of the Annual Report on Form 10-K for the year ended September 30, 2009 (the "Report") by CNS Response, Inc. (the "Registrant"), the undersigned hereby certifies that:

1. the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: December 29, 2009

/s/ George Carpenter
George Carpenter
Chief Executive Officer (Principal Executive and Financial Officer)

A signed original of this written statement required by Section 906 has been provided to CNS Response, Inc. and will be retained by CNS Response, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.