

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

AMENDMENT NO. 1 TO FORM S-1  
REGISTRATION STATEMENT  
UNDER THE  
SECURITIES ACT OF 1933

**CNS RESPONSE, INC.**  
(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**8734**  
(Primary Standard Industrial  
Classification Code Number)

**87-0419387**  
(I.R.S Employer  
Identification No.)

**85 Enterprise, Suite 410**  
**Aliso Viejo, CA 92656**  
**(714) 545-3288**  
(Address, including Zip Code, and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)

**George Carpenter, Chief Executive Officer**  
**CNS Response, Inc.**

**85 Enterprise, Suite 410**  
**Aliso Viejo, CA 92656**  
**(714) 545-3288**

Copy to:

**Scott Alderton, Esq.**  
**Stubbs Alderton & Markiles, LLP**  
**15260 Ventura Boulevard, 20<sup>th</sup> Floor**  
**Sherman Oaks, California 91403**  
**(818) 444-4500**

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

Approximate date of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If any securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

Smaller Reporting Company

(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Offering Price Per Unit (2)	Proposed Maximum Aggregate Offering Price (2)	Amount Of Registration Fee (3)
Common stock, par value \$0.001 per share (3)	2,875,385	\$ 0.95	\$ 2,731,615.75	\$ 194.76
<b>TOTAL</b>	<b>2,875,385</b>		<b>\$ 2,731,615.75</b>	<b>\$ 194.76</b>

- (1) In the event of a stock split, stock dividend, or other similar transaction involving the Registrant's common stock, in order to prevent dilution, the number of shares registered shall automatically be increased to cover the additional shares in accordance with Rule 416(a) under the Securities Act.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, using the average of the high and low price as reported on the Over-the-Counter Bulletin Board on July 1, 2010.
- (3) CNS Response, Inc. paid an aggregate filing fee in the amount of \$2,421.71 with respect to 44,595,438 shares of common stock and 20,722,098 shares of common stock issuable upon exercise of warrants with the initial filing of this registration statement on Form S-1 (Reg. No 333-164613). This Amendment No. 1 to Form S-1 Registration Statement increases the number of shares of common stock being registered by 2,875,385 shares and reduces the number of shares of common stock issuable upon exercise of warrants that are being registered by 2,313,083. The initial filing fee paid in the amount of \$2,421.71 is being carried forward into this Amendment No. 1 to Form S-1 Registration Statement, and an additional \$194.76 is being paid herewith.

REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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Subject to Completion, Dated July 2, 2010

**CNS RESPONSE, INC.**

**65,879,838 Shares Common Stock**

This prospectus relates to the offer and sale from time to time of up to 65,879,838 shares of our common stock that are held by the stockholders named in the "Selling Stockholders" section of this prospectus. The prices at which the selling stockholders may sell the shares in this offering will be determined by the prevailing market price for the shares or in negotiated transactions. We will not receive any of the proceeds from the sale of the shares. We will bear all expenses of registration incurred in connection with this offering. The selling stockholders whose shares are being registered will bear all selling and other expenses.

Our common stock is quoted on the Over-The-Counter Bulletin Board under the symbol "CNSO.OB." On July 1, 2010, the last reported sales price of the common stock on the Over-The-Counter Bulletin Board was \$0.95 per share.

**Investing in our common stock involves risks. See "Risk Factors" beginning on page 5.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_

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You should rely only on the information contained in this prospectus or any supplement. We have not authorized anyone to provide information that is different from that contained in this prospectus. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.

Except as otherwise indicated, information in this prospectus reflects a one-for-fifty reverse stock split of our common stock which took effect on January 10, 2007.

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## PROSPECTUS SUMMARY

*This summary highlights selected information contained in greater detail elsewhere in this prospectus. This summary does not contain all the information you should consider before investing in our common stock. You should read the entire prospectus carefully before making an investment decision, including "Risk Factors" and the consolidated financial statements and the related notes. References in this prospectus to "CNS Response, Inc.," the "company," "we," "our" and "us" refer to CNS Response, Inc. and our consolidated subsidiaries.*

### Our History

CNS Response, Inc. was incorporated in Delaware on March 16, 1987, under the name Age Research, 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 March 7, 2007, we acquired CNS Response, Inc., a California corporation ("CNS California") through a merger of CNS California with a wholly-owned subsidiary that we formed for the purpose of facilitating this transaction. Upon the closing of this merger transaction, CNS California became our wholly-owned subsidiary, and we changed our name from Strativation, Inc. to CNS Response, Inc.

### Our Business

#### 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 our wholly-owned subsidiary, Neuro-Therapy Clinic, Inc. ("NTC"), is a full service psychiatric clinic. The address of our principal executive office is 85 Enterprise, Suite 410, Aliso Viejo, CA 92656, and our telephone number is (714) 545-3288.

#### 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 electroencephalographic ("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<sup>®</sup> ("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.

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Our business is focused on increasing the demand for our rEEG services. We believe the key factors that will drive broader adoption of our rEEG services will be acceptance by healthcare providers of their 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 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 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 our rEEG technology.

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

### **Financial Information**

Since our inception, we have generated significant net losses. As of September 30, 2009, we had an accumulated deficit of \$25.2 million and as of March 31, 2010 we had an accumulated deficit of \$ 28.4 million. We incurred net losses of \$8.5 million and \$5.4 million for the fiscal years ended September 30, 2009 and 2008, respectively and we incurred net losses of \$1.4 million and \$3.3 million for the three and six month periods ending March 31, 2010, respectively. We have not yet achieved profitability and anticipate that we will continue to incur net losses for the next few 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 with Leonard Brandt, our former Chief Executive Officer and a former director of the company. 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. 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. As of March 31, 2010, we had approximately \$0.68 million in cash and cash equivalents and a working capital deficit of approximately \$0.98 million compared to approximately \$0.56 million in cash and cash equivalents and a working capital deficit of approximately \$1.66 million at March 31, 2009. On June 3, 2010, we raised \$250,000 from the sale of a secured promissory note to John Pappajohn, a member of our Board of Directors.

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As of March 31, 2010, our current liabilities of approximately \$1.86 million exceeded our current assets of approximately \$0.87 million by approximately \$0.98 million. Our continued operating losses and limited capital raise substantial doubt about our ability to continue as a going concern. We need additional funds immediately to continue our operations and will need substantial additional funds before we can increase demand for our rEEG services. We are currently exploring additional sources of capital; however, 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 equity funding may result in significant dilution to existing stockholders, and, if we incur additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. If adequate funds are not available, it would have a material adverse effect on our business, financial condition and/or results of operations, and could ultimately cause us to have to cease operations.

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### The Offering

Common stock offered	Up 65,879,838 shares by the selling stockholders
Common stock outstanding before this offering	56,023,921
Common stock to be outstanding after this offering	Up to 74,432,936 shares
Use of proceeds	We will not receive any of the proceeds from the sale of shares of our common stock by the selling stockholders. See "Use of Proceeds."
Over-the-Counter Bulletin Board symbol	CNSO.OB
Risk Factors	See "Risk Factors" beginning on page 5 for a discussion of factors that you should consider carefully before deciding to purchase our common stock.

In the table above, the number of shares to be outstanding after this offering is based on 56,023,921 shares outstanding as of June 22, 2010, and assumes the issuance to the selling stockholders of the following additional shares which are being offered for sale under the prospectus:

- 18,409,015 shares issuable upon the exercise of outstanding warrants at a weighted average exercise price of \$0.59 per share.

In the table above, the number of shares to be outstanding after this offering does not reflect the issuance of the following shares, which are not being offered for sale under this prospectus:

- 15,759,711 shares of common stock reserved for issuance upon exercise of warrants and options, as of June 22, 2010.



## RISK FACTORS

*Investing in CNS Response, Inc. involves a high degree of risk. You should carefully consider the following risk factors and all other information contained in this prospectus 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 your investment.*

### Risks Related to Our Company

**We need immediate additional funding to support our operations and capital expenditures, which may not be available to us and which lack of availability could have a material adverse effect on 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. Our continued operating losses and limited capital raise substantial doubt about our ability to continue as a going concern. Until we can generate a sufficient amount of revenues to finance our operations and capital expenditures, we have to finance our cash needs primarily through public or private equity offerings, debt financings, borrowings or strategic collaborations. As of March 31, 2010, we had approximately \$0.68 million in cash and cash equivalents at hand, which balance has declined since then, despite our raising \$250,000 through the sale of a promissory note in June. We need additional funds immediately to continue our operations and will need substantial additional funds before we can increase demand for our rEEG services. We are currently exploring additional sources of capital; however, 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 equity funding may result in significant dilution to existing stockholders, and, if we incur additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. If adequate funds are not available, it would have a material adverse effect on our business, financial condition and/or results of operations, and could ultimately cause us to have to cease operations.

**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 March 31, 2010, our accumulated deficit was approximately \$28.4 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.

**If our rEEG reports do not gain widespread market acceptance, our stock price may be negatively impacted.**

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 and 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 hire 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, which could also negatively impact our stock price.

**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 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.

**Regulations are constantly changing, and in the future our business may be subject to additional regulations that increase our compliance costs.**

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. 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. In the event that federal, state, and foreign laws and regulations change, we may need to incur additional costs to seek government approvals in order to sell our rEEG Reports, in addition to our 510(k) clearance which we are currently pursuing (please see page 27 under the heading "Correspondence with FDA and Decision to Seek 510(k) Clearance" for further information). 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.

**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. This litigation took place in the Delaware Chancery Court, the Delaware Supreme Court and continues in the United States District Court for the Central District of California. We have expended substantial resources in connection with this litigation.

As further described in this prospectus in the “Business” section under the heading “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, which were subsequently affirmed by the Delaware Supreme Court.

The litigation in the United States District Court for the Central District of California continues. We filed suit in July, 2009 against Mr. Brandt for violating the securities laws. Mr. Brandt has filed counterclaims in that action alleging violation of the securities laws. We are prosecuting our claims and vigorously defending Mr. Brandt’s counterclaims, which we believe to be without merit. The California securities litigation is compelling the Company to expend additional resources.

We do not know whether Mr. Brandt may institute new claims against us, and the defense of any such claims could involve the expenditure of additional resources by the Company. If the litigation continues it could make it more difficult for us to raise any additional funds needed to finance our corporate and working capital needs.

**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 and is operated by our wholly-owned subsidiary, NTC. 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.

**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 tradeshow. 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 or at all. 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.

**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.

**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 choose to stop a clinical trial and/or development of a product.

**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 important 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 CNS 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 and officers 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, as well as indemnification agreements we have entered into with our directors, officers and certain other individuals, provide for indemnification of such persons under certain circumstances. In the event we are required to indemnify any of our directors or any other person, our financial strength may be harmed, which may in turn lower our stock price.

**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.



**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.

#### **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, in addition to the 510(k) clearance we are now seeking. 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. As long as this condition continues, the sale of a significant number of shares of Common Stock at any particular time could be difficult to achieve at the market prices prevailing immediately before such shares are offered. 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. 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.

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

The sale of shares of our common stock which are registered for resale on this prospectus or other shares eligible for resale pursuant to Rule 144 of the Securities Act of 1933, as amended, or otherwise, 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 or public offering 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. Our stockholders may therefore 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 44% 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 44% 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.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, 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.



## USE OF PROCEEDS

We will not receive any proceeds from the sale of shares to be offered by the selling stockholders. The proceeds from the sale of each selling stockholder's common stock will belong to that selling stockholder.

## MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

### 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.

	<u>High</u>	<u>Low</u>
<b>Year Ended September 30, 2008</b>		
First Quarter	\$ 0.90	\$ 0.75
Second Quarter	\$ 2.25	\$ 0.75
Third Quarter	\$ 3.00	\$ 0.55
Fourth Quarter	\$ 0.75	\$ 0.51
<b>Year Ended September 30, 2009</b>		
First Quarter	\$ 1.01	\$ 0.10
Second Quarter	\$ 0.90	\$ 0.05
Third Quarter	\$ 0.69	\$ 0.15
Fourth Quarter	\$ 0.72	\$ 0.20
<b>Year Ended September 30, 2010</b>		
First Quarter	\$ 1.20	\$ 0.50
Second Quarter	\$ 1.20	\$ 0.52

On July 1, 2010, the closing sales price of our common stock as reported on the OTC Bulletin Board was \$0.95 per share. As of June 22, 2010, there were 376 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.

### Dividends

We have not paid or declared cash distributions or dividends on our common stock. CNS California has never paid dividends on its common stock. 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.

## 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 elsewhere in this prospectus. 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, and for the three and six months ended March 31, 2010 and March 31, 2009. 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.*

### 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 in determining a proper treatment for patients with behavioral (psychiatric and/or addictive) disorders. Our Clinical Services business operated by our wholly-owned subsidiary, 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 electroencephalographic ("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<sup>®</sup> ("rEEG<sup>®</sup>"), 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 our rEEG services 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 then 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 six 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 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 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 Laboratory Information 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 net losses of \$8.5 million and \$5.4 million for the fiscal years ended September 30, 2009 and 2008, respectively. As of March 31, 2010, we had an accumulated deficit of \$28.4 million. We incurred net losses of \$3.25 million and \$2.89 million for the six months ended March 31, 2010 and 2009, 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 types of behavioral disorders, the enhancement of the CNS Database and, to a lesser extent, the identification of new medications that are often combinations of approved drugs. We anticipate that future research and development projects will be funded by grants or third-party sponsorship.

As of March 31, 2010, our current liabilities of approximately \$1.86 million exceeded our current assets of approximately \$0.87 million by approximately \$0.98 million and our net losses will continue for the foreseeable future. We will need substantial additional funds immediately to continue our operations and substantial additional funds before we can increase demand for our rEEG services. We are currently exploring additional sources of capital; however, 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 equity funding may result in significant dilution to existing stockholders, and, if we incur additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. If adequate funds are not available, we may be required to delay or curtail significantly our development and commercialization activities. This would have a material adverse effect on our business, financial condition and/or results of operations, and could ultimately cause us to have to cease operations.

### 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	<u>309,600</u>
Allocated to net tangible liabilities, including cash of \$32,100	(10,600)
Allocated to goodwill	<u>\$ 320,200</u>

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

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 in Note 2 to the unaudited condensed consolidated financial statements, certain promissory notes then outstanding were converted into shares of common stock and we issued warrants to the investors in connection with these 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 24 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 this second closing of our private placement.

On December 31, 2009, we had a third closing of our private placement in which we received additional gross proceeds of approximately \$432,000 from five investors. At the third closing, we sold 8 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 \$380,200 in connection with this third closing of our private placement.

On January 4, 2010, we completed our fourth and final closing of our private placement, resulting in additional gross proceeds to us of \$108,000 from two investors. At this fourth closing, we sold 2 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 \$95,000 in connection with this final closing of our private placement.

Prior to our private placement, we raised aggregate proceeds of \$1,700,000 in fiscal year 2009 through the issuance of secured convertible promissory notes on each of March 30, May 14, and June 12, 2009. 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 in Note 2 of the unaudited condensed consolidated financial statements included elsewhere in this prospectus.

## **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 and 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. 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.

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 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 information owed to him. Finally, the Court dismissed our claims against Mr. Brandt without prejudice.

On January 4, 2010, Mr. Brandt filed an appeal with the Supreme Court of the State of Delaware from the Chancery Court's ruling in the Section 225 action. Mr. Brandt also appealed the denial of his requested injunction and the dismissal of his claims regarding the financings and stock issuances, but he dismissed this appeal on February 25, 2010, and that ruling thereby became final and un-appealable. On April 20, 2010 the Delaware Supreme Court Summarily affirmed the ruling of the Chancery Court dismissing the Section 225 action.

On September 29, 2009, the company held its first 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 directors. On April 27, 2010, the company held its 2010 annual meeting of Stockholders and five of the six directors were reelected. The sixth, Tommy Thompson, had resigned from the board.

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. On December 14, 2009, the Company answered the counterclaims in the case. On March 10, 2010, we dismissed the Company's claims against the defendants other than Mr. Brandt, and these defendants dismissed their claims against us and the other counterclaim defendants. On April 10, 2010 Mr. Brandt's attorneys moved to withdraw from representing Mr. Brandt in the case. On May 17, 2010, Mr. Brandt's attorneys were permitted to withdraw. To the Company's knowledge, Mr. Brandt has been without counsel since. The District Court action continues with respect to our claims against Mr. Brandt and Mr. Brandt's counterclaims against us and the other counterclaim defendants. We are vigorously prosecuting our claims and vigorously defending Mr. Brandt's counterclaims.

We have expended substantial resources to pursue the defense of these legal proceedings initiated by Mr. Brandt. Although the ruling by the Delaware Chancery Court appeared to be definitive, we were required to expend additional resources as a result of the appeals to the Delaware Supreme Court filed by Brandt. We also do not know whether Mr. Brandt will institute new claims against us and 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 outcomes for patients with treatment resistant depression. In this study, our rEEG technology proved effective at predicting medication response for mostly treatment-resistant patients approximately 65 percent of the time.

The study included 114 patients at 12 medical sites, 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, single 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.

A paper with the results of this study has been peer reviewed and has been submitted for publication in the Journal of Psychiatric Research.

## **Correspondence with FDA and Decision to Seek 510(k) Clearance**

Since April of 2008, we have been in a dialogue with the FDA regarding whether rEEG constitutes a medical device which is subject to regulation by the FDA. On April 10, 2008 we received correspondence 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 510(k) clearance by the FDA pursuant to the Federal Food, Drug and Cosmetic Act (the “Act”). We do not believe that sales of our Laboratory Information Services, including our rEEG Reports, are subject to regulatory pre-market approval or 510(k) clearance. We responded to the FDA on April 24, 2008 indicating that we believed it had incorrectly understood our product offering, and clarified that our Laboratory Information Services are not diagnostic and thus do 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, we received a response from the FDA indicating that it still believes rEEG constitutes a “medical device” under the Act. Although we continue to believe that the FDA is in error over whether our Laboratory Information Services constitute a device and over whether the FDA has jurisdiction over such Laboratory Information Services, on April 1, 2010 we filed an application to obtain 510(k) clearance for our rEEG service. We believe that 510(k) clearance will provide us with increased commercial acceptance of our service. To date, we have spent an aggregate of \$64,100 for consulting and \$56,900 for legal services to prepare and file our 510(k) application and at this time, we do not anticipate that the communications received from the FDA, or our decision to seek 510(k) clearance, will have a material adverse effect on our liquidity, capital resources and results of operations. We anticipate that obtaining 510(k) clearance will take from three to six months based on similar application filings with the FDA.

Since submitting our 510(k) application on April 1, 2010 we have been in routine communication with the FDA and are responding to their comments as we proceed through the review process.

## **2010 Annual Meeting**

On April 27, 2010, the Company held its 2010 annual meeting of stockholders and five of the six directors originally elected in September 2009 were reelected; the sixth, Tommy Thompson, had previously resigned from the board. In addition, the 2006 Stock Incentive Plan was amended to increase the number of shares reserved for issuance under the plan from 10 million to 20 million shares of common stock and to increase the maximum number of shares of common stock subject to awards granted within a calendar year to any eligible employee or director from 3 million to 4 million shares.

## **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 a 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 prospectus. 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.

	<b>Year Ended September 30, 2009</b>	<b>Year Ended September 30, 2008</b>
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)	(1,217)%	(695)%

## Revenues

	<u>Year Ended September 30, 2009</u>	<u>Year Ended September 30, 2008</u>	<u>Percent Change</u>
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 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 and see our Laboratory Services Revenues increase once the results of our clinical trial are published and we have been granted 510(k) clearance by the FDA.

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

	<u>Year Ended September 30, 2009</u>	<u>Year Ended September 30, 2008</u>	<u>Percent Change</u>
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

	<u>Year Ended September 30, 2009</u>	<u>Year Ended September 30, 2008</u>	<u>Percent Change</u>
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 Company is applying for grants which, if obtained, will help the Company accelerate its research and development efforts, and improve the functionality of its CNS Database.

### *Sales and marketing*

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

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 have reduced our sales and marketing expenditure for Laboratory Information Services pending receipt of our 510(k) clearance from the FDA, after which we plan to increase our Direct-to-Consumer marketing. Furthermore, with the successful completion of our clinical trial and publication of the results, we plan to introduce our rEEG technology to additional psychiatric providers and medical insurance payers later in fiscal 2010 and in 2011, which will increase our sales and marketing expenditures.

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.

**General and administrative**

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

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

\* 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 and \$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*

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

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.

**Results of Operations for the three months ended March 31, 2010 and 2009**

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

	<u>Three Months Ended March 31,</u>	
	<u>2010</u>	<u>2009</u>
Revenues	100%	100%
Cost of revenues	22	19
Gross profit	78	81
Research and development	179	284
Sales and marketing	114	154
General and administrative expenses	566	434
Operating loss	(781)	(792)
Other income (expense), net	(1)	(3)
Net income (loss)	(782)%	(795)%

## Revenues

	Three Months Ended March 31,		Percent Change
	2010	2009	
Laboratory Information Service Revenues	\$ 34,400	\$ 31,200	10%
Clinical Services Revenues	143,900	152,600	6%
Total Revenues	\$ 178,300	\$ 183,800	(3)%

With respect to our Laboratory Information Services business, the number of non-clinical study related paid rEEG Reports delivered increased from 79 for the quarter ended March 31, 2009 to 89 for the quarter ended March 31, 2010, while the average price per report decreased from approximately \$394 for the quarter ended March 31, 2009 to \$387 for the quarter ended March 31, 2010 (clinical study, training, database-enhancing and compassionate-use rEEG reports are provided free of charge). We do not expect to drive broader adoption of reports based on our rEEG technology until the Company obtains FDA 510(k) clearance and the results of our multi-site clinical study to validate the efficacy of our products is published. Accordingly, we anticipate that Laboratory Services Revenues will not increase substantially in the current fiscal year.

Our Clinical Services revenue declined by \$8,700 for the quarter ended March 31, 2010, as compared to the corresponding prior year period, because of a reduction in the volume of patients treated as a result of a reduction in the number of psychiatrists on staff. We have recruited a new psychiatrist who will start working with our Clinical Services in the fourth quarter, at which time patient volume should start increasing. Currently, we do not plan to materially expand our Clinical Services business, and therefore we do not anticipate a significant increase in revenues generated by this business segment beyond being a self sustaining, stand-alone clinic.

## Cost of Revenues

	Three Months Ended March 31,		Percent Change
	2010	2009	
Cost of Laboratory Information Services revenues	\$ 39,400	\$ 35,600	11%

Cost of Laboratory Information Services revenues consists of payroll costs, consulting costs, and other miscellaneous charges. 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 quarter ended March 31, 2010, cost of revenues consisted primarily of direct labor and benefit costs (including stock-based compensation costs) of \$25,700, and consulting fees of \$12,600. For the quarter ended March 31, 2009, cost of revenues included direct labor and benefit costs (including stock based compensation costs) of \$24,500, and consulting fees of \$9,600. Direct labor and benefits remained consistent for the two periods. Consulting fees increased in 2010 due to the higher number of rEEG Reports delivered. We ultimately expect cost of revenues to decrease as a percentage of revenues as operating efficiencies improve with the volume of reports processed.

*Research and Development*

	Three Months Ended March 31,		Percent Change
	2010	2009	
Laboratory Information Services research and development	\$ 318,700	\$ 521,800	(39)%

Research and development expenses consist of clinical studies, projects for training doctors associated with our research studies, consulting fees, payroll costs (including stock-based compensation costs), expenses related to database enhancements and maintenance, and other miscellaneous costs. Research and development costs for the quarter ended March 31, 2010, primarily consisted of the following: payroll and benefit costs (including stock based compensation) of \$207,400, consultant costs of \$96,800 and other miscellaneous costs of \$14,400. For the comparable period for 2009, research and development costs included: payroll and benefit costs (including stock based compensation) of \$196,600, consultant costs of \$6,300 and other miscellaneous costs of \$15,000. Additionally, as the clinical study was in progress for the 2009 quarter, clinical study costs were \$214,000 and patient marketing and recruitment costs were \$90,200.

Comparing the three months ended March 31, 2010 with the similar period in 2009, clinical study costs and patient marketing and recruitment costs were eliminated in the 2010 quarter as the study was completed in September 2009. Consequently, the focus of the research and development department moved from the clinical study to the preparation of scientific papers for publications, and the generation of grant applications for research funding. Additionally, the focus moved to the enhancing the rEEG production system and the application for 510(k) clearance with the FDA. As a result of this shift in focus, consulting fees increased by \$90,500, of which \$56,900 was spent on consultants hired to assist the Company with its FDA 510(k) application filed with the FDA on April 1, 2010. An additional \$28,000 was spent on programming consultants to enhance and document the production system; the balance of the increase was the hiring of a technical writer to assist with a research paper. Payroll and benefits increased by \$10,800 in the 2010 quarter primarily due a reassignment of a staff member between departments.

*Sales and marketing*

	Three Months Ended March 31,		Percent Change
	2010	2009	
Sales and Marketing			
Laboratory Information Services	\$ 201,900	\$ 282,300	(28)%
Clinical Services	600	1,400	(57)%
Total Sales and Marketing	\$ 202,500	\$ 283,700	(29)%

Sales and marketing expenses associated with our Laboratory Information Services business consist primarily of payroll and benefit costs, including stock-based compensation; advertising and marketing; consulting fees and conference and travel expenses. Sales and marketing expenses for the quarter ended March 31, 2010 primarily consisted of the following expenses: payroll and benefits \$101,500, advertising and marketing \$24,700, consulting \$27,800 and conferences and travel \$33,100. For the comparable period in 2009 expenses were as follows: payroll and benefits \$148,400, advertising and marketing \$75,600, consulting \$48,500 and conferences and travel \$3,400.



Comparing the three month period ended March 31, 2010 with the similar quarter in 2009, payroll and benefits decreased by \$46,700 in the 2010 quarter as a result a reduction in staff and the reassignment of staff to another department. Advertising and marketing expenses decreased by \$50,900 as advertising was curtailed while the Company awaits its 501(k) clearance and marketing efforts were largely limited to program development, whereas for the 2009 quarter the Company was actively executing its advertising and marketing plans. Conference and travel expense increased by \$30,600 in the 2010 quarter as the Company conducted its first user-group meeting in January 2010.

The Clinical Services sales and marketing expenses consists of advertising to attract patients to the clinic. We anticipate a moderate increase in marketing expenditure to expand our Clinical Services business in the future, which expenditures will be tailored based on the knowledge we have acquired in attracting patients to our clinical trials and further market analysis.

**General and administrative**

	<b>Three Months Ended March 31,</b>		<b>Percent Change</b>
	<b>2010</b>	<b>2009</b>	
General and administrative			
Laboratory Information Services	\$ 818,800	\$ 630,200	30%
Clinical Services	\$ 191,000	168,300	13%
Total General and administrative	<u>\$ 1,009,800</u>	<u>\$ 798,500</u>	26%

General and administrative expenses for our Laboratory Information Services business are largely comprised of payroll and benefit costs, including stock based compensation, legal, patent costs, other professional and consulting fees, general administrative and occupancy costs, conference and travel and miscellaneous costs. For the quarter ended March 31, 2010, General and Administrative costs consisted of salaries and benefit costs of \$224,100; legal fees of \$340,700 and other professional and consulting fees of \$130,100; general administrative and occupancy costs of \$74,600, patent costs \$32,600 and conference and travel costs of \$15,400. Miscellaneous costs were \$1,000 in the 2010 quarter. For the similar period in 2009, General and Administrative costs consisted of the following: salaries and benefit costs of \$216,800; legal fees of \$59,100 and other professional and consulting fees of \$155,600; general administrative and occupancy costs of \$51,700, patent costs of \$32,400 and conference and travel expenses of \$10,100. Miscellaneous costs for the 2009 quarter were \$105,000.

With respect to our Laboratory Information Services business, in the quarter ended March 31, 2010 in comparison to the same period in 2009, payroll and benefit expenses increased by a net \$7,300 due to a change in the staff mix as the Chief Financial Officer (CFO) joined the staff midway through the quarter, an increase in base salary for the CEO and an increase in stock based compensation as a result of the options granted in March 2010. Professional and consulting fees decreased by a \$25,500 largely by hiring the CFO, who had formerly served as a consultant. Legal fees increased by a net \$281,800 which was due to 293,800 being incurred in defending against actions brought by Mr. Brandt (see *Matters Involving our Former Chief Executive Officer and Former Director, Leonard Brandt*). These litigation costs were slightly offset by a reduction of \$12,000 in regular legal fees. General and administrative costs increased by a net \$22,900 due to filing fees, increased computer service costs and costs associated with relocating the office. Patent and conference and travel costs did not substantially change quarter over quarter. Miscellaneous expenses incurred in the 2009 quarter of \$105,000 were as a result of a revised IRS assessment on 2006 payroll taxes and Delaware Franchise Tax assessments for calendar years 2007 and 2008 did not reoccur to the same degree in the 2010 quarter.

General and administrative expenses for our Clinical Services business include all costs associated with operating NTC. This includes payroll costs, medical supplies, occupancy costs and other general and administrative costs. Costs increased in the quarter ended March 31, 2010 by \$22,700 as compared to the prior year quarter. This increase is largely due to clinical services staff who worked on the clinical trial were no longer reimbursed by the Laboratory Information Services for their time spent on the study.

***Interest income (expense)***

	<b>Three Months Ended March 31,</b>		<b>Percent Change</b>
	<b>2010</b>	<b>2009</b>	
Laboratory Information Services (Expense), net	\$ (100)	\$ (4,600)	(98)%
Clinical Services (Expense)	-	(100)	*
<b>Total interest income (expense)</b>	<b>\$ (100)</b>	<b>\$ (4,700)</b>	<b>(98)%</b>

\* *not meaningful*

With respect to our Laboratory Information Services business, we earned interest income of \$1,800 for the quarter ended March 31, 2010 from interest bearing accounts. This was offset by \$1,900 of interest expense on promissory notes. For the comparable period in 2009, net interest income was \$1,200 and interest expense was \$5,800 of interest expense on promissory notes.

***Net Loss***

	<b>Three Months Ended March 31,</b>		<b>Percent Change</b>
	<b>2010</b>	<b>2009</b>	
Laboratory Information Services net loss	\$ (1,340,100)	\$ (1,468,200)	(9)%
Clinical Services net loss	(53,700)	6,900	*
<b>Total Net Loss</b>	<b>\$ (1,393,800)</b>	<b>\$ (1,461,300)</b>	<b>(5)%</b>

\* *not meaningful*

The decrease in net loss of \$67,500 in the three months ended March 31, 2010 compared to the prior year period is due primarily to net decreases in costs within our research and development and sales and marketing departments. These decreases were substantially offset by expenses incurred in defending the lawsuit brought by Mr. Brandt.

## Results of Operations for the six months ended March 31, 2010 and 2009

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

	Six Months Ended March 31,	
	2010	2009
Revenues	100%	100%
Cost of revenues	21	19
Gross profit	79	81
Research and development	168	323
Sales and marketing	125	154
General and administrative expenses	795	416
Operating loss	(1,010)	(812)
Other income (expense), net	(1)	(2)
Net income (loss)	(1,011)%	(814)%

### Revenues

	Six Months Ended March 31,		
	2010	2009	Percent Change
Laboratory Information Service Revenues	\$ 56,800	\$ 59,700	(5)%
Clinical Services Revenues	265,000	295,800	(10)%
Total Revenues	\$ 321,800	\$ 355,500	(9)%

With respect to our Laboratory Information Services business, the number of non-clinical study related paid rEEG Reports delivered for the period decreased from 153 in 2009 to 147 in 2010, while the average price per report decreased from approximately \$390 in 2009 to \$386 in 2010 (clinical study, training, database-enhancing and compassionate-use rEEG reports are provided free of charge). We do not expect to drive broader adoption of reports based on our rEEG technology until the Company obtains FDA 510(k) clearance and the results of our multi-site clinical study to validate the efficacy of our products is published. Accordingly, we anticipate that Laboratory Services Revenues will not increase substantially in the current fiscal year.

Our Clinical Services revenue is as a result of patient billings for psychiatric services rendered. Revenues declined by \$30,800 in the first half of 2010 versus the same period in 2009 because of a reduction in the volume of patients treated as a result of a reduction in the number of psychiatrists on staff. We have recruited a new psychiatrist who will start working with our Clinical Services in the fourth quarter of the current fiscal year, at which time patient volume should start increasing. Currently, we do not plan to materially expand our Clinical Services business, and therefore we do not anticipate a significant increase in revenues generated by this business segment beyond being a self sustaining stand-alone clinic.

### Cost of Revenues

	Six Months Ended March 31,		Percent Change
	2010	2009	
Cost of Laboratory Information Services revenues	\$ 69,100	\$ 69,100	-%

Cost of Laboratory Information Services revenues consists of payroll costs, consulting costs, and other miscellaneous charges. 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 six months ended March 31, 2010, cost of revenues were \$69,100 consisting primarily of direct labor and benefit costs (including stock-based compensation costs) of \$50,900 and consulting fees of \$16,400. For the six months ended March 31, 2009, cost of revenues were also \$69,100, which includes direct labor and benefit costs (including stock based compensation costs) of \$50,400, and consulting fees of \$17,500. There has been no material change in Cost of Laboratory Information Services revenues for the two six-month periods ending March 31, 2010 and 2009.

We ultimately expect cost of revenues to decrease as a percentage of revenues as operating efficiencies improve with the volume of reports processed.

### Research and Development

	Six Months Ended March 31,		Percent Change
	2010	2009	
Laboratory Information Services research and development	\$ 541,300	\$ 1,147,800	(53)%

Research and development expenses consist of payroll costs (including stock-based compensation costs), consulting fees, clinical study costs, patient marketing and recruitment costs and other miscellaneous costs. Research and development costs for the six months ended March 31, 2010, primarily consisted of the following: payroll and benefit costs (including stock based compensation) of \$396,900, consultant costs of \$115,200 and other miscellaneous costs of \$29,000. There were no clinical study costs or patient marketing and recruitment costs during the period. For the comparable period for 2009, research and development costs included: payroll and benefit costs (including stock based compensation) of \$396,200, consultant costs of \$12,300 and other miscellaneous costs of \$41,900. Additionally, as the clinical study was in progress during the 2009 period, research and development costs included clinical study costs of \$573,200 and patient marketing and recruitment costs of \$124,200.

Comparing the six-month period ended March 31, 2010 with the similar period in 2009, clinical study costs and patient marketing and recruitment costs were eliminated in the 2010 quarter as the study was completed in September 2009. Consequently, the focus of the research and development department moved from the clinical study to the preparation of scientific papers for publications, and the generation of grant applications for research funding. Additionally the focus moved to the enhancing the rEEG production system and the application for 510(k) clearance with the FDA. As a result of this shift in focus, consulting fees increased by \$102,900, of which \$64,100 was spent on consultants hired to assist the Company with its FDA 510(k) application which was filed with the FDA on April 1, 2010. Additionally, \$11,200 was spent on the services of a biostatistician to analyze the results of the clinical trial. A further \$28,000 was spent on programming consultants to enhance and document the production system. Payroll and benefits remained constant for the two periods despite a change in the staff mix.

### *Sales and marketing*

	Six Months Ended March 31,		Percent Change
	2010	2009	
<b>Sales and Marketing</b>			
Laboratory Information Services	\$ 400,250	\$ 542,900	(26)%
Clinical Services	2,500	4,100	(39)%
Total Sales and Marketing	<u>\$ 402,750</u>	<u>\$ 547,000</u>	(26)%

Sales and marketing expenses associated with our Laboratory Information Services business consist primarily of payroll and benefit costs, including stock-based compensation; advertising and marketing; consulting fees and conference and travel expenses. Sales and marketing expenses for the six-month period ended March 31, 2010 primarily consisted of the following expenses: payroll and benefits \$237,100, advertising and marketing \$66,200, consulting \$50,400 and conferences and travel \$35,500. For the comparable period in 2009 expenses were as follows: payroll and benefits \$320,900, advertising and marketing \$124,300, consulting \$67,600 and conferences and travel \$17,100.

Comparing the six months ended March 31, 2010 with the same period in 2009, payroll and benefits decreased by \$83,800 in the 2010 period as a result a reduction in staff and the reassignment of staff to another department. Advertising and marketing expenses decreased by \$58,100 as advertising was curtailed while the Company awaits its 501(k) clearance and marketing efforts were largely limited to program development, whereas for the 2009 period the Company was actively executing its advertising and marketing plans. Conference and travel expenses increased by \$18,400 in the 2010 period as the Company conducted its first user-group meeting in January.

The Clinical Services sales and marketing expenses consists of advertising to attract patients to the clinic. We anticipate a moderate increase in marketing expenditure to expand our Clinical Services business in the future, which expenditures will be tailored based on the knowledge we have acquired in attracting patients to our clinical trials and additional market analysis.

### *General and administrative*

	Six Months Ended March 31,		Percent Change
	2010	2009	
<b>General and administrative</b>			
Laboratory Information Services	\$ 2,218,000	\$ 1,161,400	91%
Clinical Services	<u>\$ 339,500</u>	<u>317,100</u>	7%
Total General and administrative	<u>\$ 2,557,500</u>	<u>\$ 1,478,500</u>	84%

General and administrative expenses for our Laboratory Information Services business are largely comprised of payroll and benefit costs, including stock based compensation, legal, patent costs, other professional and consulting fees, general administrative and occupancy costs, conference and travel and miscellaneous costs. For the six-months ended March 31, 2010, General and Administrative costs consisted of salaries and benefit costs of \$364,700; legal fees of \$1,218,350 and other professional and consulting fees of \$290,200, general administrative and occupancy costs of \$233,600, patent costs \$43,200 and conference and travel costs of \$64,200. Miscellaneous costs were \$3,600 in the 2010 quarter. For the similar period in 2009, General and Administrative costs consisted of the following: salaries and benefit costs of \$455,600; legal fees of \$131,400 and other professional and consulting fees of \$228,300; general administrative and occupancy costs of \$133,500, patent costs of \$89,100 and conference and travel expenses of \$25,300. Miscellaneous costs for the 2009 period were \$99,700.

With respect to our Laboratory Information Services business, in the six months ended March 31, 2010 in comparison to the same period in 2009, payroll and benefit expenses decreased by a net \$90,900 largely due to a change in the staff mix as the former CEO, Mr. Brandt left the Company in April 2009 and the former President, Mr. Carpenter became the CEO. Additionally the Chief Financial Officer (CFO) joined the staff in mid February, 2010. Furthermore, stock based compensation was reduced by 20,400 to \$202,600 in the 2010 period. Professional and consulting fees increased by \$62,000 partly due to an increase in audit fees due to the timing, complexity and increased frequency of SEC filings. Additionally, consultants were hired in connection with the Brandt litigation and private placement financing. Legal fees increased by a net \$1,218,400 which was due to \$1,065,300 being incurred in defending against actions brought by Mr. Brandt (see page 25 *Matters Involving our Former Chief Executive Officer and Former Director, Leonard Brandt*). Additionally non-litigation legal fees increased by \$21,600 due to increased activity related to SEC filings, fund-raising and FDA-related work. General and administrative costs increased by a \$100,100 due to an increase in investor relations and corporate promotional expenses, increased computer service costs and costs associated with relocating the office. Patent costs declined by \$44,100 as costs were largely associated with patent maintenance. Conference and travel costs increased by \$38,900 as a result of increased travel associated with raising capital and litigation activities. Miscellaneous expenses incurred in the 2009 six-month period of \$99,700 were largely the result of a revised IRS assessment on 2006 payroll taxes and Delaware Franchise Tax assessments for calendar years 2007 and 2008 did not reoccur to the same degree in the 2010 period.

General and administrative expenses for our Clinical Services business include all costs associated with operating NTC. This includes payroll costs, medical supplies, occupancy costs and other general and administrative costs. These costs increased by \$22,400 to \$339,500 in the six months ending March 31, 2010 from \$317,100 for the comparable period in 2009. This increase is largely due to the fact that clinical services staff who had worked on the clinical trial were no longer reimbursed by the Laboratory Information Services for their time spent on the study.

***Interest income (expense)***

	<b>Six Months Ended March 31,</b>		<b>Percent Change</b>
	<b>2010</b>	<b>2009</b>	
Laboratory Information Services (Expense), net	\$ (1,500)	\$ (3,400)	(56)%
Clinical Services (Expense)	(200)	(100)	100%
<b>Total interest income (expense)</b>	<b>\$ (1,700)</b>	<b>\$ (3,500)</b>	<b>(51)%</b>

\* *not meaningful*

With respect to our Laboratory Information Services business, we earned interest income of \$2,800 for the six months ended March 31, 2010 from interest bearing accounts. This was offset by \$4,300 of interest expense on promissory notes. For the comparable period in 2009, we earned interest income of \$8,300 for the six months ended March 31, 2009 from interest bearing accounts. This was offset by \$11,700 of interest expense on promissory notes.

**Net Loss**

	<b>Six Months Ended March 31,</b>		<b>Percent Change</b>
	<b>2010</b>	<b>2009</b>	
Laboratory Information Services net loss	\$ (3,199,100)	\$ (2,892,500)	11%
Clinical Services net loss	(53,900)	(700)	7,700%
<b>Total Net Loss</b>	<b>\$ (3,253,000)</b>	<b>\$ (2,893,200)</b>	<b>12%</b>

The increase in net loss of \$359,800 in the six months ended March 31, 2010 compared to the prior year period is primarily due to net decreases in costs within our research and development and sales and marketing departments. These decreases were more than offset by expenses incurred in defending against the lawsuit brought by Mr. Brandt.

**Liquidity and Capital Resources**

Since our inception, we have incurred significant losses. As of September 30, 2009, we had an accumulated deficit of approximately \$25.2 million and as of March 31, 2010, we had an accumulated deficit of approximately \$28.4 million. We have not yet achieved profitability and anticipate that we will continue to incur net losses for the foreseeable future. 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.

As of March 31, 2010 we had approximately \$0.68 million in cash and cash equivalents and a working capital deficit balance of approximately \$0.98 million compared to approximately \$0.56 million in cash and cash equivalents and a working capital deficit of approximately \$1.66 as at March 31, 2009.

**Operating Capital and Capital Expenditure Requirements**

Our continued operating losses and limited capital raise substantial doubt about our ability to continue as a going concern, and we need to raise substantial additional funds in the next 12 months in order to continue to conduct our business. 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.

We need additional funds immediately to continue our operations and will need substantial additional funds before we can increase demand for our rEEG services. We are currently exploring additional sources of capital; however, 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 equity funding may result in significant dilution to existing stockholders, and, if we incur additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. 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. If adequate funds are not available, it would have a material adverse effect on our business, financial condition and/or results of operations, and could ultimately cause us to have to cease operations.

#### ***Sources of Liquidity***

Since our inception substantially all of our operations have been financed primarily from equity and debt financings. Through March 31, 2010, we had received proceeds of \$13.7 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.

On June 3, 2010, the Company entered into a Bridge Note and Warrant Purchase Agreement (the "Purchase Agreement") with John Pappajohn, pursuant to which Mr. Pappajohn agreed to purchase two secured promissory notes (each, a "Note") in the aggregate principal amount of \$500,000, with each Note in the principal amount of \$250,000 maturing on December 2, 2010. On June 3, 2010 Mr. Pappajohn loaned the Company \$250,000 in exchange for the first Note (there were no warrants issued on this first Note).

The Company has agreed to issue to Mr. Pappajohn a warrant to purchase up to 250,000 shares of common stock (the "Warrant") upon the issuance of the second Note, at an exercise price (subject to customary anti-dilution adjustments) equal to the fair market value per share at the time of issuance of the Warrant. Issuance of the Warrant is subject to and conditioned upon the purchase of the second Note by Mr. Pappajohn. The Company and Mr. Pappajohn have agreed to enter into a registration rights agreement covering the securities issuable upon exercise of the Warrant.

Each Note accrues interest at a rate of 9% per annum which will be paid together with the repayment of the principal amount at the earliest of (i) the maturity date; (ii) prepayment of the Note at the option of the Company (iii) closing of a financing in which the aggregate proceeds to the Company are not less than \$3,000,000 or (iv) the occurrence of an Event of Default (as defined in the Note). The Purchase Agreement and each Note grants Mr. Pappajohn a senior security interest in and to all of the Company's existing and future right, title and interest in its tangible and intangible property. Each Note includes provisions intended to protect the right of the holder of the Note.

#### ***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 operating activities was \$3.24 million for the six months ended March 31, 2010 compared to \$1.89 million for six months ended March 31, 2009. The increase in cash used of \$1.35 million was primarily attributable to increased legal fees associated with the Brandt litigation of \$1.06 million and other increases in general and administrative costs.



For the fiscal year ended September 30, 2009, net cash used in investing activities was \$2,000 for the purchase of office equipment 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 offices. Investing activities during the six months ended March 31, 2010 consisted of \$8,900 spent on office furniture at our new Laboratory Information Services location. There were no investing activities in the comparable period in 2009.

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 Note 2 to our year-end Financial Statements included elsewhere in this prospectus), 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.

Net cash proceeds from financing activities for the six months ended March 31, 2010 were \$2.99 million, net of placement agent fees, legal fees and other offering costs, raised on December 24 and 31, 2009 and January 4, 2010 in connection with the second, third and fourth closings of our private placement transaction. These proceeds were partly offset by the repayment of \$46,100 on a promissory note issued to Daniel Hoffman M.D. in connection with our acquisition of NTC. Net cash used by financing activities in the period ended March 31, 2009 primarily related to the payment of \$43,400 on the promissory note issued in connection with our NTC acquisition.

#### ***Contractual Obligations and Commercial Commitments***

As of March 31, 2010, we have a contractual obligation to pay the remaining balance on a promissory note to Daniel Hoffman M.D. of \$72,600 issued in connection with our acquisition of NTC, which bears interest at a rate of 8% per annum. Additionally, in December 2009, we signed a lease for our new headquarters and Laboratory Information Services premises located in Aliso Viejo, California. This lease expires on January 31, 2013 and our remaining rent obligation during the term of the lease is \$127,000. In March 2010, we signed an amendment which extends our lease for our Clinical Services premises located in Greenwood Village, Colorado. This lease expires on April 30, 2013 and our total rent obligation during the term of the lease is \$ 188,500. As of March 31, 2009, the balance outstanding on the aforementioned promissory note issued to Daniel Hoffman was \$162,700 and our obligations for leased space were \$73,500. Please see Notes 5 and 8 to our unaudited condensed consolidated financial statements in this prospectus for further details.

#### ***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. 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.

## 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 March 16, 1987, under the name Age Research, 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. Simultaneous with the closing of the Merger, we received gross proceeds of approximately \$7.0 million from the first closing of a private placement transaction with institutional investors and other high net worth individuals. On May 16, 2007, we completed a second closing of the private placement which resulted in \$797,300 of additional gross proceeds to us. After commissions and expenses, we received net proceeds of approximately \$6.7 million in the private placement.

### 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.

## *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 53) 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. Upon obtaining 510(k) clearance from the FDA, 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 ophthalmology, 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 and 2009, 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: "artifactual" 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.
- **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.

(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 in 2009 at 12 medical centers, including Harvard, Stanford, Cornell, UCI and Rush. The study began in late 2007 and was completed in September 2009, 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 signed 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/metabolic 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 launched 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.

- BRAIN RESOURCE COMPANY (Aust: BRRZF) ([www.brainresource.com](http://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 in 2008 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](http://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.

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 the remainder of 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**

Since April of 2008, we have been in a dialogue with the FDA regarding whether rEEG constitutes a medical device which is subject to regulation by the FDA. 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 510(k) clearance by the FDA pursuant to the Federal Food, Drug and Cosmetic Act (the “Act”). We do not believe that sales of our Laboratory Information Services, including our rEEG Reports, are subject to regulatory pre-market approval or 510(k) clearance. We responded to the FDA on April 24, 2008 indicating that we believed it had incorrectly understood our product offering, and clarified that our Laboratory Information Services are not diagnostic and thus do 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, we received a response from the FDA indicating that it still believes rEEG constitutes a “medical device” under the Act. Although we continue to believe that the FDA is in error over whether our Laboratory Information Services constitute a device and over whether the FDA has jurisdiction over such Laboratory Information Services, on April 1, 2010 we filed an application to obtain 510(k) clearance for our rEEG service. We believe that 510(k) clearance will provide us with increased commercial acceptance of our service. To date, we have spent an aggregate of \$64,100 for consulting and \$56,900 for legal services to prepare and file our 510(k) application and at this time, we do not anticipate that the communications received from the FDA, or our decision to seek 510(k) clearance, will have a material adverse effect on our liquidity, capital resources and results of operations. We anticipate that obtaining licensure will take from three to six months based on similar application filings with the FDA.

In addition to the foregoing, 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 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 may 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.

#### **Description of Property**

On January 22, 2010, we moved to our new leased facility for our headquarters and Laboratory Information Services business, located at 85 Enterprise, Suite 410, Aliso Viejo, California 92656. We entered into a 36 month lease for the 2,023 square foot facility, which expires on January 31, 2013. The average cost of the lease for the period is \$3642 per month.

With respect to our Clinical Services operations, on April 1, 2010, we negotiated a 37 month extension to the original lease for our clinical services space, which expired in February 2010. The new lease for our 3,542 square foot facility will expire on April 30, 2013, and has an average cost for the lease term of \$5,100 per month.

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.

#### **Employees**

As of June 1, 2010, we had approximately 15 full-time and 5 part-time employees, and 3 independent contractors. We provide all full-time employees with medical insurance, dental insurance and paid vacation. We believe that our relations with our employees are good. None of our employees belong to a union.

#### **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. On January 4, 2010, Brandt filed an appeal with the Supreme Court of the State of Delaware in relation to the case. On April 20, 2010, the Delaware Supreme Court summarily affirmed the ruling of the Chancery Court dismissing the 225 action.

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. On January 4, 2010, Brandt also filed an appeal in relation to this ruling with the Delaware Supreme Court. On February 25, 2010, Mr. Brandt voluntarily dismissed this appeal, and the ruling of the Chancery Court thereby became final and non-appealable.

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. Mr. Brandt did not appeal this dismissal.

An action before the United States District Court for the Central District of California remains outstanding. We are vigorously prosecuting our claims and vigorously defending Mr. Brandt's counterclaims, which we believe to be without merit.

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 to prevent Mr. Brandt from holding his purported special meeting. Brandt opposed the motion. 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 in 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. On January 4, 2010, Brandt filed an appeal with the Supreme Court of the State of Delaware in relation to the case. On February 25, 2010, Mr. Brandt voluntarily dismissed this appeal.

**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. N o. 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. On January 4, 2010, Brandt filed an appeal with the Supreme Court of the State of Delaware in relation to the case. On April 20, 2010 the Delaware Supreme Court summarily affirmed the ruling of the Chancery Court dismissing the Section 225 action.

**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.

On March 10, 2010, we dismissed the Company's claims against EAC, and EAC dismissed its claims against us and Mr. Carpenter. On April 10, 2010 Mr. Brandt's attorneys moved to withdraw from representing Mr. Brandt in the case. The District Court action continues with respect to our claims against Mr. Brandt and Mr. Brandt's counterclaims against us and the other counterclaim defendants. We are vigorously prosecuting our claims and vigorously defending Mr. Brandt's counterclaims.

We have expended substantial resources to pursue the defense of legal proceedings initiated by Mr. Brandt and the California securities litigation is compelling the Company to expend additional resources. We also do not know whether Mr. Brandt will institute new claims against us and the defense of any such claims could involve the expenditure of additional resources by the Company.

**Website**

We maintain a website at [www.CNSResponse.com](http://www.CNSResponse.com). The reference to our web address does not constitute incorporation by reference of the information contained at this site.

## MANAGEMENT

The following table sets forth the name, age and position of each of our executive officers and directors as of June 1, 2010.

<b>Name</b>	<b>Age</b>	<b>Position</b>
George Carpenter	52	Chairman of the Board, Chief Executive Officer and Secretary
Paul Buck	54	Chief Financial Officer
Daniel Hoffman	62	President, Chief Medical Officer
John Pappajohn	81	Director
David B. Jones	66	Director
Jerome Vaccaro, M.D.	54	Director
Dr. Henry T. Harbin	63	Director

*George Carpenter, Chairman of the Board, Chief Executive Officer, Secretary*

George Carpenter joined our board of directors as Chairman on April 10, 2009. Mr. Carpenter has been serving as our Chief Executive Officer since April 10, 2009 and prior to that date served as our President since October 1, 2007. As President, Mr. Carpenter's primary responsibility involved developing strategy and commercializing our rEEG technology. From 2002 until he joined CNS, Mr. Carpenter was the President & CEO of WorkWell Systems, Inc., a national physical medicine firm that manages occupational health programs for Fortune 500 employers. Prior to his position at WorkWell Systems, Mr. Carpenter founded and served as Chairman and CEO of Core, Inc., a company focused on integrated disability management and work-force analytics. He served in those positions from 1990 until Core was acquired by Assurant, Inc. in 2001. From 1984 to 1990, Mr. Carpenter was a Vice President of Operations with Baxter Healthcare, served as a Director of Business Development and as a strategic partner for Baxter's alternate site businesses. Mr. Carpenter began his career at Inland Steel where he served as a Senior Systems Consultant in manufacturing process control. Mr. Carpenter holds an MBA in Finance from the University of Chicago and a BA with Distinction in International Policy & Law from Dartmouth College. The Board selected Mr. Carpenter to serve as a director because of his extensive experience as chief executive officer for several companies and his service in a variety of leadership positions in the areas of fund raising, business development and building a management team. Mr. Carpenter provides critical insight into the areas of organizational and operational management.

*Paul Buck, Chief Financial Officer*

Effective February 18, 2010, we appointed Paul Buck, 54, to the position of Chief Financial Officer. Mr. Buck has been working with the Company as an independent consultant since December 2008, assisting management with finance and accounting matters as well as the Company's filings with the Securities and Exchange Commission. Mr. Buck has worked as an independent consultant since 2004 and has broad experience with a wide variety of public companies. His projects have included forensic accounting, restatements, acquisitions, interim management and system implementations. Mr. Buck, a Swiss National, was raised in Southern Africa and holds a Bachelor of Science degree in Chemistry and a Bachelor of Commerce degree both from the University of Cape Town, South Africa. He started his career with Touche Ross & Co. in Cape Town and qualified as a Chartered Accountant. In 1985, Mr. Buck joined the Los Angeles office of Touche Ross & Co. where he was an audit manager. In 1991 he joined the American Red Cross Biomedical Services as the CFO of the Southern Californian Region. After five years with the organization, he returned to Deloitte & Touche as a manager in the Solutions Consulting Group. In 1998, Mr. Buck was recruited back to the American Red Cross Biomedical Services as CFO and became the Director of Operations for the Southern California Region until 2003.

*Daniel Hoffman, Chief Medical Officer and President*

Dr. Hoffman, 61, became our President on April 10, 2009 and our Chief Medical Officer on January 15, 2008 upon our acquisition of Neuro-Therapy Clinic, Inc., which at the time of the acquisition was our largest customer and which was owned by Dr. Hoffman. He had served as the Medical Director of Neuro-Therapy Clinic, Inc. since 1993. Dr. Hoffman is a Neuropsychiatrist with over 25 years experience treating general psychiatric conditions such as depression, bipolar disorder and anxiety. He provides the newest advances in diagnosing and treating attentional and learning problems in children and adults. Dr. Hoffman has authored over 40 professional articles, textbook chapters, poster presentations and letters to the editors on various aspects of neuropsychiatry, Quantitative EEG, LORETA, Referenced EEG, advances in medication management, national position papers and standards, Mild Traumatic Brain Injury, neurocognitive effects of Silicone Toxicity, sexual dysfunction and other various topics. Dr. Hoffman has given over 58 major presentations and seminars, including Grand Rounds at Universities and Hospitals, workshops and presentations at national society meetings (such as American Psychiatric Association and American Neuropsychiatric Association), national CME conferences, insurance companies, national professional associations, panel member discussant, and presenter of poster sessions. He has also lectured internationally as part of a consortium advancing Quantitative EEG in Psychiatry and done research with the major national academic institutions on the use of Referenced EEG to help guide treatment choices and as a Biomarker. Dr. Hoffman has a Bachelor of Science in Psychology from the University of Michigan, an MD from Wayne State University School of Medicine and conducted his Residency in Psychiatry at the University of Colorado Health Sciences Center. During the past five years, Dr. Hoffman has served as the President of Neuro-Therapy Clinic, Inc., a wholly-owned subsidiary of the company that is focused on discovering ways to integrate technology into the creation of better business practices.

*John Pappajohn, Director*

John Pappajohn joined our board of directors on August 26, 2009. Since 1969, Mr. Pappajohn has been the President and sole owner of Pappajohn Capital Resources, a venture capital firm, and President and sole owner of Equity Dynamics, Inc., a financial consulting firm, both located in Des Moines, Iowa. He serves as a director on the boards of the following public companies: American CareSource Holdings, Inc., Dallas, TX since 1994; PharmAthene, Inc., Annapolis, MD, since 2007; Spectrascience, Inc., San Diego, CA, since 2007, and ConMed Healthcare Management, Inc., Hanover, MD, since 2005. Mr. Pappajohn also serves as director of CareGuide, Inc., Florida (formerly Patient Infosystems, Inc.) since 1996, which was a public company through January 2009. Mr. Pappajohn was chosen to serve as a director of the Company because of his unparalleled experience serving as a director of more than 40 companies and the substantial insight he has gained into the life sciences and healthcare industries by actively investing in the industries for more than 40 years, and by founding and supporting several public healthcare companies.

*David B. Jones, Director*

David B. Jones has been a director of CNS California since August 2006, and became a director of the company upon the completion of our merger with CNS California on March 7, 2007. Mr. Jones currently serves as a partner of Sail Venture Partners, L.P., a position which he has held since 2003. Mr. Jones served as Chairman and Chief Executive Officer of Dartron, Inc., a computer accessories manufacturer. From 1985 to 1997, Mr. Jones was a general partner of InterVen Partners, a venture capital firm with offices in Southern California and Portland, Oregon. From 1979 to 1985, Mr. Jones was President and Chief Executive Officer of First Interstate Capital, Inc., the venture capital affiliate of First Interstate Bancorp. Mr. Jones is a graduate of Dartmouth College and holds Masters of Business Administration and law degrees from the University of Southern California. Mr. Jones is the longest-serving member on our board and adds substantial expertise from his venture capital finance background and his executive experience. His experience provides the Company with valuable insight with respect to financing and operational strategies and corporate governance issues.

*Jerome Vaccaro, M.D., Director*

Jerome Vaccaro, M.D., joined the board of directors of CNS California in 2006 and became a director of the Company upon the completion of our merger with CNS California on March 7, 2007. Dr. Vaccaro is President and Chief Operating Officer of APS Healthcare, Inc. (APS), a privately held specialty healthcare company, which he joined in June 2007. From February 2001 until its acquisition by United Health Group in 2005, Dr. Vaccaro served as President and Chief Executive Officer of PacifiCare Behavioral Health (“PBH”), and then served as Senior Vice President with United Health Group’s Specialized Care Services until he joined APS. Dr. Vaccaro has also served as Medical Director of PBH (1996-2001), Chief Executive Officer of PacifiCare Dental and Vision (2002-2004), and Senior Vice President for the PacifiCare Specialty Health Division (2002-2004). Dr. Vaccaro has an extensive background in community mental health and public sector work, including editing the textbook, “Practicing Psychiatry in the Community,” which is hailed as the definitive community psychiatry text. Dr. Vaccaro completed medical school and a Psychiatry Residency at the Albert Einstein College of Medicine in New York City. After his training, Dr. Vaccaro served on the full-time faculty of the University of Hawaii (1985-1989) and UCLA (1989-1996) Departments of Psychiatry. Dr. Vaccaro was chosen to serve on the Company’s board because of his experience in senior executive positions in a diverse set of mental healthcare companies, his extensive background in community mental health and public sector work and his valuable experience in medical academia.

*Henry T. Harbin, M.D., Director*

Henry Harbin, M.D. joined our board of directors on October 17, 2007. Since 2004, Dr. Harbin has worked as an independent consultant providing health care consulting services to a number of private and public organizations. Dr. Harbin is a psychiatrist with over 30 years of experience in the behavioral health field. He has held a number of senior positions in both public and private health care organizations. He worked for 10 years in the public mental health system in Maryland serving as director of the state mental health authority for three of those years. He has been CEO of two national behavioral healthcare companies — Greenspring Health Services and Magellan Health Services. At the time he was CEO of Magellan, it was the largest managed behavioral healthcare company managing the mental health and substance abuse benefits of approximately 70 million Americans including persons who were insured by private employers, Medicaid and Medicare. In 2002 and 2003, he served on the President’s New Freedom Commission on Mental Health. As a part of the Commission he was chair of the subcommittee for the Interface between Mental Health and General Medicine. In 2005, he served as co-chair of the National Business Group on Health’s work group that produced the Employer’s Guide to Behavioral Health Services in December 2005. The Board selected Dr. Harbin to serve as a director because of his over 30 years of experience in the behavioral health field, which includes an impressive service record in the area of public sector health. His experience provides significant vision to a company in the mental healthcare industry.

**Board Composition and Committees and Director Independence**

Our board of directors currently consists of five members: George Carpenter, Henry Harbin, David Jones, Jerome Vaccaro and John Pappajohn. Each director was elected at our annual meeting of shareholders held on April 27, 2010. Each of our directors will serve until our next annual meeting and until his successor is duly elected and qualified.

We are not a “listed company” under SEC rules and are therefore not required to have separate committees comprised of independent directors. Our board of directors has, however, determined that David Jones, Jerome Vaccaro, Henry Harbin and John Pappajohn are “independent” as that term is defined in Section 5600 of the Nasdaq Listing Rules as required by the NASDAQ Stock Market (the “Nasdaq Listing Rules”).

Our board of directors established an audit committee and a compensation committee at a board meeting held on March 3, 2010, and each committee has its own charter. The primary functions of these two committees are described below.

*Audit Committee.* The primary functions of the Audit Committee are to: assist the board of directors in its oversight responsibilities regarding (1) the integrity of the Company’s financial statements, (2) the Company’s compliance with legal and regulatory requirements, (3) the independent accountant’s qualifications and independence and (4) the Company’s internal and disclosure controls; prepare the report of the Audit Committee required by the SEC for inclusion in the Company’s annual proxy statement; retain and terminate the Company’s independent accountant; approve audit and non-audit services to be performed by the independent accountant; and perform such other functions as the board of directors may from time to time assign to the committee.

The Audit Committee is composed of three members, all of whom are “independent” as such term is defined in the rules and regulations of the SEC and the Nasdaq Listing Rules. Our board has also determined that David Jones qualifies as an “audit committee financial expert” within the meaning of the rules and regulations of the SEC and that each of our other committee members is able to read and understand fundamental financial statements and has substantial business experience that results in that member’s financial sophistication.

*Compensation Committee.* The Company’s executive compensation program is administered by the Compensation Committee. The Compensation Committee is composed of three directors, each of whom qualifies as an outside director within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended. The committee reports to the full board of directors on all matters within the committee’s responsibilities.

The Compensation Committee’s primary functions are to: discharge the oversight responsibilities of the board of directors with respect to compensation of the Company’s executives; if required, prepare the report of the Compensation Committee pursuant to SEC rules for inclusion in the Company’s annual proxy statement; and administer designated executive compensation plans of the Company. The Chief Executive Officer is not present during voting or deliberations on his or her compensation.

The following table below sets forth the membership of each Committee:

<u>Name of Director</u>	<u>Audit Committee</u>	<u>Compensation Committee</u>
John Pappajohn	Member	Chair
David B. Jones	Chair	Member
Jerome Vaccaro	Member	
Henry T. Harbin		Member

We do not have a nominating and corporate governance committee and the function customarily delegated to such committee is performed by our full board of directors. In addition, we do not have any charter that relates to the functions traditionally performed by such committee.

## EXECUTIVE COMPENSATION

### Compensation Structure

#### Compensation Philosophy

Generally, we compensate our executive officers with a compensation package that is designed to drive company performance to maximize shareholder value while meeting our needs and the needs of our executives. The following are objectives we consider:

- Alignment - to align the interests of executives and shareholders through equity-based compensation awards;
- Retention - to attract, retain and motivate highly qualified, high performing executives to lead our growth and success; and
- Performance - to provide, when appropriate, compensation that is dependent upon the executive's achievements and the company's performance.

In order to achieve the above objectives, our executive compensation philosophy is guided by the following principles:

- Rewards under incentive plans are based upon our short-term and longer-term financial results and increasing shareholder value;
- Executive pay is set at sufficiently competitive levels to attract, retain and motivate highly talented individuals who are necessary for us to strive to achieve our goals, objectives and overall financial success;
- Compensation of an executive is based on such individual's role, responsibilities, performance and experience; and
- Annual performance of our company and the executive are taken into account in determining annual bonuses with the goal of fostering a pay-for-performance culture.

#### Compensation Elements

We compensate our executives through a variety of components, which may include a base salary, annual performance based incentive bonuses, equity incentives, and benefits and perquisites, in order to provide our executives with a competitive overall compensation package. The mix and value of these components are impacted by a variety of factors, such as responsibility level, individual negotiations and performance and market practice. The purpose and key characteristics for each component are described below.

#### Base Salary

Base salary provides executives with a steady income stream and is based upon the executive's level of responsibility, experience, individual performance and contributions to our overall success, as well as negotiations between the company and such executive officer. Competitive base salaries, in conjunction with other pay components, enable us to attract and retain talented executives. The Board typically sets base salaries for our executives at levels that it deems to be competitive, with input from our Chief Executive Officer.



#### Annual Incentive Bonuses

Annual incentive bonuses are a variable performance-based component of compensation. The primary objective of an annual incentive bonus is to reward executives for achieving corporate and individual goals and to align a portion of total pay opportunities for executives to the attainment of our company's performance goals. Annual incentive awards, when provided, act as a means to recognize the contribution of our executive officers to our overall financial, operational and strategic success.

#### Equity Incentives

Equity incentives are intended to align executive and shareholder interests by linking a portion of executive pay to long-term shareholder value creation and financial success over a multi-year period. Equity incentives may also be provided to our executives to attract and enhance the retention of executives and to facilitate stock ownership by our executives. The Board considers individual and company performance when determining long-term incentive opportunities.

#### Health & Welfare Benefits

The executive officers participate in health and welfare, and paid time-off benefits which we believe are competitive in the marketplace. Health and welfare and paid time-off benefits help ensure that we have a productive and focused workforce.

#### Severance and Change of Control Arrangements

We do not have a formal plan for severance or separation pay for our employees, but we typically include a severance provision in the employment agreements of our executive officers that have written employment agreements with us. Generally, such provisions are triggered in the event of involuntary termination of the executive without cause or in the event of a change in control. Please see the description of our employment agreements with each of George Carpenter, Daniel Hoffman and Paul Buck below for further information.

#### Other Benefits

In order to attract and retain highly qualified executives, we may provide our executive officers with automobile allowances, consistent with current market practices.

#### Accounting and Tax Considerations

We consider the accounting implications of all aspects of our executive compensation strategy and, so long as doing so does not conflict with our general performance objectives described above, we strive to achieve the most favorable accounting (and tax) treatment possible to the company and our executive officers.

Process for Setting Executive Compensation; Factors Considered

When making pay determinations for named executive officers, the Board considers a variety of factors including, among others: (1) actual company performance as compared to pre-established goals, (2) individual executive performance and expected contribution to our future success, (3) changes in economic conditions and the external marketplace, (4) prior years' bonuses and long-term incentive awards, and (5) in the case of executive officers, other than Chief Executive Officer, the recommendation of our Chief Executive Officer, and in the case of our Chief Executive Officer, his negotiations with our Board. No specific weighing is assigned to these factors nor are particular targets set for any particular factor. Ultimately, the Board uses its judgment and discretion when determining how much to pay our executive officers and sets the pay for such executives by element (including cash versus non-cash compensation) and in the aggregate, at levels that it believes are competitive and necessary to attract and retain talented executives capable of achieving the Company's long-term objectives.

**Summary Compensation Table**

The following table provides disclosure concerning all compensation paid for services to us in all capacities for our fiscal years ending September 30, 2009 and 2008 (i) as to each person serving as our principal executive officer ("PEO") or acting in a similar capacity during our fiscal year ended September 30, 2009, and (ii) as to our most highly compensated executive officer other than our PEO who was serving as an executive officer at the end of our fiscal year ended September 30, 2009, whose compensation exceeded \$100,000; and (iii) one additional individual for whom disclosure would have been provided under (ii) but for the fact that he was not serving as an executive officer as of September 30, 2009. The people listed in the table below are referred to as our "named executive officers".

<b>Name and Principal Position</b>	<b>Fiscal Year Ended September 30,</b>	<b>Salary (\$)</b>	<b>Bonus (\$)</b>	<b>Option Awards (\$)</b>	<b>All Other Compensation (\$)</b>	<b>Total (\$)</b>
George Carpenter (Chief Executive Officer, Principal Executive Officer, Director)	2009	180,000	0	0	20,500(2)	200,500
	2008	180,000	0	680,700(1)	16,300(2)	877,000
Daniel Hoffman (President, Chief Medical Officer)	2009	150,000	0	0(4)	33,400(3)	183,400
	2008	108,100	0	0	39,200(3)	147,300
Leonard Brandt (Former Chief Executive Officer, Former Principal Executive Officer, Former Director)	2009	119,800	0	0(5)	20,500	140,300
	2008	175,000	0	0	19,000(2)	194,000

(1) These options were granted on October 1, 2007. The amount reflected in the table represents the aggregate grant date fair value of options computed in accordance with FASB ASC Topic 718 (formerly FAS 123R). The fair value was estimated using the assumptions detailed in Note 4 to our year end Financial Statements. The aggregate number of option awards outstanding for Mr. Carpenter at September 30, 2009 was 968,875.

(2) Relates to healthcare insurance premiums paid on behalf of executive officers by the company.

(3) Relates to healthcare insurance premiums for the year ended September 30, 2009 of \$28,300 and automobile expenses of \$4,400 paid on behalf of Dr. Hoffman by the company. For the year ended September 30, 2008, healthcare insurance premiums were \$15,300 and automobile expenses were \$8,900. Additionally Dr. Hoffman was paid \$15,000 in consulting fees for services rendered to the company prior to his employment.

(4) The aggregate number of option awards outstanding for Dr. Hoffman at September 30, 2009 was 933,075.

(5) The aggregate number of option awards outstanding for Mr. Brandt at September 30, 2009 was 1,302,500.

#### **Grant of Plan Based Awards in the Fiscal Year Ending September 30, 2009**

No option grants to executive officers occurred during fiscal year ending September 30, 2009 under our 2006 Stock Incentive Plan, which is the only plan pursuant to which awards can be granted, as the Board was focused on management changes, securing funding and defending against a lawsuit brought by a dissident shareholder and fellow director.

#### **Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table**

Since we had \$0.99 million in cash and cash equivalents and a working capital deficit of approximately \$1.1 million as of September 30, 2009, we elected to preserve our cash and did not pay any bonuses to our executive officers during our fiscal year ended September 30, 2009.

The following is a summary of each employment agreement that we have entered into with respect to our named executive officers, which summary includes, where applicable, a description of all payments the company is required to make to such named executive officers at, following or in connection with the resignation, retirement or other termination of such named executive officers, or a change in control of our company or a change in the responsibilities of such named executive officers following a change in control.

#### **Employment Agreements**

##### *George Carpenter*

On October 1, 2007, after our 2007 fiscal year end, we entered into an employment agreement with George Carpenter pursuant to which Mr. Carpenter served as our President. During the period of his employment, Mr. Carpenter will receive a base salary of no less than \$180,000 per annum, which is subject to upward adjustment at the discretion of the Chief Executive Officer or our Board of Directors. On March 3, 2010, the Board of Directors resolved to increase the annual base salary of Mr. Carpenter to \$270,000, with the increase in salary having retroactive effect to January 1, 2010. In addition, pursuant to the terms of the employment agreement, on October 1, 2007, Mr. Carpenter was granted an option to purchase 968,875 shares of our common stock at an exercise price of \$0.89 per share pursuant to our 2006 Stock Incentive Plan. These options vest as follows: 121,109 shares vested immediately with the remaining 847,766 shares vesting equally over 42 months commencing April 30, 2008. In the event of a change of control transaction, a portion of Mr. Carpenter's unvested options equal to the number of unvested options at the date of the corporate transaction multiplied by the ratio of the time elapsed between October 1, 2008 and the date of corporate transaction over the vesting period (48 months) will automatically accelerate, and become fully vested. Mr. Carpenter will be entitled to four weeks vacation per annum, health and dental insurance coverage for himself and his dependents, and other fringe benefits that we may offer our employees from time to time.

Mr. Carpenter's employment is on an "at-will" basis, and Mr. Carpenter may terminate his employment with us for any reason or for no reason. Similarly, we may terminate Mr. Carpenter's employment with or without cause. If we terminate Mr. Carpenter's employment without cause or Mr. Carpenter involuntarily terminates his employment with us (an involuntary termination includes changes, without Mr. Carpenter's consent or pursuant to a corporate transaction, in Mr. Carpenter's title or responsibilities so that he is no longer the President of the company), Mr. Carpenter shall be eligible to receive as severance his salary and benefits for a period equal to six months payable in one lump sum upon termination. If Mr. Carpenter is terminated by us for cause, or if Mr. Carpenter voluntarily terminates his employment, he will not be entitled to any severance.

As of April 10, 2009, Mr. Carpenter was named Chief Executive Officer and a Director of the company and Daniel Hoffman became our President. Other than Mr. Carpenter's 2010 salary increase described above, his option grant on March 3, 2010 described below and his change in title, there have been no changes in the terms of Mr. Carpenter's employment with us.

#### ***Daniel Hoffman***

On January 11, 2008, we entered into an employment agreement with Daniel Hoffman pursuant to which Dr. Hoffman began serving as our Chief Medical Officer effective January 15, 2008. During the period of his employment, Dr. Hoffman will receive a base salary of \$150,000 per annum, which is subject to upward adjustment. Dr. Hoffman will also have the opportunity to receive bonus compensation, if and when approved by our Board of Directors. Dr. Hoffman's employment is on an "at-will" basis, and Dr. Hoffman may terminate his employment with us for any reason or for no reason. Similarly, we may terminate Dr. Hoffman's employment with or without cause. If we terminate Dr. Hoffman's employment without cause or Dr. Hoffman involuntarily terminates his employment with us (an involuntary termination includes changes, without Dr. Hoffman's consent or pursuant to a corporate transaction, in Dr. Hoffman's title or responsibilities so that he is no longer the Chief Medical Officer of the company), Dr. Hoffman will be eligible to receive as severance his salary and benefits for a period equal to six months payable in one lump sum upon termination. If Dr. Hoffman is terminated by us for cause, or if Dr. Hoffman voluntarily terminates his employment, he will not be entitled to any severance. Dr. Hoffman will be entitled to four weeks vacation per annum, health and dental insurance coverage for himself and his dependents, and other fringe benefits that we may offer our employees from time to time.

Prior to his employment, from October 1, 2007 to January 15, 2008 Dr. Hoffman earned \$15,000 for consulting services rendered to the company. In addition, as compensation for his services to us as a consultant, Dr. Hoffman was granted options to purchase an aggregate of 814,062 shares of our common stock at an exercise price of \$1.09 on August 7, 2007. In accordance with the terms of his employment agreement, the terms of Dr. Hoffman's option grant were amended to provide that in the event of a change of control transaction, a portion of Dr. Hoffman's unvested options equal to the number of unvested options at the date of the corporate transaction multiplied by the ratio of the time elapsed between August 7, 2007 and the date of corporate transaction over the vesting period (42 months), will automatically accelerate, and become fully vested.

In addition to being the Chief Medical Officer, Dr. Hoffman was named President of the Company on April 10, 2009.

### **Paul Buck**

On February 18, 2010, we entered into an employment agreement with Paul Buck pursuant to which Mr. Buck began serving as our Chief Financial Officer on an “at will” basis and will be paid a salary of no less than \$208,000 per annum, which is subject to upward adjustment at the discretion of the Chief Executive Officer or the Board of Directors of the Company. Pursuant to his employment agreement, Mr. Buck also received an option to purchase 450,000 shares of the company’s common stock on March 3, 2010, which options vest in 48 equal installments commencing on March 3, 2010. Mr. Buck will be entitled to four weeks vacation per annum, health and dental insurance coverage for himself and his dependents, and other fringe benefits that the Company may offer its employees from time to time. As Mr. Buck’s employment is on an “at-will” basis, he may terminate his employment with the Company for any reason or for no reason. Similarly, the Company may terminate Mr. Buck’s employment with or without cause. If the Company terminates Mr. Buck’s employment without cause or Mr. Buck involuntarily terminates his employment with the Company, Mr. Buck shall be eligible to receive as severance his salary and benefits for a period equal to six months payable in one lump sum upon termination. If Mr. Buck is terminated by the Company for cause, or if Mr. Buck voluntarily terminates his employment, he will not be entitled to any severance.

The Company has no other employment agreements with its executive officers.

### **2006 Stock Incentive Plan**

On August 3, 2006, CNS California adopted the CNS California 2006 Stock Incentive Plan (the “2006 Plan”). On March 7, 2007, in connection with the closing of the merger transaction with CNS California, we assumed the CNS California stock option plan and all of the options granted under the plan at the same price and terms. Subsequently, we amended the 2006 Plan on March 3, 2010 to increase the number of shares of common stock reserved for issuance under the 2006 Plan from 10 million to 20 million shares and increased the limit on shares underlying awards granted within a calendar year to any eligible employee or director from 3 million to 4 million shares of common stock. The amendment was approved by shareholders at the annual meeting held on April 27, 2010. The following is a summary of the 2006 Plan, as amended, which we use to provide equity compensation to employees, directors and consultants to the company.

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 nonstatutory stock options (NSO)), stock appreciation rights and stock unit grants and is administered by the board of directors. 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 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.

### **Outstanding Equity Awards at Fiscal Year-End 2009**

The following table presents information regarding outstanding options held by our named executive officers as of the end of our fiscal year ended September 30, 2009. During the fiscal year ended September 30, 2009, Leonard Brandt exercised 2,124,740 options at an exercise price of \$0.132 per share which were granted on August 11, 2006.

Name	Number of Securities Underlying Unexercised Options (#)		Option Exercise Price (\$)	Option Expiration Date
	Exercisable	Unexercisable		
George Carpenter <sup>(1)</sup>	484,454	484,421	0.89	October 1, 2017
Daniel Hoffman <sup>(2)</sup>	508,796	305,796	1.09	August 8, 2017
	119,013	0	0.12	August 11, 2016
Leonard Brandt <sup>(3)</sup>	229,353	104,258	1.20	August 8, 2012
	827,930	140,959	1.09	August 8, 2017

- (1) Please see the summary of Mr. Carpenter's employment agreement above, which describes the vesting terms of the options granted to Mr. Carpenter.
- (2) On August 8, 2007, Dr. Hoffman was granted options to purchase 814,062 shares of our common stock. The options are exercisable at \$1.09 per share and vest as follows: options to purchase 203,516 shares vested on March 8, 2008; options to purchase 593,600 shares vest in equal monthly installments of 16,960 shares over 35 months commencing on April 30, 2008; the remaining options to purchase 16,946 shares vest on March 31, 2011. On August 11, 2006, Dr. Hoffman was granted an option to purchase 119,013 shares of common stock at an exercise price of \$0.12 per share, which is now fully exercisable.
- (3) On August 8, 2007, Mr. Brandt was granted options to purchase 1,302,500 shares of our common stock. The options were exercisable at \$1.20 per share as to 333,611 shares and \$1.09 per share as to 968,889 shares. The option to purchase 333,611 of our shares was scheduled to vest as follows: options to purchase 83,403 shares vested on August 8, 2007, the date of grant; options to purchase 243,250 shares were scheduled to vest in equal monthly installments of 6,950 shares over 35 months commencing on January 31, 2008 and the remaining options to purchase 6,958 shares were scheduled to vest on December 31, 2010. The option to purchase 968,889 of our shares was scheduled to vest as follows: options to purchase 269,357 shares vested on August 8, 2007, the date of grant; options to purchase 135,675 shares vested in equal monthly installments of 27,135 shares over 5 months beginning on August 31 2007; options to purchase 543,726 shares were scheduled to vest in equal monthly installments of 20,138 shares over 27 months beginning on January 31, 2008 and the remaining options to purchase 20,131 shares were scheduled to vest on April 30, 2010. Upon Mr. Brandt's termination as a Director on December 2, 2009, Mr. Brandt forfeited 90,358 options having an exercise price of \$1.20 per share and 100,683 options having an exercise price of \$1.09 per share.

#### Director Compensation

During our fiscal year ended September 30, 2009, our non-employee directors did not receive compensation for their services on our board. We do not pay management directors for board service in addition to their regular employee compensation. The full Board of Directors has the primary responsibility for reviewing and considering any revisions to director compensation. Going forward, we intend to compensate our non-employee directors for their service on our Board with a combination of cash payments and option grants (please see the description of option grants to our non-employee directors on March 3, 2010 described below). As described below, Dr. Harbin received compensation for consulting services he provided to the company during our fiscal year ending September 30, 2009.

#### Non-Employee Director Compensation

Name	All Other Compensation (\$)	Total (\$)
Jerome Vaccaro (1)	0	0
Henry Harbin (2)	46,400	46,400
John Pappajohn (3)	0	0
Tommy Thompson (3)(4)	0	0
David Jones (3)	0	0

(1) The aggregate number of option awards outstanding for Dr. Vaccaro at September 30, 2009 was 20,000. On August 28, 2006, Dr. Vaccaro was granted 20,000 options having an exercise price of \$0.12 for his service as a Director. The options vested semiannually in four equal amounts over a period of two years commencing February 28, 2007 through August 31, 2008. These options expire on August 28, 2016 and are fully vested.

(2) The amount reflected in the table represents the aggregate grant date fair value of options granted under the March 17, 2009 Consulting Agreement (as defined below) computed in accordance with FASB ASC Topic 718 (formerly FAS 123R). The fair value was estimated using the assumptions detailed in Note 4 to our year end Financial Statements. The aggregate number of option awards outstanding for Dr. Harbin at September 30, 2009 was 156,000.

On August 8, 2007, we entered into an agreement with Dr. Harbin for consulting services. Pursuant to the agreement, we granted, on August 8, 2007, options to purchase 24,000 shares of our common stock at an exercise price of \$1.09 per share pursuant to our 2006 Stock Incentive Plan. The options expire on August 8, 2017 and are now fully vested.

As compensation for his service as a Director of the company, on December 19, 2007, we granted Dr. Harbin options to purchase 20,000 shares of our common stock at an exercise price of \$0.80 per share under our 2006 Stock Incentive Plan. The options expire on December 19, 2017 and are now fully vested.

On April 15, 2008, we entered into a consulting agreement with Dr. Harbin which expired on December 31, 2008. Pursuant to the agreement, we paid Dr. Harbin a consulting fee of \$24,000 in cash of which \$8,000 was paid during the fiscal year ended September 30, 2009. Additionally Dr. Harbin was granted options to purchase 56,000 shares of our common stock at an exercise price of \$0.96 per share under our 2006 Stock Incentive Plan. The options expire on April 15, 2018 and are now fully vested.

On March 17, 2009, we entered into a consulting agreement with Dr. Harbin (the "March 17, 2009 Consulting Agreement"), which expired on December 31, 2009 pursuant to which Dr. Harbin was to be paid an aggregate of \$24,000 as compensation for his consulting services. Dr. Harbin was paid the \$24,000 due to him in January 2010. In addition, as further compensation, we granted Dr. Harbin options to purchase 56,000 shares of our common stock at an exercise price of \$0.40 per share, with the options vesting in equal monthly installments over a twelve month period commencing on January 1, 2009. The options expire on March 17, 2019.

On March 26, 2010, we entered into a consulting agreement with Dr. Harbin (the "March 26, 2010 Consulting Agreement"), pursuant to which Dr. Harbin is to be paid an aggregate of \$36,000 as compensation for his consulting services. The agreement expires on December 31, 2010, but is renewable for two one year terms on January 1, 2011 and 2012.

(3) No options were granted to Mr. Pappajohn, Mr. Thompson or Mr. Jones as of September 30, 2009.

(4) Mr. Thompson resigned from the Board effective March 12, 2010.

#### **Option Grants to Officers and Directors on March 3, 2010**

After adopting the amendment to the Company's 2006 Stock Incentive Plan, on March 3, 2010, the Company's Board of Directors granted options to the directors and officers as listed in the table below. Each of the options has an exercise price of \$0.55 per share and a term of 10 years from the date of grant. The options vest evenly over a 48 month period for officers and over a 36 month period for non-employee directors starting on March 3, 2010.

Executive Officers and Directors:	Number of Options Granted on March 3, 2010	Vesting Period:
		Number of month Starting March 3, 2010
George Carpenter Chief Executive Officer, Secretary	4,000,000	48 months
Paul Buck Chief Financial Officer	450,000	48 months
Dr. Daniel Hoffman President and Chief Medical Officer	500,000	48 months
David B. Jones (3) Director	250,000	36 months
Dr. Jerome Vaccaro Director	250,000	36 months
Dr. Henry Harbin (1) Director	650,000	36 months
John Pappajohn (3) Director	250,000	36 months
Tommy Thompson (2) Director	400,000	36 months

- (1) Dr. Harbin was granted options by purchase 250,000 shares of common stock for his work as a Director and options to purchase 400,000 shares of common stock as part of a consulting agreement.
- (2) Mr. Thompson was granted options by purchase 250,000 shares of common stock for his work as a Director and options to purchase 150,000 shares of common stock for his special advisory work with the Company. Shortly after being granted the options Mr. Thompson resigned from the Board of Directors and forfeited the 250,000 options to purchase common stock that were provided as director compensation.
- (3) Non-employee directors were granted options by purchase 250,000 shares of common stock for their board service.

#### Changes in Control

We do not have any arrangements which may at a subsequent date result in a change in control.



## PRINCIPAL AND SELLING STOCKHOLDERS

The selling security holders may offer and sell, from time to time, any or all of the shares of common stock held by them. Because the selling security holders may offer all or only some portion of the 65,879,838 shares of common stock to be registered, we cannot estimate how many shares of common stock the selling security holders may hold upon termination of the offering, nor can we express, as a percentage, how this number of shares will relate to the total number of shares that we will have outstanding at that time.

The following table presents information regarding the beneficial ownership of our common stock as of June 15, 2010, and the number of shares of common stock covered by this prospectus. The number of shares in the table represents an estimate of the number of shares of common stock to be offered by:

- each of the executive officers;
- each of our directors;
- all of our directors and executive officers as a group;
- each stockholder known by us to be the beneficial owner of more than 5% of our common stock; and
- each of the selling stockholders.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned, subject to community property laws where applicable. Shares of our common stock subject to options and warrants from the company that are currently exercisable or exercisable within sixty days of June 15, 2010 are deemed to be outstanding and to be beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

The information presented in this table is based on 56,023,921 shares of our common stock outstanding on June 15, 2010. Unless otherwise indicated, the address of each of the executive officers and directors and 5% or more stockholders named below is c/o CNS Response, Inc., 85 Enterprise, Suite 410, Aliso Viejo, CA 92656.

<u>Name of Beneficial Owner</u>	<u>Number of Shares Beneficially Owned Prior to Offering</u>		<u>Number of Shares Being Offered</u>	<u>Number of Shares Beneficially Owned After Offering</u>	
	<u>Number</u>	<u>Percentage of Shares Outstanding</u>		<u>Number</u>	<u>Percentage of Shares Outstanding</u>
<b>Executive Officers and Directors:</b>					
George Carpenter (1) Chief Executive Officer, Secretary	1,726,275	3.0%	540,000	1,186,275	2.1%

Name of Beneficial Owner	Number of Shares Beneficially Owned Prior to Offering		Number of Shares Being Offered	Number of Shares Beneficially Owned After Offering	
	Number	Percentage of Shares Outstanding		Number	Percentage of Shares Outstanding
Paul Buck (2) Chief Financial Officer	326,250	*	270,000	56,250	*
Dr. Daniel Hoffman (3) President and Chief Medical Officer	970,956	1.7%	110,545	860,411	1.5%
David B. Jones(4) Director	8,737,735	15.0%	8,696,055	41,680	*
Dr. Jerome Vaccaro (5) Director	61,680	*	-	61,680	*
Dr. Henry Harbin (6) Director	275,184	*	10,834	264,350	*
John Pappajohn (7) Director	11,762,592	19.8%	11,720,912	41,680	*
Directors and officers as a group (7 persons) (8)	23,860,672	37.1%	21,348,346	2,512,326	3.9%
<b>5% Stockholders:</b>					
Leonard Brandt (9)	11,081,982	19.0%	9,970,523	1,111,459	1.9%
Sail Venture Partners LP (4)	8,696,055	15.0%	8,696,055	-	-
<b>Other Selling Stockholders:</b>					
Argyris Vassiliou (10)	500,001	*	500,001	-	-
James Howard Desnick, M.D. (11)	1,620,000	2.9%	1,620,000	-	-
Peter Unanue (12)	974,990	1.7%	974,990	-	-
Ann Vassiliou Children's Trust P2587 (13)	500,001	*	500,001	-	-
AC Care, LLC (14)	100,000	*	100,000	-	-
AJWC Ltd. (15)	540,000	1.0%	540,000	-	-
Andy's Liquor, Inc. (16)	750,000	1.3%	750,000	-	-
Theodore Chafoulias (17)	150,000	*	150,000	-	-
Dennis James Colbert and Patti J. Colbert, as joint tenants with right of survivorship (18)	540,000	1.0%	540,000	-	-
Ronald I. Dozoretz, M.D. (19)	540,000	1.0%	540,000	-	-
Richard L. Hexum, Jr. (20)	770,000	1.4%	770,000	-	-
Larry Hopfenspirger (21)	600,000	1.1%	600,000	-	-
William and Joanne Jellison (22)	500,000	*	500,000	-	-
Jeffrey P. Knightly (23)	540,000	1.0%	540,000	-	-
Meyer Leon Proler (24)	1,853,274	3.3%	1,847,274	6,000	*
Dale Ragan (25)	645,000	1.1%	645,000	-	-
Richard Lee Roehl (26)	1,080,000	1.9%	1,080,000	-	-
Lindsay A. Rosenwald, M.D. (27)	1,080,000	1.9%	1,080,000	-	-
Gene Salkind, M.D. (28)	540,000	1.0%	540,000	-	-
Starr F. Schlobohm Rev. Trust U/D/A 12/09/04 (29)	540,000	1.0%	540,000	-	-

Name of Beneficial Owner	Number of Shares Beneficially Owned Prior to Offering		Number of Shares Being Offered	Number of Shares Beneficially Owned After Offering	
	Number	Percentage of Shares Outstanding		Number	Percentage of Shares Outstanding
Myron F. Steves, Jr. (30)	540,000	1.0%	540,000	-	-
David S. Strutt (31)	540,000	1.0%	540,000	-	-
Brian J. Thompson (32)	270,000	*	270,000	-	-
Mark C. Thompson & Bonita S. Thompson Revocable Living Trust Dated 1/14/04 (33)	1,620,000	2.9%	1,620,000	-	-
John Francis Wheeler (34)	270,000	*	270,000	-	-
White Sand Investor Group, L.P. (35)	1,350,000	2.4%	1,350,000	-	-
B + D Associates (36)	500,000	*	500,000	-	-
Adolfo and Donna Carmona, as joint tenants with right of survivorship (37)	540,000	1.0%	540,000	-	-
The Carnahan Trust (38)	540,000	1.0%	540,000	-	-
Jordan Family LLC (39)	330,000	*	330,000	-	-
John V. BiVona (40)	250,000	*	250,000	-	-
Maxim Group LLC (41)	965,134	1.7%	965,134	-	-
Monarch Capital Group (42)	65,340	*	65,340	-	-
Robert Nathan (43)	152,460	*	152,460	-	-
Felix Investments, LLC (44)	292,200	*	292,200	-	-
George C. Foulkes (45)	30,102	*	30,102	-	-
Max A. Schneider, Inc. (46)	128,617	*	128,617	-	-
Kenneth Leonard (47)	150,513	*	150,513	-	-
Anthony Morgenthau (48)	7,415	*	7,415	-	-
Mao Holdings (Cayman) Limited (49)	400,000	*	400,000	-	-
Glenn Baron (50)	90,308	*	90,308	-	-
Moty Yekutieli (51)	208,553	*	34,607	173,946	*
Pike Family Trust (52)	107,834	*	107,834	-	-
Carl Cadwell (53)	642,336	1.1	144,136	498,200	*
Brian MacDonald (54)	2,373,166	4.2%	1,015,459	1,357,707	2.4%
W. Hamlin Emory (55)	1,342,101	2.4%	117,170	1,224,931	2.2%
Heartland Value Fund (56)	2,340,000	4.1%	2,340,000	-	-
EAC Investment Limited Partnership (57)	1,766,279	3.1%	1,766,279	-	-
Partner Healthcare Offshore Fund, Ltd.					
Partner Healthcare Fund, L.P. (58)	1,333,657	2.4%	1,333,657	-	-
David J. Zwiebel (59)	24,486	*	12,501	11,985	*
Craig B. Swanson (60)	29,250	*	29,250	-	-
David J. Galey (61)	56,122	*	15,231	40,891	*
Bill and Kim Woodworth (62)	58,500	*	58,500	-	-
Bradley N. Rotter Self Employed Pension Plan & trust (63)	142,751	*	33,751	109,000	*
Bradley Rotter (64)	532,333	*	100,000	432,333	*

Name of Beneficial Owner	Number of Shares Beneficially Owned Prior to Offering		Number of Shares Being Offered	Number of Shares Beneficially Owned After Offering	
	Number	Percentage of Shares Outstanding		Number	Percentage of Shares Outstanding
Paul E. von Kuster (65)	109,688	*	109,688	-	-
Paul E. von Kuster, Trustee, Credit trust under will of Thomas W. von Kuster (66)	55,575	*	55,575	-	-
David R. Holbrooke (67)	58,500	*	58,500	-	-
Max A. Schneider, M.D. Trust (68)	18,625	*	14,625	4,000	*
Frederick E. Kahn, MD (69)	29,250	*	29,250	-	-
Dr. Jim Greenblatt (70)	197,708	*	187,528	10,180	*
Lawrence M. Baill (71)	44,727	*	44,727	-	-
Jospeh A. Bailey (72)	29,250	*	29,250	-	-
Daniel E. Greenblatt (73)	58,500	*	58,500	-	-
Fred Ehrman (74)	325,000	*	75,000	250,000	*
Michael T. Cullen, M.D. (75)	54,182	*	26,000	28,182	*
Crown Jewel Ventures, LLC (76)	181,226	*	49,419	131,807	*
Itasca Capital Partners, LLC (77)	58,500	*	58,500	-	-
Kerry Judd and Susan Stillman (78)	10,970	*	10,970	-	-
H. R. Swanson Revocable Trust (79)	58,500	*	58,500	-	-
Robert James Blinken Jr. (80)	29,250	*	29,250	-	-
Brean Murray Carret & Co. (81)	1,278,657	2.3%	1,257,650	21,007	*
Hal F. Lewis (82)	32,500	*	32,500	-	-
G&A Consulting Retirement Trust (83)	58,500	*	58,500	-	-
Scott Alderton (84)	50,894	*	50,894	-	-
Murray Markiles (85)	50,894	*	50,894	-	-
V. Joseph Stubbs (86)	50,894	*	50,894	-	-
Jonathan Hodes (87)	25,535	*	25,535	-	-
John McIlvery (88)	25,804	*	25,804	-	-
Greg Akselrud (89)	21,272	*	21,272	-	-
Scott Galer (90)	17,877	*	17,877	-	-
Kevin DeBre (91)	22,558	*	22,558	-	-
Ryan Azlein (92)	9,430	*	9,430	-	-
AJ Investors # 1 (93)	359,506	*	50,001	309,505	*
John Pagnucco (94)	650,699	1.2%	560,807	89,892	*
Tanya Ragan (95)	125,000	*	125,000	-	-
Ann & RJ Vassiliou (96)	367,608	*	367,608	-	-
NICAL Partners (97)	367,608	*	367,608	-	-
Thomas W. Von Kuster Jr. (98)	17,625	*	14,625	3,000	*
Thomas E. Brust & Susan Brust JT TEN (99)	58,500	*	58,500	-	-

\* Less than 1%

- (1) Consists of (a) 360,000 shares of common stock (b) 180,000 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock and (c) options to acquire 1,186,275 shares of common stock issuable upon the exercise of vested and exercisable options. 360,000 shares of common stock and 180,000 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus.

- (2) Consists of (a) 180,000 shares of common stock (b) 90,000 shares reserved for issuance upon exercise of warrants to purchase common stock and (c) options to acquire 56,250 shares of common stock issuable upon the exercise of vested and exercisable options. 180,000 shares of common stock and 90,000 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus. Paul Buck was a financial consultant to the company.
- (3) Consists of (a) 98,544 shares of common stock, which includes 500 shares held by Dr. Hoffman's daughter (b) 12,501 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock and (c) options to acquire 859,911 shares of common stock issuable upon the exercise of vested and exercisable options. 98,044 shares of common stock and 12,501 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus.
- (4) Consists of (a) 6,471,067 shares of Common Stock held by Sail Venture Partners, L.P., (b) 2,224,988 shares of Common Stock issuable upon the exercise of vested and exercisable warrants held by Sail Venture Partners, L.P., and (c) options to acquire 41,680 shares of common stock issuable upon the exercise of vested and exercisable options held by David Jones. Sail Venture Partners, LLC is the general partner of Sail Venture Partners, L.P.. 6,471,067 shares of common stock and 2,224,988 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus by Sail Venture Partners, L.P.. The unanimous vote of the managing members of Sail Venture Partners, LLC (who are Walter Schindler, Alan Sellers, Thomas Cain, F. Henry Habicht and David B. Jones), is required to voting and make investment decisions over the shares held by Sail Venture Partners, L.P.. The address of Sail Venture Partners, L.P. is 600 Anton Blvd., Suite 1010, Costa Mesa, CA 92626.
- (5) Consists of options to acquire 61,680 shares of common stock issuable upon the exercise of vested and exercisable options.
- (6) Consists of (a) 8,333 shares of common stock, (b) 2,501 shares of common stock issuable upon the exercise of warrants to purchase common stock and (c) options to acquire 264,350 shares of common stock issuable upon the exercise of vested and exercisable options. 8,333 shares of common stock and 2,501 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus by the selling stockholder.
- (7) Consists of (a) 8,387,578 shares of common stock and (b) 3,333,334 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock and (c) options to acquire 41,680 shares of common stock issuable upon the exercise of vested and exercisable options. 8,387,578 shares of common stock and 3,333,334 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus by the selling stockholder. The address of John Pappajohn is 2116 Financial Center, Des Moines, IA 50309.
- (8) Consists of (a) 15,505,522 shares of common stock (b) 5,843,324 shares of common stock issuable upon the exercise of vested and exercisable warrants and (c) 2,511,826 shares of common stock issuable upon the exercise of vested and exercisable options.
- (9) Consists of (a) 8,890,795 shares of common stock (including 540,000 shares owned by Mr. Brandt's children and 956,164 shares held by Brandt Ventures), (b) 1,079,728 shares reserved for issuance upon exercise of warrants to purchase common stock (including warrants to purchase 478,082 shares of common stock held by Brandt Ventures) and (c) 1,111,459 shares reserved for issuance upon exercise of options to purchase common stock held by Mr. Brandt. Of these holdings, 8,890,795 shares of common stock and 1,079,728 shares of common stock reserved for issuance upon exercise of certain warrants to purchase common stock are being registered for resale. The address of Leonard Brandt is 28911 Via Hacienda San Juan Capistrano CA 92675. Leonard Brandt became our Chairman of the Board, Chief Executive Officer and Secretary upon completion of our merger with CNS Response, Inc., a California corporation (or CNS California) on March 7, 2007 and served in these positions until April 10, 2009. Mr. Brandt is a founder of CNS California, and previously served as its President and Chief Executive Officer, and as a member of its Board of Directors.
- (10) Consists of 333,334 shares of common stock and 166,667 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (11) Consists of 1,080,000 shares of common stock and 540,000 shares reserved for issuance upon exercise of warrants to purchase common stock.

- (12) Consists of 650,000 shares of common stock and 324,990 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (13) Consists of 333,334 shares of common stock and 166,667 shares reserved for issuance upon exercise of warrants to purchase common stock. Argyris Vassiliou, as trustee of the Ann Vassiliou Children's Trust P2587, exercises voting and investment authority over the shares held by this selling stockholder.
- (14) Consists of 66,667 shares of common stock and 33,333 shares reserved for issuance upon exercise of warrants to purchase common stock. Andrew Chafoulias, as Chief Manager, exercises voting and investment authority over the shares held by this selling stockholder.
- (15) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock. William Wu, as President, exercises voting and investment authority over the shares held by this selling stockholder.
- (16) Consists of 500,000 shares of common stock and 250,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Gus Chafoulias, as President, exercises voting and investment authority over the shares held by this selling stockholder.
- (17) Consists of 100,000 shares of common stock and 50,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (18) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (19) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (20) Consists of 513,333 shares of common stock and 256,667 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (21) Consists of 400,000 shares of common stock and 200,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (22) Consists of 333,333 shares of common stock and 166,667 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (23) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (24) Consists of 1,460,351 shares of common stock and 386,923 shares reserved for issuance upon exercise of warrants to purchase common stock and options to acquire 6,000 shares of common stock issuable upon the exercise of vested and exercisable options. 1,460,351 shares of common stock and 386,923 shares of common stock issuable upon exercise of warrants are being registered for resale on this prospectus by the selling stockholder. Dr. Proler provides medical consulting services to the company.
- (25) Consists of 430,000 shares of common stock and 215,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (26) Consists of 720,000 shares of common stock and 360,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (27) Consists of 720,000 shares of common stock and 360,000 shares reserved for issuance upon exercise of warrants to purchase common stock. The selling stockholder is an affiliate of a broker dealer but has certified to the company that she bought the securities being registered for resale in the ordinary course of business, and at the time of the purchase of such securities, had no agreements or understandings, directly or indirectly, with any person to distribute such securities.
- (28) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (29) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Starr F. Schlobohm, as trustee of the selling stockholder, exercises voting and investment authority over the shares held by this selling stockholder.
- (30) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (31) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.

- (32) Consists of 180,000 shares of common stock and 90,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Mr. Thompson is an employee of Equity Dynamics, Inc., which has provided advisory services to the company.
- (33) Consists of 1,080,000 shares of common stock and 540,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Mark C. Thompson & Bonita S. Thompson, as trustees, exercise voting and investment authority over the shares held by this selling stockholder.
- (34) Consists of 180,000 shares of common stock and 90,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (35) Consists of 900,000 shares of common stock and 450,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Elliott Donnelley, as President, Corporate G.P., exercises voting and investment authority over the shares held by this selling stockholder.
- (36) Consists of 333,333 shares of common stock and 166,667 shares reserved for issuance upon exercise of warrants to purchase common stock. Bruce Seyburn, as Partner, exercises voting and investment authority over the shares held by this selling stockholder.
- (37) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (38) Consists of 360,000 shares of common stock and 180,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Kevin and Laurie Carnahan, as trustees, exercise voting and investment authority over the shares held by this selling stockholder.
- (39) Consists of 220,000 shares of common stock and 110,000 shares reserved for issuance upon exercise of warrants to purchase common stock. Patricia J. Jordan, as Chief Manager, exercises voting and investment authority over the shares held by this selling stockholder.
- (40) Consists of 166,667 shares of common stock and 83,333 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (41) Consists of 965,134 shares reserved for issuance upon exercise of warrants to purchase common stock. The selling stockholder is a broker-dealer, and has represented to the company that it received its warrants to purchase common stock as compensation for investment banking services to the company. Michael Rabinowitz exercises voting and investment authority over the shares held by this selling stockholder.
- (42) Consists of 65,340 shares reserved for issuance upon exercise of warrants to purchase common stock. The selling stockholder is a broker-dealer, and has represented to the company that it received its warrants to purchase common stock as compensation for investment banking services to the company. Michael Potter, as Chairman, exercises voting and investment authority over the shares held by this selling stockholder.
- (43) Consists of 152,460 shares reserved for issuance upon exercise of warrants to purchase common stock. The selling stockholder is a broker-dealer, and has represented to the company that it received its warrants to purchase common stock as compensation for investment banking services to the company. The selling shareholder is also an affiliate of a broker-dealer. The selling stockholder has represented that it purchased or otherwise acquired the warrants in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold.
- (44) Consists of 292,200 shares reserved for issuance upon exercise of warrants to purchase common stock. The selling stockholder is a broker-dealer and has represented to the company that it received its warrants to purchase common stock as compensation for investment banking services to the company. Frank Mazzola exercises voting and investment authority over the shares held by this selling stockholder.
- (45) Consists of 21,636 shares of common stock and 8,466 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (46) Consists of 125,242 shares of common stock and 3,375 shares of common stock issuable upon the exercise of vested and exercisable warrants. Max A. Schneider exercises voting and investment authority over the shares held by this selling stockholder.
- (47) Consists of 108,182 shares of common stock and 42,331 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock.

- (48) Consists of 7,415 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock.
- (49) Consists of 250,000 shares of common stock and 150,000 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock. Michel Clemence, Dominique Warluzel and Mansour Ojje, as directors of the selling stockholder, each exercise voting and dispositive power over the shares held by this selling stockholder.
- (50) Consists of 64,910 shares of common stock and 25,398 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock.
- (51) Consists of 198,394 shares of common stock and 10,159 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock. 24,448 shares of common stock and 10,159 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus
- (52) Consists of 107,834 shares of common stock. John Pike, as trustee of the selling stockholder, exercises voting and investment authority over the shares held by this selling stockholder.
- (53) Consists of 600,006 shares of common stock and 42,330 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock. 101,806 shares of common stock and 42,330 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (54) Consists of 1,242,375 shares of common stock and 1,357,707 shares of common stock issuable upon the exercise of vested and exercisable options to purchase common stock. Brian MacDonald is the Chief Engineer of the Company. 1,015,459 shares of common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (55) Consists of 1,015,334 shares of common stock, 4,233 shares of common stock issuable upon the exercise of vested and exercisable warrants to purchase common stock and 322,534 shares of common stock issuable upon the exercise of vested and exercisable options to purchase common stock. 117,170 shares of common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (56) Consists of 1,800,000 shares of common stock and 540,000 shares reserved for issuance upon exercise of warrants to purchase common stock. The selling stockholder is affiliated with Alps Distributors, Inc. a registered broker/dealer and member of FINRA. The selling stockholder purchased or otherwise acquired these shares in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold. Mr. Paul T. Beste, Vice President & Secretary of Heartland Group Inc., exercises voting and investment authority over the shares held by this selling stockholder.
- (57) Consists of 1,292,177 shares of common stock and 474,102 shares of common stock issuable upon the exercise of warrants to purchase common stock. Elizabeth Morgenthau, as President of the selling stockholder, exercises voting and investment authority over the shares held by this selling stockholder.
- (58) Consists of 651,090 shares of common stock and 195,327 shares reserved for issuance upon exercise of certain warrants to purchase common stock held by Partner Healthcare Fund, LP, and 374,800 shares of common stock and 112,440 shares reserved for issuance upon exercise of warrants to purchase common stock held by Partner Healthcare Offshore Fund, Ltd. Brian Grossman, as the Portfolio Manager of Partner Healthcare Offshore Fund, Ltd., exercises voting and investment authority over the shares held by Partner Healthcare Offshore Fund, Ltd. Brian Grossman, as the Portfolio Manager of Partner Healthcare Fund, L.P., exercises voting and investment authority over the shares held by Partner Healthcare Fund, L.P.
- (59) Consists of 11,985 shares of common stock and 12,501 shares reserved for issuance upon exercise of warrants to purchase common stock. 12,501 warrants to purchase shares of common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (60) Consists of 22,500 shares of common stock and 6,750 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (61) Consists of 40,891 shares of common stock and 15,231 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (62) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock. Kimberly Craig-Woodworth and William N. Woodworth are affiliated with Brean Murray, Carret & Co. a registered broker/dealer and member of FINRA. Kimberly Craig-Woodworth and William N. Woodworth purchased or otherwise acquired these shares in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold.



- (63) Consists of 109,000 shares of common stock and 33,751 shares reserved for issuance upon exercise of warrants to purchase common stock. Bradley Rotter, Trustee of the Bradley N. Rotter Self Employed Pension Plan & Trust, exercises voting and investment authority over the shares held by this selling stockholder. 33,751 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (64) Consists of 432,333 shares of common stock and 100,000 shares reserved for issuance upon exercise of warrants to purchase common stock. 100,000 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (65) Consists of 84,375 shares of common stock and 25,313 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (66) Consists of 42,750 shares of common stock and 12,825 shares reserved for issuance upon exercise of warrants to purchase common stock. Paul E. von Kuster, Trustee, Credit trust under will of Thomas W. von Kuster, exercises voting and investment authority over the shares held by this selling stockholder.
- (67) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (68) Consists of (a) 11,250 shares of common stock (b) 3,375 shares reserved for issuance upon exercise of warrants to purchase common stock and (c) 4,000 shares reserved for issuance upon exercise of options to purchase common stock. 11,250 shares of common stock and 3,375 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus. Max Schneider, Trustee of the Max A Schneider, M.D. Trust, exercises voting and investment authority over the shares held by this selling stockholder.
- (69) Consists of 22,500 shares of common stock and 6,750 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (70) Consists of (a) 129,028 shares of common stock (b) 58,500 shares reserved for issuance upon exercise of warrants to purchase common stock and (c) 10,180 shares reserved for issuance upon exercise of options to purchase common stock. 129,028 shares of common stock and 58,500 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus. Dr. Greenblatt is a contractor who acts as one of CNS Response, Inc.'s Regional Medical Directors and in this capacity, among other things, trains physicians in the use of rEEG.
- (71) Consists of 32,886 shares of common stock and 11,841 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (72) Consists of 22,500 shares of common stock and 6,750 shares reserved for issuance upon exercise of warrants to purchase common stock. Mr. Bailey is affiliated with Brean Murray, Carret & Co., LLC, a registered broker/dealer and member of FINRA, as he is an employee of Brean Murray, Carret & Co., LLC. Mr. Bailey purchased or otherwise acquired his shares in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold.
- (73) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (74) Consists of 250,000 shares of common stock and 75,000 shares reserved for issuance upon exercise of warrants to purchase common stock. 75,000 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus. Mr. Ehrman is affiliated with Brean Murray, Carret & Co. a registered broker/dealer and member of FINRA. Mr. Ehrman purchased or otherwise acquired his shares in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold.
- (75) Consists of 48,182 shares of common stock and 6,000 shares reserved for issuance upon exercise of warrants to purchase common stock. 20,000 shares of common stock and 6,000 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus.

- (76) Consists of 131,807 shares of common stock and 49,419 shares reserved for issuance upon exercise of warrants to purchase common stock. 49,419 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus. Sharon Keene exercises voting and investment authority over the shares held by this selling stockholder.
- (77) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock. Michael S. Wallace, the Managing Member of Itasca Capital Partners, LLC, exercises voting and investment authority over the shares held by this selling stockholder.
- (78) Consists of 8,438 shares of common stock and 2,532 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (79) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock. H. R. Swanson, Trustee of the H. R. Swanson Rev. Trust, exercises voting and investment authority over the shares held by this selling stockholder.
- (80) Consists of 22,500 shares of common stock and 6,750 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (81) Consists of 641,472 shares of common stock and 637,185 shares reserved for issuance upon exercise of warrants to purchase common stock. Brean Murray, Carret & Co., LLC is a FINRA member firm. Brean Murray, Carret & Co., LLC purchased or otherwise acquired its shares in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold. William McCluskey, President and Chief Executive Officer of Brean Murray, Carret & Co., LLC, exercises voting and investment authority over the shares held by this selling stockholder. 633,138 shares of common stock and 624,512 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (82) Consists of 25,000 shares of common stock and 7,500 shares reserved for issuance upon exercise of warrants to purchase common stock. Mr. Lewis is affiliated with a registered broker/dealer and member of FINRA. Mr. Lewis purchased or otherwise acquired his shares in the ordinary course of business and, at the time of such purchase/acquisition, had no agreements or understandings, directly or indirectly, with any person, to distribute the securities to be resold.
- (83) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock. Gary Gossard, as Trustee of the G&A Consulting Retirement Trust, exercises voting and investment authority over the shares held by this selling stockholder.
- (84) Consists of 36,096 shares of common stock and 14,798 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (85) Consists of 36,096 shares of common stock and 14,798 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (86) Consists of 36,096 shares of common stock and 14,798 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (87) Consists of 18,456 shares of common stock and 7,079 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (88) Consists of 18,624 shares of common stock and 7,180 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (89) Consists of 15,518 shares of common stock and 5,754 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (90) Consists of 12,869 shares of common stock and 5,008 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (91) Consists of 16,371 shares of common stock and 6,187 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (92) Consists of 7,254 shares of common stock and 2,176 shares reserved for issuance upon exercise of warrants to purchase common stock.

- (93) Consists of 309,505 shares of common stock and 50,001 shares reserved for issuance upon exercise of warrants to purchase common stock. 50,001 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus. Adam Katz, as Partner of AJ Investors #1, exercises voting and investment authority over the shares held by this selling stockholder.
- (94) Consists of 306,748 shares of common stock and 214,951 shares reserved for issuance upon exercise of warrants to purchase common stock held by John Pagnucco; 75,000 shares of common stock and 45,000 shares reserved for issuance upon exercise of warrants to purchase common stock held by John W. Pagnucco 1998 Rollover Roth IRA RBC Dain; and 9,000 shares of common stock held by John Pagnucco as custodian for his grandchildren over which John Pagnucco exercises voting and dispositive control. Of these holdings, 225,856 shares of common stock and 214,951 shares of common stock reserved for issuance upon exercise of warrants to purchase common stock held by John Pagnucco and 75,000 shares of common stock and 45,000 shares of common stock reserved for issuance upon exercise of warrants to purchase common stock held by John W Pagnucco 1998 Rollover Roth IRA RBC Dain are being registered for resale sale on this prospectus.
- (95) Consists of 83,333 shares of common stock and 41,667 shares reserved for issuance upon exercise of warrants to purchase common stock.
- (96) Consists of 367,608 shares of common stock.
- (97) Consists of 367,608 shares of common stock. Argyris Vassiliou, as general partner of the NICALE Partners, exercises voting and investment authority over the shares held by this selling stockholder.
- (98) Consists of 14,250 shares of common stock, (including 1,000 shares owned by his minor child) and 3,375 shares reserved for issuance upon exercise of warrants to purchase common stock. 11,250 shares of common stock and 3,375 shares reserved for issuance upon exercise of warrants to purchase common stock are being registered for re-sale by the selling shareholder on this prospectus.
- (99) Consists of 45,000 shares of common stock and 13,500 shares reserved for issuance upon exercise of warrants to purchase common stock.

## RELATED PARTY TRANSACTIONS

### Certain Relationships and Related Transactions

Except as follows, since October 1, 2007, there has not been, nor is there currently proposed, any transaction or series of similar transactions to which we are or will be a party:

- in which the amount involved exceeds the lesser of \$120,000 or 1% of the average of our total assets at year-end for the last two completed fiscal years; *and*
- in which any director, executive officer, other stockholders of more than 5% of our common stock or any member of their immediate family had or will have a direct or indirect material interest.

### Transactions with George Carpenter

On December 24, 2009, the Company completed a second closing of its private placement in which it received gross proceeds of approximately \$3 million, which included \$108,000 invested by Mr. Carpenter. In exchange for his investment, the Company issued to Mr. Carpenter 360,000 shares of its common stock and a five year non-callable warrant to purchase 180,000 shares of its common stock at an exercise price of \$0.30 per share. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the private placement to Mr. Carpenter. This investment was completed with the identical terms as received by all other investors in the Company's private placement closings that took place on August 26, 2009, December 24, 2009, December 31, 2009 and January 4, 2010.

On January 4, 2010 a family member of Mr. Carpenter's was paid \$36,000 for data discovery consulting services in support of the Company's litigation with Mr. Brandt. This transaction was done with knowledge of certain board members and was subsequently ratified by the Board.

On March 3, 2010, the Board granted options to purchase 4,000,000 shares to George Carpenter, the Company's Chief Executive Officer. The options have an exercise price of \$0.55 per share, vest in equal monthly installments over a period of four years and have a term of 10 years from the date of grant.

### Transactions with SAIL Venture Partners LP

On March 7, 2007, Odyssey Venture Partners II, L.P. (now called Sail Venture Partners LP), invested an aggregate of \$447,000 in our Private Placement and in exchange were issued 372,500 shares of our Common Stock and a warrant to purchase 111,750 shares of our common stock at an exercise price of \$1.80 per share. Mr. Jones, a director of the company, is a partner of Sail Venture Partners, L.P. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the 2007 private placement to Sail Venture Partners LP.

On March 30, 2009, we executed two senior secured convertible promissory notes each in the principal amount of \$250,000 with SAIL Venture Partners, LP ("SAIL") and Brandt Ventures, GP ("Brandt"). David Jones, a member of our board of directors, is one of four managing members of SAIL Venture Partners, LLC, which is the general partner of SAIL. Leonard Brandt, also a member of our board of directors until December 3, 2009 and our former Chief Executive Officer, is the general partner of Brandt.

These notes accrue interest at the rate of 8% per annum and are due and payable upon a declaration by the note holder(s) requesting repayment, unless sooner converted into shares of our common stock (as described below), upon the earlier to occur of: (i) June 30, 2009 or (ii) an Event of Default (as defined in the notes), which includes the default that occurred as a result of Mr. Brandt no longer serving as our Chief Executive Officer effective as of April 10, 2009. The notes are secured by a lien on substantially all of our assets (including all intellectual property). In the event of a liquidation, dissolution or winding up of the company, unless Brandt and/or SAIL informs us otherwise, we shall pay such investor an amount equal to the product of 250% multiplied by the principal and all accrued but unpaid interest outstanding on the note.

In concert with an equity financing transaction of at least \$1,500,000 (excluding any and all other debt that is converted), 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.

On May 14, 2009, we entered into a Bridge Note and Warrant Purchase Agreement with SAIL.

Pursuant to the Purchase Agreement, on May 14, 2009, SAIL purchased a Secured Promissory Note in the principal amount of \$200,000 from us. 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 registration statement of which this prospectus forms a part covers the resale of the common stock underlying the aforementioned warrant.

The Purchase Agreement also provides that, at any time on or after June 30, 2009, and provided that certain conditions are satisfied by us, SAIL will purchase from us a second Secured Convertible Promissory Note in the principal sum of \$200,000 and will be issued a second warrant identical in terms to the warrant described above. The aforementioned conditions include our entry into a term sheet in which investors commit to participate in an equity financing by us of not less than \$2,000,000 (excluding any and all other debt that are to be converted).

The notes issued or issuable pursuant to the Purchase Agreement accrue interest at the rate of 8% per annum and are 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 SAIL on or after June 30, 2009 or (ii) an Event of Default as defined in the notes. The note(s) are secured by a lien on substantially all of our assets (including all intellectual property). In the event of a liquidation, dissolution or winding up of the company, unless SAIL informs us otherwise, we shall pay SAIL an amount equal to the product of 250% multiplied by the principal and all accrued but unpaid interest outstanding on the note(s).

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(s) 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 addition, in the event we issue preferred stock that is not part of an equity financing described above, SAIL may, at its option, convert the principal and all accrued, but unpaid interest outstanding under the note(s) into preferred stock by dividing such amount by 85% of the per share price paid by the purchasers' of our preferred stock.

On August 26, 2009, the Company completed an equity financing transaction of approximately \$2 million. As a result of the financing, each of the notes described above that were held by SAIL and Brandt automatically converted into common stock, with SAIL receiving 1,758,356 shares and Brandt receiving 956,164 shares. In addition, pursuant to the terms of the notes, SAIL was issued a non-callable five year warrant to purchase 879,178 shares of common stock at an exercise price of \$0.30 per share and Brandt was issued a non-callable five year warrant to purchase 478,082 shares of common stock at an exercise price of \$0.30 per share. The registration statement of which this prospectus forms a part covers the resale of the aforementioned common stock and common stock underlying the warrants.

In connection with the equity financing referred to above, on August 26, 2009, SAIL purchased 6 Units for \$324,000. Each Unit consists of 180,000 shares of common stock and a five year non-callable warrant to purchase an additional 90,000 shares of common stock at an exercise price of \$0.30 per share. The shares of common stock and warrants comprising the Units are immediately separable and were issued separately. This investment was completed with the identical terms as received by all other investors in the Company's private placement closings that took place on August 26, 2009, December 24, 2009, December 31, 2009 and January 4, 2010. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the 2009 private placement to SAIL.

#### **Transactions with Leonard Brandt**

Please see the discussion above under the heading "*Transaction with Sail Venture Partners LP*" for a summary of a bridge financing transaction which closed on March 30, 2009, in which Mr. Brandt participated.

#### **Transactions with Henry Harbin, M.D.**

Prior to his appointment as a Director, Dr. Harbin was party to several transactions with us. On March 7, 2007, Dr. Harbin participated in the first closing of our private placement transaction pursuant to which we received gross proceeds of approximately \$7.0 million from institutional investors and other high net worth individuals. In the first closing of the private placement, we sold 5,840,374 "Investment Units" at \$1.20 per Investment Unit. Each Investment Unit consists of one share of our common stock, and a five year non-callable warrant to purchase three-tenths of one share of our common stock, at an exercise price of \$1.80 per share. Mr. Harbin received 8,334 shares of our common stock and a warrant to purchase 2,501 shares of our common stock as a result of his investment in the company. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the 2007 private placement to Dr. Harbin.

In addition, since June 2007, Dr. Harbin has acted as a strategic advisor to the company, and has advised us on our marketing initiatives. As compensation for his services as an advisor, on August 8, 2007, we granted Dr. Harbin a non-qualified option to purchase 24,000 shares of our common stock at an exercise price of \$1.09 per share. Options to purchase 6,000 shares vested on the date of grant, and the remaining 18,000 shares vested in equal installments of 2,000 shares on each monthly anniversary of the grant date for a period of nine months.

Subsequently, on April 15, 2008, we entered into a consulting agreement which expired on December 31, 2008 pursuant to which Dr. Harbin was paid an aggregate of \$24,000 and was granted options to purchase 56,000 shares of our common stock at an exercise price of \$0.96 per share, with options to purchase 14,000 shares vesting on the date of grant, options to purchase 37,328 shares vesting in eight equal monthly installments of 4,666 options commencing on April 30, 2008, and the remaining options to purchase 4,672 shares vesting on December 31, 2008.

On March 17, 2009, we entered into a consulting agreement with Dr. Harbin which expired on December 31, 2009 pursuant to which Dr. Harbin was paid an aggregate of \$24,000 as compensation for his consulting services. Dr. Harbin was paid the \$24,000 due to him in January 2010. In addition, as further compensation, we granted Dr. Harbin options to purchase 56,000 shares of our common stock at an exercise price of \$0.40 per share, with the option vesting in equal monthly installments over a twelve month period commencing on January 1, 2009.

On March 26, 2010, we entered into a new Consulting Agreement with Dr. Harbin, pursuant to which Dr. Harbin is to be paid an aggregate of \$36,000 as compensation for his consulting services. The agreement expires on December 31, 2010, but is renewable for two one year terms on January 1, 2011 and 2012. In addition to his cash compensation, On March 3, 2010 we granted Dr. Harbin options to purchase 400,000 shares of our common stock at an exercise price of \$0.55 per share as further compensation for such services, with the options vesting in equal monthly installments over a 36 month period commencing on March 3, 2010. The options expire on March 3, 2020.

### **Transactions with Daniel Hoffman**

On January 11, 2008, we, through our wholly owned subsidiary, Colorado CNS Response, Inc. and pursuant to the terms of a Stock Purchase Agreement, acquired all of the outstanding common stock of Neuro-Therapy Clinic, PC, a Colorado professional medical corporation wholly owned by Dr. Hoffman ("NTC") in exchange for a non-interest bearing note of \$300,000 payable in equal monthly installments over 36 months. At the time of the transaction, NTC was our largest customer. Upon the completion of the acquisition, Dr. Hoffman was appointed our Chief Medical Officer. The Stock Purchase Agreement provides that upon the occurrence of certain events, as defined in the purchase agreement, Dr. Hoffman has a repurchase option for a period of three years subsequent to the closing, as well as certain rights of first refusal, in relation to the assets and liabilities we acquired.

On March 3, 2010, the Board granted options to purchase 500,000 shares to Daniel Hoffman. Each of the options have an exercise price of \$0.55 per share, vest in equal monthly installments over a period of four years and have a term of 10 years from the date of grant.

Prior to his employment, from October 1, 2007 to January 15, 2008, Dr. Hoffman earned \$15,000 for consulting services rendered to the Company. In addition, as compensation for his services to us as a consultant, Dr. Hoffman was granted options to purchase an aggregate of 814,062 shares of our common stock at an exercise price of \$1.09 on August 7, 2007. In accordance with the terms of his employment agreement, the terms of Dr. Hoffman's option grant were amended to provide that in the event of a change of control transaction, a portion of Dr. Hoffman's unvested options equal to the number of unvested options at the date of the corporate transaction multiplied by the ratio of the time elapsed between August 7, 2007 and the date of corporate transaction over the vesting period (42 months), will automatically accelerate, and become fully vested.

Prior to his employment with us, Dr. Hoffman participated in our private placement transaction which closed on May 16, 2007. In the private placement, we received gross proceeds of approximately \$7.8 million from institutional investors and other high net worth individuals, including \$50,000 from Dr. Hoffman. In exchange for his investment, Dr. Hoffman was issued 41,667 shares of our common stock, and a fully-vested five year non-callable warrant to purchase 12,501 shares of our common stock at an exercise price of \$1.80 per share. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the 2007 private placement to Dr. Hoffman.

### **Transactions with John Pappajohn**

In conjunction with the closing of the Company's private placement on August 26, 2009, Mr. Pappajohn joined the Company's Board of Directors.

On June 12, 2009, we entered into a Bridge Note and Warrant Purchase Agreement with Mr. John Pappajohn ("Pappajohn").

Pursuant to the Purchase Agreement, on June 12, 2009, Pappajohn purchased a Secured Convertible Promissory Note in the principal amount of \$1,000,000 from us. In order to induce Pappajohn to purchase the note, we issued to Pappajohn a warrant to purchase up to 2,333,333 shares of our common stock and issued to relatives of Pappajohn warrants to purchase up to a total of 1,000,000 shares, all at a purchase price equal to \$0.30 per share. These warrants were exercised for shares of common stock in cashless exercises on February 23, 2010 and February 24, 2010, and such shares are being registered for resale on this registration statement of which this prospectus forms a part.

The note issued pursuant to the Purchase Agreement provided that the principal amount of \$1,000,000 together with a single Premium Payment of \$90,000 which is 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 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 intellectual property). In the event of a liquidation, dissolution or winding up of the company, unless Pappajohn informs us otherwise, we were required to pay Pappajohn an amount equal to the product of 250% multiplied by the then outstanding principal amount of the note and the Premium Payment.

The note also contained a provision 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 will be repaid in cash at the time of such equity financing) shall 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.

On August 26, 2009, the Company completed an equity financing transaction of approximately \$2 million. As a result of the financing, the note described above held by Mr. Pappajohn automatically converted into common stock, with Mr. Pappajohn receiving 3,333,334 shares. In addition, pursuant to the terms of the note, Mr. Pappajohn received a five year non-callable warrant to purchase 1,666,667 shares of common stock at an exercise price of \$0.30 per share. The registration statement of which this prospectus forms a part covers the resale of the aforementioned common stock and the common stock underlying the warrants issued to Mr. Pappajohn.

In connection with the equity financing referred to above, on August 26, 2009, Mr. Pappajohn invested an additional \$1,000,000 in the Company. In exchange for his investment, the Company issued an additional 3,333,333 shares of common stock to Mr. Pappajohn and a five year non-callable warrant to purchase 1,666,667 shares of common stock at an exercise price of \$0.30 per share. The terms of this investment were identical to the terms received by all other investors in the Company's private placement closings that took place on August 26, 2009, December 24, 2009, December 31, 2009 and January 4, 2010. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the 2009 private placement to Mr. Pappajohn.

The Company intends to reimburse Equity Dynamics, Inc., a company solely owned by Mr. Pappajohn, for expenses which Equity Dynamics incurred between May and December, 2009 on behalf of CNS Response, Inc. These expenses include \$34,700 incurred in connection with the Company's private placement financing and other activities.

On February 23, 2010 Mr. Pappajohn exercised 2,333,333 warrants and was issued 1,720,910 shares of common stock in a net exercise of warrants in lieu of cash transaction.

On June 3, 2010, we entered into a Bridge Note and Warrant Purchase Agreement with John Pappajohn, pursuant to which Mr. Pappajohn agreed to purchase two secured promissory notes (each, a "Note") in the aggregate principal amount of \$500,000 with each Note in the principal amount of \$250,000 maturing on December 2, 2010. On June 3, 2010, Mr. Pappajohn loaned the Company \$250,000 in exchange for the first Note (there were no warrants issued on this first Note). We have agreed to issue to Mr. Pappajohn a warrant to purchase up to 250,000 shares of common stock (the "Warrant") upon the issuance of the second Note, at an exercise price (subject to customary anti-dilution adjustments) equal to the fair market value per share at the time of issuance of the Warrant. Issuance of the Warrant to Mr. Pappajohn is subject to and conditioned upon the purchase by Mr. Pappajohn of the second Note. The Company and Mr. Pappajohn will execute a registration rights agreement covering the securities issuable upon exercise of the Warrant.



Each Note accrues interest at a rate of 9% per annum which will be paid together with the repayment of the principal amount at the earliest of (i) the maturity date; (ii) prepayment of the Note at the option of the Company (iii) closing of a financing in which the aggregate proceeds to the Company are not less than \$3,000,000 or (iv) the occurrence of an Event of Default (as defined in the Note). The Purchase Agreement and each Note grant Mr. Pappajohn a senior security interest in and to all of the Company's existing and future right, title and interest in its tangible and intangible property. Each Note includes provisions intended to protect the right of the holder of the Note.

#### **Transactions with Paul Buck**

On March 3, 2010, the Board granted options to purchase 450,000 shares to Paul Buck. Each of the options have an exercise price of \$0.55 per share, vest in equal monthly installments over a period of four years and have a term of 10 years from the date of grant.

Prior to his employment by the Company, Mr. Buck had been working with the Company as an independent consultant since December 2008, assisting management with finance and accounting matters as well as the Company's filings with the Securities and Exchange Commission. Mr. Buck earned \$260,800 in consulting services rendered to the Company.

On December 24, 2009, the Company completed a second closing of its private placement in which it received gross proceeds of approximately \$3 million, which included \$54,000 invested by Mr. Buck. In exchange for his investment, the Company issued to Mr. Buck 180,000 shares of its common stock and a five year non-callable warrant to purchase 90,000 shares of its common stock at an exercise price of \$0.30 per share. This investment was completed with the identical terms as received by all other investors in the Company's private placement closings that took place on August 26, 2009, December 24, 2009, December 31, 2009 and January 4, 2010. The registration statement of which this prospectus forms a part covers the resale of the common stock and the common stock underlying the warrants sold in the 2009 private placement to Mr. Buck.

#### **Transactions with Non-Executive Directors**

On March 3, 2010, the Board granted options to purchase 250,000 shares to each non-executive Director (Dr. Harbin, Mr. Jones, Mr. Pappajohn, Mr. Thompson, and Dr. Vaccaro) for their board service. Each of the options have an exercise price of \$0.55 per share, vest in equal monthly installments over a period of three years and have a term of 10 years from the date of grant.

As Mr. Thompson has subsequently resigned from the board, he has forfeited the option to purchase the 250,000 shares granted to him. However, on March 3, 2010, the Board also granted options to Mr. Thompson to purchase 150,000 shares for his services as an advisor to the Company. Each of the options have an exercise price of \$0.55 per share, vest in equal monthly installments over a period of three years and have a term of 10 years from the date of grant.

#### **Transactions with Promoters and Control Persons**

Prior to our merger with CNS California, which closed on March 7, 2007, Strativation, Inc. (now called CNS Response, 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.

#### ***Shares for Debt Agreement***

Prior to our merger with CNS California, on January 11, 2007, we entered into a Shares For Debt Agreement with Richardson & Patel LLP ("R&P"), our former legal counsel, pursuant to which we agreed to issue and R&P agreed to accept 645,846 restricted shares of our common stock (the "Shares") as full and complete settlement of a portion of the total outstanding debt in the amount of \$261,202 that we owed to R&P for legal services (the "Partial Debt"). On January 15, 2007, the company and R&P agreed to amend and restate the Shares for Debt Agreement to increase the number of Shares to be issued in settlement of such Partial Debt to 656,103 restricted shares of our common stock, which then represented 75.5% of our issued and outstanding common stock.

### ***Registration Rights Agreement***

On January 11, 2007, we entered into a Registration Rights Agreement in connection with the above referenced Shares For Debt Agreement with R&P and various other stockholders of the Company signatory thereto ("Majority Stockholders") in connection with the shares of the company acquired pursuant to the Shares For Debt Agreement and certain other transactions that took place on or around July 18, 2006. On January 15, 2007, the company and the Majority Stockholders agreed to amend and restate the Registration Rights Agreement to provide registration rights to the Majority Stockholders for up to 767,101 shares of our common stock held or to be acquired by them.

### ***Merger Agreement***

On January 16, 2007, we entered into an Agreement and Plan of Merger with CNS Response, Inc., a California corporation (or CNS California), and CNS Merger Corporation, a California corporation and our wholly-owned subsidiary that was formed to facilitate the acquisition of CNS California (the "Merger Agreement"). On March 7, 2007, the merger with CNS California closed, CNS California became our wholly-owned subsidiary, and we changed our name from Strativation, Inc. to CNS Response, Inc.. At the Effective Time of the Merger (as defined in the Merger Agreement, as amended on February 23, 2007), MergerCo was merged with and into CNS California, the separate existence of MergerCo ceased, and CNS California continued as the surviving corporation at the subsidiary level. We issued an aggregate of 17,744,625 shares of our common stock to the stockholders of CNS California in exchange for 100% ownership of CNS California. Additionally, we assumed an aggregate of 8,407,517 options to purchase shares of common stock and warrants to purchase shares of common stock on the same terms and conditions as previously issued by CNS California. Pursuant to the Merger Agreement, our former sole director and executive officer, Silas Phillips, resigned as a director and executive officer of our company effective as of the closing of the merger, and the directors and officers of CNS California were appointed to serve as directors and officer of our company. Except for the Merger Agreement, as amended, and the transactions contemplated by that agreement, neither CNS California, nor the directors and officers of CNS California serving prior to the consummation of the Merger, nor any of their associates, had any material relationship with us, or any of our directors and officers, or any of our associates prior to the merger. Following the merger, the business conducted by the company is the business conducted by CNS California.

Pursuant to the terms of the Merger Agreement, we paid an advisory fee of \$475,000 to Richardson & Patel, LLP, our former legal counsel and a principal shareholder, immediately upon the closing of the merger.

### **Transactions with Selling Stockholders**

#### ***2007 Private Placement***

On March 7, 2007, simultaneous with the closing of the Merger, we received gross proceeds of approximately \$7,008,450 in the first closing of a private placement transaction with institutional investors and other high net worth individuals ("Investors"). Pursuant to Subscription Agreements entered into with these Investors, we sold 5,840,368 Investment Units, at \$1.20 per Investment Unit. Each "Investment Unit" consists of one share of our common stock, and a five year non-callable warrant to purchase three-tenths of one share of our common Stock, at an exercise price of \$1.80 per share (the "Investor Warrant"). On May 16, 2007, we completed a second closing of the private placement for an additional 664,390 Investment Units. The additional gross proceeds to us amounted to \$797,300.

Brean Murray Carret & Co. (“Brean Murray”) acted as placement agent and corporate finance advisor in connection with the private placement. For their services as placement agent and financial advisor, pursuant to the terms of an Engagement Agreement between CNS California and Brean Murray, Brean Murray received a retainer in the form of 83,333 shares of our common stock (having a deemed value of \$100,000) upon the closing of the private placement. We also paid Brean Murray a fee equal to 8% of the funds raised in the private placement, or approximately \$624,500 of the gross proceeds from the financing. In addition, Brean Murray received warrants (the “Placement Agent Warrants”) to purchase shares of our common stock in amounts equal to (i) 8% of the shares of common stock sold by Brean Murray in the private placement (520,380 warrants at an exercise price of \$1.44 per share), and (ii) 8% of the shares underlying the Investor Warrants sold by Brean Murray in the private placement (156,114 warrants at an exercise price of \$1.80 per share). The Placement Agent Warrants are fully vested and have a term of 5 years. We also paid \$87,700 in costs, fees and expenses incurred by Brean Murray in connection with the private placement. After payment of commissions and expenses associated with the offering, we received net proceeds of approximately \$6.9 million in the private placement financing.

The holders of the shares (i) sold in our 2007 private placement, (ii) issuable upon exercise of the Investor Warrants sold in the 2007 private placement, (iii) issuable upon exercise of the Placement Agent Warrants or otherwise under the engagement agreement with Brean Murray, and (iv) issued upon conversion of CNS California Series A Preferred Stock, CNS California Series B Preferred Stock and certain shares of CNS California Common Stock under the terms of the Merger Agreement, each have piggy-back registration rights with respect to such shares. For holders who have elected to participate, we are including for resale on this registration statement of which this prospectus forms a part the shares of common stock and/or shares of common stock purchasable under warrants issued in the above mentioned transactions that are held by such holders.

#### **2009 Private Placement**

On August 26, December 24 and December 31, 2009 and January 4, 2010, the Company completed a first, second, third and fourth and final closing of its private placement, resulting in gross proceeds to the Company of \$2,000,000, \$2,996,000, \$432,000 and \$108,000 respectively from accredited investors. Pursuant to Subscription Agreements entered into with the investors, we sold approximately 103 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 \$4,920,000 in the private placement.

Pursuant to Registration Rights Agreements entered into with each investor and the placement agent, we agreed to file a registration statement covering the resale of the Common Stock and the Common Stock underlying the warrants sold in the 2009 private placement, as well as the Common Stock underlying the warrants issued to the placement agent (as further described below) by the later of October 26, 2009 or the 20th calendar day after the termination of the offering. The Registration Rights agreement with the investors 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 20<sup>th</sup> calendar day after termination of the offering. The initial registration statement was filed on February 1, 2010. 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. The registration statement of which this prospectus forms a part covers the resale of the Common Stock and the Common Stock underlying the warrants sold in the private placement.

Pursuant to a Placement Agent Agreement entered into with Maxim Group LLC dated as of August 3, 2009, Maxim Group LLC served as lead placement agent in our recently completed private placement offering, and received, in addition to cash commissions and a non-accountable expense allowance (See pages F-29 to F-32 for further details), warrants to purchase an aggregate of 965,134 shares of our Common Stock with an exercise price of \$0.33 per share. Monarch Capital Group, Robert Nathan and Felix Investments, LLC also acted as placement agents in our recently completed private placement. In addition to cash commissions and a non-accountable expense allowance, each placement agent received warrants to purchase shares of our Common Stock at an exercise price of \$0.33 per share, with Monarch Capital Group receiving 65,340 warrants, Robert Nathan receiving 152,460 warrants and Felix Investments, LLC receiving 292,200 warrants. The registration statement of which this prospectus forms a part includes the shares underlying the warrants held by Maxim Group LLC, Monarch Capital Group, Robert Nathan and Felix Investments, LLC.

The warrants held by each placement agent expire between February 26, 2015 and January 4, 2015, corresponding to five years and six months after the closing of each tranche of the private placement in compliance with FINRA Rule 5110(f)(2)(H). All shares of Common Stock issued or issuable upon conversion of placement agent warrants received by each placement agent are restricted from sale, transfer, assignment, pledge or hypothecation or from being the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the effective date of the registration statement of which this prospectus forms a part, except transfers of the warrants to officers or partners each respective placement agent as allowed under FINRA Rule 5110 (g)(1) and (2).

The Form of Subscription Agreement, Form of Warrant issued to the investors, the Registration Rights Agreement with the investors, Amendment No. 1 to the Registration Rights Agreement with the investors, the Placement Agent Agreement, a form of warrant issued to the Placement Agent, and a form of Registration Rights Agreement with the Placement Agent associated with our 2009 private placement are referenced at Exhibits 10.18, 10.19, 10.20, 10.21, 10.28, 10.29 and 10.30 hereto.

## DESCRIPTION OF CAPITAL STOCK

The information set forth below is a general summary of our capital stock structure. As a summary, this Section is qualified by, and not a substitute for, the provisions of our Certificate of Incorporation, as amended, and Bylaws, as amended.

### Authorized Capital Stock

Our authorized capital stock consists of 750,000,000 shares of Common Stock, par value \$0.001 per share.

### Common Stock

As of June 22, 2010, we had 56,023,921 shares of Common Stock issued and outstanding. In addition, we have reserved 14,870,973 shares of Common Stock for issuance in respect of options to purchase common stock and 19,297,753 shares of Common Stock were reserved for issuance pursuant to issued and outstanding warrants to purchase our Common Stock.

#### Dividend Rights

The holders of outstanding shares of Common Stock are entitled to receive dividends out of funds legally available at the times and in the amounts that our Board may determine.

#### Voting Rights

Each holder of Common Stock is entitled to one vote for each share of Common Stock held on all matters submitted to a vote of stockholders.

#### No Preemptive or Similar Rights

Holders of Common Stock do not have preemptive rights, and Common Stock is not convertible or redeemable.

#### Right to Receive Liquidation Distributions

Upon our dissolution, liquidation or winding-up, the assets legally available for distribution to our stockholders are distributable ratably among the holders of Common Stock.

### Warrants

At June 22, 2010, the following warrants were outstanding:

- warrants that will expire at various times through 2012 to purchase an aggregate of 189,146 shares of our common stock at an exercise price per share of \$0.01, which were granted in connection with the issuance of convertible promissory notes;
- warrants that will expire at various times through 2015 to purchase an aggregate of 1,427,022 shares of our common stock at an exercise price per share of \$0.59 which were granted in connection with the issuance of convertible promissory notes;

- warrants that will expire at various times through 2011 to purchase an aggregate of 1,143,587 shares of our common stock at an exercise price per share of \$1.51 which were issued to investors in connection with the private placement completed in November 2006;
- warrants that will expire in 2011 to purchase 7,921 shares of our common stock at an exercise price per share of \$1.01 which were granted to the placement agent in connection with the private placement completed in November 2006;
- warrants that will expire in 2011 to purchase an aggregate of 4,752 shares of our common stock at an exercise price per share of \$1.812 which were granted to the placement agent in connection with the private placement completed in November 2006;
- warrants that will expire in 2012 to purchase 1,951,445 shares of our common stock at an exercise price per share of \$1.80 which were issued to investors in connection with the private placement which was completed concurrently with the Merger on March 7, 2007;
- warrants that will expire in 2012 to purchase 520,380 shares of our common stock at an exercise price per share of \$1.44 which were issued to the placement agent in connection with the private placement which was completed concurrently with the Merger on March 7, 2007;
- warrants that will expire in 2012 to purchase 156,114 shares of our common stock at an exercise price per share of \$1.80 which were issued to the placement agent in connection with the private placement which was completed concurrently with the Merger on March 7, 2007.
- warrants that will expire in 2016 to purchase 100,000 shares of our common stock at an exercise price per share of \$0.25 which were issued to SAIL Venture Partners, LLC in connection with the a bridge note of \$200,000 which was executed on May 14, 2009.
- warrants that will expire in 2014 through January 2015 to purchase 12,322,252 shares of our common stock at an exercise price per share of \$0.30 which were issued to investors who participated in our private placement in which we raised gross proceeds of \$5,579,000 between August, 2009 and January 2010.
- warrants that will expire in 2014 through January 2015 to purchase 1,475,134 shares of our common stock at an exercise price per share of \$0.33 which were issued to the placement agents in connection with the private placement in which we raised gross proceeds of \$5,579,000 between August 2009 and January 2010.

## Options

On August 3, 2006, CNS California adopted the CNS California 2006 Stock Incentive Plan (the “Stock Option Plan”). The Stock Option 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.

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 718-20, 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. Stock-based compensation expense is recognized over the employees' or service provider's requisite service period, generally the vesting period of the award.

Originally, a total of 10 million shares of common stock were reserved for issuance under the 2006 Plan. The 2006 Plan also originally provided that in any calendar year, no eligible employee or director shall be granted an award to purchase more than 3 million shares of stock. On March 3, 2010, the Board of Directors approved an amendment to the 2006 Plan which increased the number of shares of common stock reserved for issuance under the 2006 Plan from 10 million to 20 million shares and increased the limit on shares underlying awards granted within a calendar year to any eligible employee or director from 3 million to 4 million shares of common stock. The amendment was approved by shareholders at the annual meeting held on April 27, 2010.

On March 3, 2010, the Board of Directors also approved the grant of 9,450,000 options to staff members, directors, advisors and consultants. For staff members the options will vest equally over a 48 month period while for directors, advisors and consultants the options will vest equally over a 36 month period.

As of March 31, 2010, 2,124,740 options were exercised and there were 14,870,973 options and 183,937 restricted shares outstanding under the amended 2006 Plan and a further 575,000 options approved but not yet granted, leaving 2,245,350 shares available for issuance pursuant to future awards.

The following is a summary of the status of options outstanding at March 31, 2010:

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	2,513,549	10 years	\$ 1.09
\$ 1.20	243,253	5 years	\$ 1.20
\$ 0.51	41,187	10 years	\$ 0.51
\$ 0.40	56,000	10 years	\$ 0.40
\$ 0.55	8,400,000	10 years	\$ 0.55
<b>Total</b>	<b>14,870,973</b>		<b>\$ 0.63</b>

## **Anti-Takeover Provisions**

Delaware has enacted the following legislation that may deter or frustrate takeovers of Delaware corporations, such as CNS Response:

*Section 203 of the Delaware General Corporation Law.* Section 203 provides, with some exceptions, that a Delaware corporation may not engage in any of a broad range of business combinations with a person or affiliate, or associate of the person, who is an “interested stockholder” for a period of three years from the date that the person became an interested stockholder unless: (i) the transaction resulting in a person becoming an interested stockholder, or the business combination, is approved by the board of directors of the corporation before the person becomes an interested stockholder; (ii) the interested stockholder acquires 85% or more of the outstanding voting stock of the corporation in the same transaction that makes it an interested stockholder, excluding shares owned by persons who are both officers and directors of the corporation, and shares held by some employee stock ownership plans; or (iii) on or after the date the person becomes an interested stockholder, the business combination is approved by the corporation’s board of directors and by the holders of at least 66 2/3% of the corporation’s outstanding voting stock at an annual or special meeting, excluding shares owned by the interested stockholder. An “interested stockholder” is defined as any person that is (a) the owner of 15% or more of the outstanding voting stock of the corporation or (b) an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested stockholder.

*Authorized but Unissued Stock.* The authorized but unissued shares of our common stock are available for future issuance without shareholder approval. These additional shares may be used for a variety of corporate purposes, including future public offering to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock may enable our Board to issue shares of stock to persons friendly to existing management, which may deter or frustrate a takeover of the company.

## **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company. The address of American Stock Transfer & Trust Company is 59 Maiden Lane, New York, New York, and the phone number is (718) 921-8201.

## **Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters.**

The Company’s shares trade on the Nasdaq Over-the-Counter bulletin board market (OTC BB) under the symbol CNSO.OB. These shares are very thinly traded, with an average daily volume for the twelve months ended September 30, 2009 of 350 shares per day with no trades occurring on 215 out of 252 trading days. Consequently, management believes that the prices quoted on the OTC BB may not accurately reflect the value of the Company’s common shares. In addition, certain members of management have made open market purchases of the Company’s shares, including approximately 500 shares as recently as February 20, 2009.

We have never paid dividends on our common stock. CNS California has never paid dividends on its common stock. We intend to retain any future earnings for use in our business.

## PLAN OF DISTRIBUTION

We are registering the shares of common stock on behalf of the selling security holders. 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 time 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.

Each of Maxim Group LLC, Monarch Capital Group, Robert Nathan, and Felix Investments, LLC are registered broker dealers and FINRA members and are listed as selling shareholders in this prospectus. Maxim Group LLC served as lead placement agent in our recently completed private placement offering, and received, in addition to cash commissions and a non-accountable expense allowance, warrants to purchase an aggregate of 965,134 shares of our Common Stock with an exercise price of \$0.33 per share. Monarch Capital Group, Robert Nathan and Felix Investments, LLC also acted as placement agents in our recently completed private placement. In addition to cash commissions and a non-accountable expense allowance, each placement agent received warrants to purchase shares of our Common Stock at an exercise price of \$0.33 per share, with Monarch Capital Group receiving 65,340 warrants, Robert Nathan receiving 152,460 warrants and Felix Investments, LLC receiving 292,200 warrants. The registration statement of which this prospectus forms a part includes the shares underlying the warrants held by Maxim Group LLC, Monarch Capital Group, Robert Nathan and Felix Investments, LLC.

The warrants held by each placement agent expire between February 26, 2015 and January 4, 2015, corresponding to five years and six months after the closing of each tranche of the private placement in compliance with FINRA Rule 5110(f)(2)(H). All shares of Common Stock issued or issuable upon conversion of placement agent warrants received by each placement agent are restricted from sale, transfer, assignment, pledge or hypothecation or from being the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the effective date of the registration statement of which this prospectus forms a part, except transfers of the warrants to officers or partners each respective placement agent as allowed under FINRA Rule 5110 (g)(1) and (2).

Maxim Group LLC has indicated to us its willingness to act as selling agent on behalf of certain of the selling shareholders named in the prospectus under the section titled "Principal and Selling Stockholders" that purchased our privately placed securities. All shares sold, if any, on behalf of selling shareholders by Maxim Group LLC would be in transactions executed by Maxim Group LLC on an agency basis and commissions charged to its customers in connection with each transaction shall not exceed a maximum of 5% of the gross proceeds. Maxim Group LLC does not have an underwriting agreement with us and/or the selling shareholders and no selling shareholders are required to execute transactions through Maxim Group LLC. Further, other than any existing brokerage relationship as customers with Maxim Group LLC, no selling shareholder has any pre-arranged agreement, written or otherwise, with Maxim Group LLC to sell their securities through Maxim Group LLC.

FINRA Rule 5110 requires member firms (unless an exemption applies) to satisfy the filing requirements of Rule 5110 in connection with the resale, on behalf of selling shareholders, of the securities on a principal or agency basis. NASD Notice to Members 88-101 states that in the event a selling shareholder intends to sell any of the shares registered for resale in this prospectus through a member of FINRA participating in a distribution of our securities, such member is responsible for insuring that a timely filing, if required, is first made with the Corporate Finance Department of FINRA and disclosing to FINRA the following:

- it intends to take possession of the registered securities or to facilitate the transfer of such certificates;
- the complete details of how the selling shareholders' shares are and will be held, including location of the particular accounts;
- whether the member firm or any direct or indirect affiliates thereof have entered into, will facilitate or otherwise participate in any type of payment transaction with the selling shareholders, including details regarding any such transactions; and
- in the event any of the securities offered by the selling shareholders are sold, transferred, assigned or hypothecated by any selling shareholder in a transaction that directly or indirectly involves a member firm of FINRA or any affiliates thereof, that prior to or at the time of said transaction the member firm will timely file all relevant documents with respect to such transaction(s) with the Corporate Finance Department of FINRA for review.

No FINRA member firm may receive compensation in excess of that allowable under FINRA rules, including Rule 5110, in connection with the resale of the securities by the selling shareholders, which total compensation may not exceed 8%.

## LEGAL MATTERS

Stubbs Alderton & Markiles, LLP (“SAM LLP”), has provided legal services to us in connection with its preparation of the registration statement covering the securities offered by this prospectus. In addition, SAM LLP has rendered a legal opinion, attached hereto as Exhibit 5.1, as to the validity of the shares of the common stock to be registered hereby. SAM LLP was the holder of 61,880 shares of common stock and warrants to purchase 37,128 shares of common stock at an exercise price of \$1.51 of CNS Response, Inc., a California corporation, which converted into 61,880 shares of our common stock and warrants to purchase 37,128 shares of our common stock at an exercise price of \$1.51 upon the closing of the merger on March 7, 2007. In addition, SAM Venture Partners invested \$162,600 in the Private Placement that closed on March 7, 2007, and in exchange received 135,500 shares of our common stock, and warrants to purchase 40,652 shares of our common stock at an exercise price of \$1.80 per share. Subsequent to the Private Placement, SAM Venture Partners distributed the aforementioned shares and warrants to its partners, each of whom is a partner in SAM LLP.

## EXPERTS

The consolidated financial statements included in this prospectus have been audited by Cacciamatta Accountancy Corporation, independent certified public accountants, to the extent and for the periods set forth in their reports appearing elsewhere herein, and are included in reliance on such reports given upon the authority of said firm as experts in auditing and accounting.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We have also filed with the SEC under the Securities Act a registration statement on Form S-1 with respect to the common stock offered by this prospectus. This prospectus, which constitutes part of the registration statement, does not contain all the information set forth in the registration statement or the exhibits and schedules which are part of the registration statement, portions of which are omitted as permitted by the rules and regulations of the SEC. Statements made in this prospectus regarding the contents of any contract or other document are summaries of the material terms of the contract or document. With respect to each contract or document filed as an exhibit to the registration statement, reference is made to the corresponding exhibit. For further information pertaining to us and the common stock offered by this prospectus, reference is made to the registration statement, including the exhibits and schedules thereto, copies of which may be inspected without charge at the Public Reference Room of the SEC at 100 F Street, N.E., Washington, D.C. 20549 on official business days during the hours of 10 a.m. to 3 p.m.. Copies of all or any portion of the registration statement may be obtained from the SEC at prescribed rates. Information on the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. The web site can be accessed at <http://www.sec.gov>. The internet address of CNS Response is <http://www.cnsresponse.com>.

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## 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
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
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
Prepays and other	89,500	189,400
Total current assets	1,139,300	2,284,600
Other Assets	21,600	28,700
Goodwill	-	320,200
<b>TOTAL ASSETS</b>	<b>\$ 1,160,900</b>	<b>\$ 2,633,500</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
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
<b>LONG-TERM LIABILITIES</b>		
Note payable to officer	24,800	118,600
Capital lease	5,600	7,700
Total long-term liabilities	30,400	126,300
<b>TOTAL LIABILITIES</b>	2,271,000	1,580,600
<b>COMMITMENTS AND CONTINGENCIES</b>		
	-	-
<b>STOCKHOLDERS' EQUITY:</b>		
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
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 1,160,900</b>	<b>\$ 2,633,500</b>

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
<b>REVENUES</b>		
Laboratory Information Services	120,400	178,500
Clinical Services	579,700	595,000
	<u>\$ 700,100</u>	<u>\$ 773,500</u>
<b>OPERATING EXPENSES:</b>		
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	-
	<u>7,392,200</u>	<u>6,247,600</u>
<b>OPERATING LOSS</b>	<u>(6,692,100)</u>	<u>(5,474,100)</u>
<b>OTHER INCOME (EXPENSE):</b>		
Interest income (expense), net	(1,732,900)	104,000
Financing premium	(90,000)	-
Total other income (expense)	<u>(1,822,900)</u>	<u>104,000</u>
<b>LOSS BEFORE PROVISION FOR INCOME TAXES</b>	<u>(8,515,000)</u>	<u>(5,370,100)</u>
<b>PROVISION FOR INCOME TAXES</b>	7,200	1,400
<b>NET LOSS</b>	<u>\$ (8,522,200)</u>	<u>\$ (5,371,500)</u>
<b>BASIC NET LOSS PER SHARE</b>	<u>\$ (0.31)</u>	<u>\$ (0.21)</u>
<b>DILUTED NET LOSS PER SHARE</b>	<u>\$ (0.31)</u>	<u>\$ (0.21)</u>
<b>WEIGHTED AVERAGE SHARES OUTSTANDING:</b>		
Basic	<u>27,778,171</u>	<u>25,299,547</u>
Diluted	<u>27,778,171</u>	<u>25,299,547</u>

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		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
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
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
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)
Prepays 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	<u>(4,613,600)</u>	<u>(3,656,900)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Deferred offering relating to acquisition	-	(43,700)
Furniture & Fixtures	(2,000)	(30,900)
Net cash used in investing activities	<u>(2,000)</u>	<u>(74,600)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
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	<u>3,606,700</u>	<u>(61,600)</u>
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	<u>\$ 988,100</u>	<u>\$ 1,997,000</u>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>		
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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

**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.

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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 than 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 20<sup>th</sup> 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.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008*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.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS 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.



NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

**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.

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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 718-20, 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:

<b>Options granted in:</b>	<b>Dividend Yield</b>	<b>Risk-free interest rate</b>	<b>Expected volatility</b>	<b>Expected life</b>
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:

	<b>For the fiscal year ended September 30,</b>	
	<b>2009</b>	<b>2008</b>
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
<b>Total</b>	<b>\$ 850,500</b>	<b>\$ 1,071,300</b>

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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	<u>(352,757)</u>	\$ 1.09
Outstanding at September 30, 2008	8,964,567	\$ 0.60
Granted	80,000	\$ 0.43
Exercised	<u>(2,124,740)</u>	\$ 0.132
Forfeited	(257,813)	\$ 0.51
Outstanding at September 30, 2009	<u>6,662,014</u>	\$ 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	<u>56,000</u>	10 years	<u>\$ 0.40</u>
Total	<u>6,662,014</u>		<u>\$ 0.76</u>

**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.

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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	\$ 0.27	Associated with the automatic conversion of
401,096 shares	\$ 0.255	\$1,700,000 of convertible promissory notes and
1,666,667 shares	\$ 0.30	\$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%

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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:

	<u>2009</u>	<u>2008</u>
<b>Deferred income tax assets:</b>		
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	-
	<u>9,736,900</u>	<u>5,193,300</u>
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	<u>\$ -</u>	<u>\$ -</u>

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	<u>309,600</u>
Allocated to net tangible liabilities, including cash of \$32,100	(10,600)
Allocated to goodwill	<u>\$ 320,200</u>

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.

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

**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	<u>\$ (6,624,900)</u>	<u>\$ (67,200)</u>	<u>\$ 0</u>	<u>\$ (6,692,100)</u>

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

	Reference Laboratory	Clinic	Total
Goodwill	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Total assets	<u>\$ 1,118,000</u>	<u>\$ 42,900</u>	<u>\$ 1,160,900</u>

**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.

CNS RESPONSE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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:

	<b>2009</b>	<b>2008</b>
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 the section called "Business" under the heading "Legal Proceedings" contained elsewhere in this prospectus 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.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008**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
<b>Total</b>	<b>\$ 36,000</b>	<b>\$ 8,900</b>	<b>\$ 125,000</b>	<b>\$ 169,900</b>
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)
<b>Long-term debt and lease obligation</b>	<b>\$ -</b>	<b>\$ 5,600</b>	<b>\$ 24,800</b>	<b>\$ 30,400</b>

**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. On January 4, 2010, Brandt filed an appeal with the Supreme Court of the State of Delaware in relation to the case, which the Company believes is without merit and intends to vigorously defend. For a full description of the events associated with the Brandt Litigation please refer to the heading "Legal Proceedings" on page 48 of this prospectus.

*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 million 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.

*Completion of Third and Fourth Closings of Private Placement Transaction*

The Company completed a third and fourth closing of its private placement, on December 31, 2009 and January 4, 2010, respectively, resulting in gross proceeds to the Company of approximately \$540,000, thereby completing its Private Placement.

Pursuant to Subscription Agreements entered into with the investors, the Company sold 10 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 \$480,000 in the Private Placement. The Company intends to use the net proceeds from the 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.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED  
SEPTEMBER 30, 2009 AND 2008

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 December 31, 2009 closing of the Private Placement, the Placement Agent received (i) a cash fee of \$4,320, (ii) a cash expense allowance of \$8,640, and (iii) a five year non-callable warrant to purchase 14,400 shares of the Company's common stock at an exercise price of \$.33 per share.

For its services in connection with the January 4, 2010 closing of the Private Placement, the lead Placement Agent received (i) a cash fee of \$1,080, (ii) a cash expense allowance of \$2,160, and (iii) a five year non-callable warrant to purchase 3,600 shares of the Company's common stock at an exercise price of \$.33 per share.

In connection with the third and fourth closings 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 earlier closings of the Company's Private Placement.

*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.

**CNS RESPONSE, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

	For the three months ended March 31,		For the six months ended March 31,	
	2010	2009	2010	2009
<b>REVENUES</b>				
Laboratory Information Services	\$ 34,400	\$ 31,200	\$ 56,800	\$ 59,700
Clinical Services	143,900	152,600	265,000	295,800
	<u>178,300</u>	<u>183,800</u>	<u>321,800</u>	<u>355,500</u>
<b>OPERATING EXPENSES</b>				
Cost of laboratory services revenues	39,400	35,600	69,100	69,100
Research and development	318,700	521,800	541,300	1,147,800
Sales and marketing	202,500	283,700	402,800	547,000
General and administrative	1,009,800	798,500	2,557,500	1,478,500
	<u>1,570,400</u>	<u>1,639,600</u>	<u>3,570,700</u>	<u>3,242,400</u>
<b>OPERATING LOSS</b>	<u>(1,392,100)</u>	<u>(1,455,800)</u>	<u>(3,248,900)</u>	<u>(2,886,900)</u>
<b>OTHER INCOME (EXPENSE):</b>				
Interest income (expense), net	(100)	(4,700)	(1,700)	(3,500)
	<u>(100)</u>	<u>(4,700)</u>	<u>(1,700)</u>	<u>(3,500)</u>
<b>LOSS BEFORE PROVISION FOR INCOME TAXES</b>	<u>(1,392,200)</u>	<u>(1,460,500)</u>	<u>(3,250,600)</u>	<u>(2,890,400)</u>
Income taxes	1,600	800	2,400	2,800
<b>NET LOSS</b>	<u>\$ (1,393,800)</u>	<u>\$ (1,461,300)</u>	<u>\$ (3,253,000)</u>	<u>\$ (2,893,200)</u>
<b>NET LOSS PER SHARE:</b>				
Basic	\$ (0.03)	\$ (0.06)	\$ (0.07)	\$ (0.11)
Diluted	\$ (0.03)	\$ (0.06)	\$ (0.07)	\$ (0.11)
<b>WEIGHTED AVERAGE SHARES OUTSTANDING:</b>				
Basic	54,512,337	25,299,547	48,530,317	25,299,547
Diluted	54,512,337	25,299,547	48,530,317	25,299,547

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**CNS RESPONSE, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

	<u>March 31,</u> <u>2010</u>	<u>September 30,</u> <u>2009</u>
	(unaudited)	
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash	\$ 682,800	\$ 988,100
Accounts receivable (net of allowance for doubtful accounts of \$6,600 (unaudited) as of March 31, 2010 and \$11,200 as of September 30, 2009)	69,200	61,700
Prepaid and other	<u>120,700</u>	<u>89,500</u>
Total current assets	872,700	1,139,300
Furniture and Fittings	21,100	17,500
Other Assets	18,700	4,100
<b>TOTAL ASSETS</b>	<u><u>\$ 912,500</u></u>	<u><u>\$ 1,160,900</u></u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable (including amounts due to related parties of \$0 (unaudited) as of March 31, 2010 and \$7,000 as of September 30, 2009)	\$ 955,600	\$ 1,285,600
Accrued liabilities	337,100	261,400
Deferred compensation (including \$69,100 (unaudited) and \$81,200 to related parties as of March 31, 2010 and September 30, 2009 respectively)	228,700	220,100
Accrued patient costs	193,100	305,500
Accrued consulting fees	66,100	72,100
Current portion of long-term debt	<u>74,700</u>	<u>95,900</u>
Total current liabilities	1,855,300	2,240,600
<b>LONG-TERM LIABILITIES</b>		
Note payable to officer	-	24,800
Capital lease	<u>4,500</u>	<u>5,600</u>
Total long term liabilities	4,500	30,400
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>Stockholders' equity (deficit):</b>		
Common stock, \$0.001 par value; authorized, 750,000,000 shares, issued and, 56,023,921 and 41,781,129 shares outstanding as of March 31, 2010 and September 30, 2009 respectively	56,000	41,800
Additional paid-in capital	27,445,600	24,044,000
Accumulated deficit	<u>(28,448,900)</u>	<u>(25,195,900)</u>
Total stockholders' equity (deficit)	(947,300)	(1,110,100)
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<u><u>\$ 912,500</u></u>	<u><u>\$ 1,160,900</u></u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**CNS RESPONSE, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

	For the six months ended March 31,	
	2010	2009
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (3,253,000)	\$ (2,893,200)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and Amortization	5,300	4,500
Stock-based compensation	420,400	441,500
Doubtful debt write-off	5,800	-
Changes in operating assets and liabilities:		
Accounts receivable	(13,300)	4,500
Prepays and other current assets	(31,200)	19,000
Accounts payable	(330,000)	336,500
Accrued liabilities	69,700	128,100
Deferred compensation	8,600	(15,700)
Accrued patient costs	(112,400)	83,600
Security deposits on leases	(14,600)	-
Net cash used in operating activities	<u>(3,244,700)</u>	<u>(1,891,200)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Acquisition of office furniture	(8,900)	-
Net cash used in investing activities	<u>(8,900)</u>	<u>-</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Cash from Secured Convertible notes	-	500,000
Repayment of note	(46,100)	(42,500)
Prepayment of lease	(1,000)	(900)
Proceeds from sale of common stock, net of offering costs	2,995,400	-
Net cash from financing activities	<u>2,948,300</u>	<u>456,600</u>
Net decrease in cash	(305,300)	(1,434,600)
Cash, beginning of period	988,100	1,997,000
Cash, end of period	<u>\$ 682,800</u>	<u>\$ 562,400</u>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>		
Cash paid during the period for:		
Interest	<u>\$ 1,700</u>	<u>\$ 7,900</u>
Income taxes	<u>\$ 2,400</u>	<u>\$ 2,800</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**CNS RESPONSE, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**

**For the six months ended  
March 31, 2010**

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
BALANCE - September 30, 2009	41,781,129	\$ 41,800	\$ 24,044,000	\$ (25,195,900)	\$ (1,110,100)
Stock- based compensation	-	-	420,400	-	420,400
Issuance of stock in connection with the Maxim PIPE net of offering costs of \$540,600	11,786,666	11,800	2,983,600	-	2,995,400
Warrants issued in association with the Maxim PIPE	-	-	7,615,100	-	7,615,100
Offering cost pertaining to the Maxim PIPE	-	-	(7,615,100)	-	(7,615,100)
Value of warrants surrendered for cashless exercise	-	-	(415,800)	-	(415,800)
Stock issued for cashless exercise	2,456,126	2,400	413,400	-	415,800
Net loss for the six months ended March 31, 2010	-	-	-	(3,253,000)	(3,253,000)
Balance at March 31, 2010	<u>56,023,921</u>	<u>\$ 56,000</u>	<u>\$ 27,445,600</u>	<u>\$ (28,448,900)</u>	<u>\$ 947,300</u>

**For the six months ended March  
31, 2009**

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
BALANCE - September 30, 2008	25,299,547	\$ 25,300	\$ 17,701,300	\$ (16,673,700)	\$ 1,052,900
Stock- based compensation	-	-	441,500	-	441,500
Net loss for the six months ended March 31, 2009	-	-	-	(2,893,200)	(2,893,200)
Balance at March 31, 2009	<u>25,299,547</u>	<u>\$ 25,300</u>	<u>\$ 18,142,800</u>	<u>\$ (19,566,900)</u>	<u>\$ (1,398,800)</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**CNS RESPONSE, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION**

**Organization and Nature of Operations**

CNS Response, Inc. (the “Company”) was incorporated as Age Research, Inc. in Delaware. In connection with a merger on March 7, 2007 with CNS Response, Inc., a California corporation, the Company changed its name to its current name and commenced its current operations. The Company utilizes a patented system that guides psychiatrists and other physicians to determine a personalized regimen 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 11, 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 accompanying unaudited condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America which contemplate continuation of the company as a going concern. 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 Quarterly 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 on terms acceptable to the Company.

## Basis of Presentation

The unaudited condensed consolidated financial statements of CNS Response, Inc. (“CNS,” “we,” “us,” “our” or the “Company”) have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission and include all the accounts of CNS and its wholly owned subsidiaries CNS California and NTC. Certain information and note disclosures, normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States, have been condensed or omitted pursuant to such rules and regulations. The unaudited condensed consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of our financial position as of March 31, 2010 and our operating results, cash flows, and changes in stockholders’ equity for the interim periods presented. The September 30, 2009 balance sheet was derived from our audited consolidated financial statements but does not include all disclosures required by accounting principles generally accepted in the United States of America. These unaudited condensed consolidated financial statements and the related notes should be read in conjunction with our consolidated financial statements and notes for the year ended September 30, 2009 which are included in our current report on Form 10-K, filed with the Securities and Exchange Commission on December 30, 2009.

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities and revenues and expenses in the financial statements. Examples of estimates subject to possible revision based upon the outcome of future events include, among others, recoverability of long-lived assets and goodwill, stock-based compensation, the allowance for doubtful accounts, the valuation of equity instruments, use and other taxes. Actual results could differ from those estimates.

The results of operations for the six months ended March 31, 2010 are not necessarily indicative of the results that may be expected for future periods or for the year ending September 30, 2010.

### *Reclassifications*

Certain amounts previously reported have been reclassified to conform to the current period presentation. The reclassifications were made to change the income statement presentation to provide the users of the financial statements additional information related to the operating results of the Company. These reclassifications include reclassifying the Company’s patent costs to General and Administrative costs which were previously included in Research and Development costs. The reclassifications had no effect on consolidated net income or consolidated assets and liabilities.

## 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 March 31, 2010 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.

#### **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 unaudited 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 unaudited 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 unaudited 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 interim 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 adoption of ASU 2009-05 did not have a material impact on the Company's unaudited consolidated financial statements.

In January 2010, the FASB issued Accounting Standards Update No. 2010-06 (ASU 2010-06), "Fair Value Measurements and Disclosures (Topic 820) – Improving Disclosures About Fair Value Measurements." ASU 2010-06 amends Subtopic 820-10 that requires new disclosures and provides clarification of existing disclosures. ASU 2010-06 also includes conforming amendments to the guidance on employers' disclosures about postretirement benefit plans assets (Subtopic 715-20). ASU 2010-06 is effective for interim and annual reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances, and settlements in the roll forward of activity in Level 3 fair value measurements. Those disclosures are effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. The Company is evaluating the impact of the adoption of ASU 2010-06 on its unaudited consolidated financial statements.

In February 2010, the FASB issued Accounting Standards Update No. 2010-09 ("ASU 2010-09") as amendments to certain recognition and disclosure requirements. The amendments remove the requirement for an SEC filer to disclose a date in both issued and revised financial statements. Revised financial statements include financial statements revised as a result of either correction of an error or retrospective application of U.S. GAAP. Those amendments remove potential conflicts with the SEC's literature. All of the amendments in ASU 2010-09 were effective upon issuance for interim and annual periods. The adoption of ASU 2010-09 did not have a material impact on the Company's unaudited consolidated financial statements.

## **2. CONVERTIBLE DEBT AND EQUITY FINANCING**

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 a private placement transaction that closed on August 26, 2009, which is fully described in the section below.

### **The Private Placement Transactions**

#### *Completion of First Closing of Private Placement Transaction*

On August 26, 2009, 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.

A secondary placement agent who participated in the first closing of the private placement received cash fees of \$29,200 and five year non-callable warrants to purchase 97,200 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 than 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. The Registration Statement was filed with the Securities and Exchange Commission on February 1, 2010.

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. To date, the registration statement has not been declared effective.

#### *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 stock (by using the closing market price on the respective original issuance dates of the convertible notes) and warrants (through the use of the Black-Scholes Model) issued upon the conversions and 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.

#### *Completion of Second, Third and Fourth Closings of Private Placement Transaction*

On December 24 and 31, 2009 and January 4, 2010, the Company completed a second, third and fourth and final closing of its private placement (the first closing having occurred on August 26, 2009), resulting in additional gross proceeds to the Company of \$2,996,000, \$432,000 and \$108,000 respectively from accredited investors.

Pursuant to Subscription Agreements entered into with the investors, the Company sold approximately 65 Investment Units in the three closings 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 \$2,650,400 million at the second closing, \$380,200 at the third and \$95,000 at the fourth and final closing. The Company intends to use the proceeds from these closings 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 Mr. Brandt.

A FINRA member firm, the Maxim Group acted as lead placement agent in connection with the second, third and fourth closings of the private placement. For its services in connection with the second closing, the Maxim Group 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. For the third closing the Maxim Group received (i) a cash fee of \$4,300, (ii) a cash expense allowance of \$8,600, and (iii) a five year non-callable warrant to purchase 14,400 shares of the Company's common stock at an exercise price of \$ 0.33 per share, first exercisable no earlier than June 30, 2010. For the fourth closing the Maxim Group received (i) a cash fee of \$1,100, (ii) a cash expense allowance of \$2,100, and (iii) a five year non-callable warrant to purchase 3,600 shares of the Company's common stock at an exercise price of \$ 0.33 per share, first exercisable no earlier than July 4, 2010

Secondary placement agents who participated in the second closing of the private placement received cash fees of \$75,200 and five year non-callable warrants to purchase 250,800 shares of the Company's common stock at an exercise price of \$ 0.33 per share, first exercisable no earlier than June 24, 2010. For the third closing, the secondary placement agents received cash fees of \$38,900 and five year non-callable warrants to purchase 129,600 shares of the Company's common stock at an exercise price of \$ 0.33 per share, first exercisable no earlier than June 30, 2010. For the fourth closing, the secondary placement agents received cash fees of \$9,700 and five year non-callable warrants to purchase 32,400 shares of the Company's common stock at an exercise price of \$ 0.33 per share, first exercisable no earlier than July 4, 2010.

In connection with the second, third and fourth closing of the Company's private placement, each investor who participated in the financing became party to the abovementioned Registration Rights agreement, pursuant to which a registration statement on Form S-1 was filed with the Securities and Exchange Commission on February 1, 2010, and received the same rights and benefits as the investors in the first closing of the Company's Private Placement on August 26, 2009.

### **3. STOCKHOLDERS' EQUITY**

#### **Common and Preferred Stock**

As of March 31, 2010 the Company is authorized to issue 750,000,000 shares of common stock.

As of March 31, 2010, 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 March 31, 2010, Colorado CNS Response, Inc. is authorized to issue 1,000,000 shares of common stock.

As of March 31, 2010, 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.

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 718-20, 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.

Originally, a total of 10 million shares of common stock were reserved for issuance under the 2006 Plan. The 2006 Plan also originally provided that in any calendar year, no eligible employee or director shall be granted an award to purchase more than 3 million shares of stock. On March 3, 2010, the Board of Directors approved an amendment to the 2006 Plan which increased the number of shares of common stock reserved for issuance under the 2006 Plan from 10 million to 20 million shares and increased the limit on shares underlying awards granted within a calendar year to any eligible employee or director from 3 million to 4 million shares of common stock. The amendment was approved by shareholders at the annual meeting held on April 27, 2010.

On March 3, 2010, the Board of Directors also approved the grant of 9,450,000 options to staff members, directors, advisors and consultants. For staff members the options will vest equally over a 48 month period while for directors, advisors and consultants the options will vest equally over a 36 month period. The effective grant date for accredited investors was March 3, 2010 and the exercise price of \$0.55 per share was based on the quoted closing share price of the Company's common stock on that day. For non-accredited investors the grant date will be determined after obtaining a permit from the State of California allowing the granting of options to non-accredited investors.

As of March 31, 2010, 2,124,740 options were exercised and there were 14,870,973 options and 183,937 restricted shares outstanding under the amended 2006 Plan and further 575,000 options approved but not yet granted, leaving 2,245,350 shares available for issuance of future awards.

Stock-based compensation expense is recognized over the employees' or service provider's requisite service period, generally the vesting period of the award. Stock-based compensation expense included in the accompanying statements of operations for the periods ended March 31, 2010 and 2009 is as follows:

	<b>For the three months ended March 31,</b>	
	<b>2010</b>	<b>2009</b>
Cost of laboratory services revenues	\$ 4,900	\$ 4,000
Research and development	78,800	65,200
Sales and marketing	35,600	38,200
General and administrative	117,400	106,500
Total	<u>\$ 236,700</u>	<u>\$ 213,900</u>

	For the six months ended March 31,	
	2010	2009
Cost of laboratory services revenues	\$ 8,900	\$ 8,000
Research and development	143,700	130,400
Sales and marketing	65,200	80,000
General and administrative	202,600	223,100
<b>Total</b>	<b>\$ 420,400</b>	<b>\$ 441,500</b>

Total unrecognized compensation expense as of March 31, 2010 amounted to \$5,098,900

A summary of stock option activity is as follows:

	Number of Shares	Weighted Average Exercise Price
Outstanding at September 30, 2009	6,662,014	\$ 0.76
Granted	-	\$ -
Exercised	-	-
Forfeited	(191,041)	\$ 1.14
Outstanding at December 31, 2009	6,470,973	\$ 0.74
Granted	8,650,000	\$ 0.55
Exercised	-	-
Forfeited	(250,000)	0.55
Outstanding at March 31, 2010	14,870,973	\$ 0.63
Weighted average fair value of options granted during:		
Three months ended March 31, 2010		\$ 0.55
Six months ended March 31, 2010		\$ 0.55

The following is a summary of the status of options outstanding at March 31, 2010:

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	2,513,549	10 years	\$ 1.09
\$ 1.20	243,253	5 years	\$ 1.20
\$ 0.51	41,187	10 years	\$ 0.51
\$ 0.40	56,000	10 years	\$ 0.40
\$ 0.55	8,400,000	10 years	\$ 0.55
<b>Total</b>	<b>14,870,973</b>		<b>\$ 0.63</b>

## Warrants to Purchase Common Stock

At September 30, 2008, 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.

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 as follows:

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 August 26, 2009 private placement transaction of 6,810,002 shares at \$0.30 with 50% warrant coverage as described in Note 2
3,023,927 shares	\$ 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. During the six months ended March 31, 2010, a further 7,093,601 warrants were granted and 3,333,333 warrants were exercised as follows:

5,893,334 shares	\$ 0.30	Associated with the second, third and fourth closing of the private placement transaction of 11,786,667 shares at \$0.30 with 50% warrant coverage as described in Note 2
1,200,267 shares	\$ 0.33	Associated with warrants for the lead and secondary placement agents for private placement as described in Note 2
(3,333,333) shares	\$ 0.30	These warrants were surrendered in a net exercise method and 2,456,126 shares were issued in lieu of cash.

At March 31, 2010, there were warrants outstanding to purchase 19,297,753 shares of the Company's common stock at exercise prices ranging from \$0.01 to \$1.812 with a weighted average exercise price of \$0.59. The warrants expire at various times through 2017.



#### 4. RELATED PARTY TRANSACTIONS

As at March 31, 2010 deferred compensation included the following: \$9,000 of accrued fees due to a director in accordance with a consulting agreement. During the six months ended March 31, 2010 a payment of \$24,000 was made to a director for consulting services per an agreement and \$36,000 was paid, with board approval, to a family member of the Company's Chief Executive Officer, who provided data discovery consulting services in support of the Company's litigation with Mr. Brandt.

#### 5. LONG-TERM DEBT

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 March 31, 2010 and September 30, 2009 the note has an outstanding principal balance in the amount of \$72,600 and \$118,600 respectively. The entire balance is current as of March 31, 2010.

#### 6. REPORTABLE SEGMENTS

The Company operates in two business segments: Laboratory Information Services and Clinic. Laboratory Information Services 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 the Company's 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:

	Three Months ended March 31, 2010			
	Laboratory Information Services	Clinic	Eliminations	Total
Revenues	\$ 40,400	\$ 143,900	\$ (6,000)	\$ 178,300
Operating expenses:				
Cost of revenues	39,400	6,000	(6,000)	39,400
Research and development	318,700	-	-	318,700
Sales and marketing	201,900	600	-	202,500
General and administrative	818,800	191,000	-	1,009,800
Total operating expenses	\$ 1,378,800	\$ 197,600	\$ -	\$ 1,570,400
Income (Loss) from operations	\$ (1,338,400)	\$ 53,700	\$ -	\$ (1,392,100)

**Three Months ended March 31, 2009**

	<b>Laboratory Information Services</b>	<b>Clinic</b>	<b>Eliminations</b>	<b>Total</b>
Revenues	\$ 34,600	\$ 180,100	\$ (30,900)	\$ 183,800
<b>Operating expenses:</b>				
Cost of revenues	35,600	3,400	(3,400)	35,600
Research and development	521,800	-	-	521,800
Sales and marketing	282,300	1,400	-	283,700
General and administrative	657,700	168,300	(27,500)	798,500
Total operating expenses	<u>\$ 1,497,400</u>	<u>\$ 173,100</u>	<u>\$ (30,900)</u>	<u>\$ 1,639,600</u>
Income (Loss) from operations	<u>\$ (1,462,800)</u>	<u>\$ 7,000</u>	<u>\$ -</u>	<u>\$ (1,455,800)</u>

**Six Months ended March 31, 2010**

	<b>Laboratory Information Services</b>	<b>Clinic</b>	<b>Eliminations</b>	<b>Total</b>
Revenues	\$ 66,800	\$ 298,300	\$ (43,300)	\$ 321,800
<b>Operating expenses:</b>				
Cost of revenues	69,100	10,000	(10,000)	69,100
Research and development	541,300	-	-	541,300
Sales and marketing	400,300	2,500	-	402,800
General and administrative	2,251,300	339,500	(33,300)	2,557,500
Total operating expenses	<u>\$ 3,192,900</u>	<u>\$ 352,000</u>	<u>\$ (33,300)</u>	<u>\$ 3,570,700</u>
Income (Loss) from operations	<u>\$ (3,195,200)</u>	<u>\$ (53,700)</u>	<u>\$ -</u>	<u>\$ (3,248,900)</u>

**Six Months ended March 31, 2009**

	<b>Laboratory Information Services</b>	<b>Clinic</b>	<b>Eliminations</b>	<b>Total</b>
Revenues	\$ 66,800	\$ 329,700	\$ (41,000)	\$ 355,500
<b>Operating expenses:</b>				
Cost of revenues	69,100	7,100	(7,100)	69,100
Research and development	1,147,800	-	-	1,147,800
Sales and marketing	542,900	4,100	-	547,000
General and administrative	1,195,300	317,100	(33,900)	1,478,500
Total operating expenses	<u>\$ 2,955,100</u>	<u>\$ 328,300</u>	<u>\$ (41,100)</u>	<u>\$ 3,242,400</u>
Income (Loss) from operations	<u>\$ (2,888,300)</u>	<u>\$ 1,400</u>	<u>\$ -</u>	<u>\$ (2,886,900)</u>

The following table includes selected segment financial information as of March 31, 2010, related to goodwill and total assets:

	Laboratory Information Services	Clinic	Total
Goodwill	\$ -	\$ -	\$ -
Total assets	\$ 861,400	\$ 51,100	\$ 912,500

7. **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 three months and six months ended March 31, 2010 and 2009, 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 three months and six months ended March 31, 2010 and 2009 are as follows:

	For the Three Months ended March 31,	
	2010	2009
Net loss for computation of basic net loss per share	\$ (1,393,800)	\$ (1,461,300)
Net loss for computation of dilutive net loss per share	\$ (1,393,800)	\$ (1,461,300)
Basic net loss per share	\$ (0.03)	\$ (0.06)
Diluted net loss per share	\$ (0.03)	\$ (0.06)
Basic weighted average shares outstanding	54,512,337	25,299,547
Dilutive common equivalent shares	-	-
Diluted weighted average common shares	54,512,337	25,299,547
	For the Six Months ended March 31,	
	2010	2009
Net loss for computation of basic net loss per share	\$ (3,253,000)	\$ (2,893,200)
Net loss for computation of dilutive net loss per share	\$ (3,253,000)	\$ (2,893,200)
Basic net loss per share	\$ (0.07)	\$ (0.11)
Diluted net loss per share	\$ (0.07)	\$ (0.11)
Basic weighted average shares outstanding	48,530,317	25,299,547
Dilutive common equivalent shares	-	-
Diluted weighted average common shares	48,530,317	25,299,547

Anti-dilutive common equivalent shares not included in the computation of dilutive net loss per share:

	<b>For the Three Months ended March 31,</b>	
	<b>2010</b>	<b>2009</b>
Convertible debt	-	4,995,000
Warrants	21,326,499	6,899,353
Options	7,870,973	8,740,087
	<b>For the Six Months ended March 31,</b>	
	<b>2010</b>	<b>2009</b>
Convertible debt	-	4,995,000
Warrants	18,707,898	6,899,353
Options	7,236,708	8,840,843

## 8. 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 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, 2009, 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. On January 4, 2010, Brandt filed an appeal with the Supreme Court of the State of Delaware in relation to the case. On April 20, 2010, the Delaware Supreme Court affirmed the ruling of the Chancery Court.

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. On January 4, 2010, Brandt also filed an appeal in relation to this ruling with the Delaware Supreme Court. On February 25, 2010, Mr. Brandt voluntarily dismissed this appeal, and the ruling of the Chancery Court thereby became final and non-appealable.

The Chancery Court also dismissed with prejudice another action brought by Mr. Brandt, in which he claimed he had not been provided information owed to him. Mr. Brandt did not appeal this dismissal.

In July 2009, 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. On September 17, 2009, Mr. Brandt and the other defendants 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. On December 14, 2009, the Company answered the counterclaims in the case. On March 10, 2010, we dismissed the Company's claims against the defendants other than Mr. Brandt, and they dismissed their claims against us and the other counterclaim defendants. On April 10, 2010 Mr. Brandt's attorneys moved to withdraw from representing Mr. Brandt in the case. The District Court action continues with respect to our claims against Mr. Brandt and Mr. Brandt's counterclaims against us and the other counterclaim defendants. We are vigorously prosecuting our claims and vigorously defending Mr. Brandt's counterclaims.

#### **Lease Commitments**

The Company leased its headquarters and Laboratory Information Services space under an operating lease which terminated on November 30, 2009. The Company continued to lease the space on a month-to-month basis through January 22, 2010 at which time the Company moved to its new premises.

On December 30, 2009 the Company entered a three year lease, commencing February 1, 2010 and terminating on January 30, 2013 for its new Headquarters and Laboratory Information Services business premises located at 85 Enterprise, Aliso Viejo, California 92656. The 2,023 square foot facility has an average cost for the lease term of \$3,600 per month.

The Company leases space for its Clinical Services operations under an operating lease. The base rental as of December 31, 2009 was \$6,000 per month. This lease terminated on February 28, 2010 and a 37 month extension to the lease was negotiated commencing April 1, 2010 and terminating April 30, 2013. The 3,542 square foot facility has an average cost for the lease term of \$5,100 per month.

The Company also sub-leased space for its Clinical Services operations on a month-to-month basis for \$1,000 per month up until March 2010 when it terminated this sub-lease and gave up the space.

The Company leases a copier for \$200 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.

The Company incurred rent expense of \$34,300 and \$32,000 for the three months ended March 31, 2010 and 2009 and \$71,800 and \$62,500 for the six months ended March 31, 2010 and 2009

#### **9. SUBSEQUENT EVENTS**

Events subsequent to March 31, 2010 have been evaluated through the date these financial statements were issued to determine whether they should be disclosed to keep the financial statements from being misleading. The following events have occurred since March 31, 2010.

On April 1, 2010, the Company filed its application for 510(k) clearance with the FDA and has engaged in routine correspondence with the FDA regarding the filing.

On April 20, 2010, as detailed in Note 8 and on page 23 (see *Matters Involving our Former Chief Executive Officer and Former Director, Leonard Brandt*), the Delaware Supreme Court ruled on an appeal filed by Mr. Brandt on January 4, 2010. The Delaware Supreme Court affirmed the ruling in favor of the Company by the Chancery Court of Delaware.

On April 27, 2010, as mentioned in Note 3, the amendment to the 2006 Stock Incentive Plan was approved by shareholders at the annual meeting. The amendment increased the number of shares of common stock reserved for issuance under the 2006 Plan from 10 million to 20 million shares and increased the limit on shares underlying awards granted within a calendar year to any eligible employee or director from 3 million to 4 million shares of common stock.

PART II  
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. Other Expenses of Issuance and Distribution.

The Registrant will bear all expenses of registration incurred in connection with this offering. The selling shareholders whose shares are being registered will bear all selling and other expenses. The following table itemizes the expenses incurred by the Registrant in connection with the offering. All the amounts shown are estimates except the Securities and Exchange Commission registration fee.

	<u>Amount</u>
Registration fee – Securities and Exchange Commission	\$ 2,422
Legal fees and expenses	\$ 40,000
Accounting fees and expenses	\$ 20,000
Miscellaneous expenses	\$ 5,000
Total	\$ 67,422

ITEM 14. Indemnification of Directors and Officers.

The Delaware General Corporation Law and certain provisions of our certificate of incorporation and bylaws under certain circumstances provide for indemnification of our officers, directors and controlling persons against liabilities which they may incur in such capacities. A summary of the circumstances in which such indemnification is provided for is contained herein, but this description is qualified in its entirety by reference to our certificate of incorporation, bylaws and to the statutory provisions.

In general, any officer, director, employee or agent may be indemnified against expenses, fines, settlements or judgments arising in connection with a legal proceeding to which such person is a party, if that person's actions were in good faith, were believed to be in our best interest, and with respect to any criminal action or proceeding, such person had no reasonable cause to believe their actions were unlawful. Unless such person is successful upon the merits in such an action, indemnification may be awarded only after a determination by independent decision of the board of directors, by legal counsel, or by a vote of the stockholders, that the applicable standard of conduct was met by the person to be indemnified.

The circumstances under which indemnification is granted in connection with an action brought on our behalf is generally the same as those set forth above; however, with respect to such actions, indemnification is granted only with respect to expenses actually incurred in connection with the defense or settlement of the action. In such actions, unless the court determines otherwise, the person to be indemnified must have acted in good faith and in a manner believed to have been in our best interest, and have not been adjudged liable to the corporation.

Indemnification may also be granted pursuant to the terms of agreements which we are currently party to with each of our directors and executive officers, agreements which we may enter into in the future or pursuant to a vote of stockholders or directors. Delaware law and our certificate of incorporation also grant the power to us to purchase and maintain insurance which protects our officers and directors against any liabilities incurred in connection with their service in such a position, and such a policy may be obtained by us.

A stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present we are reimbursing SAIL Venture Partners, LLP, \$107,600 and Equity Dynamics, Inc \$55,200 for their costs incurred in defending Mr. Jones and Mr. Pappajohn and their respective organizations in the course of the Brandt Litigation. Apart from our litigation with Brandt, there is no pending litigation or proceeding involving any of our directors, officers or employees regarding which indemnification by us is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Reference is made to the following documents filed as exhibits to this Registration Statement regarding relevant indemnification provisions described above and elsewhere herein:

<b>Exhibit</b>	<b>Number</b>
Certificate of Incorporation of Registrant, as amended	3.1.1
Bylaws of Registrant	3.2
Form of Indemnification Agreement	10.22

#### ITEM 15. Recent Sales of Unregistered Securities.

Reference is made to the Shares for Debt Agreement entered into on January 11, 2007 described above in the section entitled Certain Relationships and Related Transaction, which is hereby incorporated by reference.

#### **Merger with CNS California**

On January 16, 2007, we entered into an Agreement and Plan of Merger with CNS Response, Inc., a California corporation (or CNS California), and CNS Merger Corporation, a California corporation and our wholly-owned subsidiary that was formed to facilitate the acquisition of CNS California. On March 7, 2007, the merger with CNS California closed, CNS California became our wholly-owned subsidiary, and we changed our name from Strativation, Inc. to CNS Response, Inc. At the Effective Time of the Merger (as defined in the Merger Agreement, as amended on February 23, 2007), MergerCo was merged with and into CNS California, the separate existence of MergerCo ceased, and CNS California continued as the surviving corporation at the subsidiary level. We issued an aggregate of 17,744,625 shares of our common stock to the stockholders of CNS California in exchange for 100% ownership of CNS California. Additionally, we assumed an aggregate of 8,407,517 options to purchase shares of common stock and warrants to purchase shares of common stock on the same terms and conditions as previously issued by CNS California.

#### **Securities Issued in 2007 Private Placement**

On March 7, 2007, simultaneous with the closing of the Merger, we received gross proceeds of approximately \$7,008,450 in the first closing of a private placement transaction (the "Private Placement") with institutional investors and other high net worth individuals ("Investors"). Pursuant to Subscription Agreements entered into with these Investors, we sold 5,840,368 Investment Units, at \$1.20 per Investment Unit. Each "Investment Unit" consists of one share of our common stock, and a five year non-callable warrant to purchase three-tenths of one share of our common Stock, at an exercise price of \$1.80 per share (the "Investor Warrant"). On May 16, 2007, we completed a second closing of the Private Placement for an additional 664,390 Investment Units. The additional gross proceeds to us amounted to \$797,300.



Brean Murray Carret & Co. (“Brean Murray”) acted as placement agent and corporate finance advisor in connection with the Private Placement. For their services as placement agent and financial advisor, pursuant to the terms of an Engagement Agreement between CNS California and Brean Murray, Brean Murray received a retainer in the form of 83,333 shares of our common stock (having a deemed value of \$100,000) upon the closing of the Private Placement. We also paid Brean Murray a fee equal to 8% of the funds raised in the Private Placement, or approximately \$624,500 of the gross proceeds from the financing. In addition, Brean Murray received warrants (the “Placement Agent Warrants”) to purchase shares of our common stock in amounts equal to (i) 8% of the shares of common stock sold by Brean Murray in the Private Placement (520,381 warrants at an exercise price of \$1.44 per share), and (ii) 8% of the shares underlying the Investor Warrants sold by Brean Murray in the Private Placement (156,114 warrants at an exercise price of \$1.80 per share). The Placement Agent Warrants are fully vested and have a term of 5 years. We also paid \$87,700 in costs, fees and expenses incurred by Brean Murray in connection with the Private Placement. We expressly assumed CNS California’s agreement with Brean Murray upon the closing of the Merger. Pursuant to this agreement, Brean Murray had a right of first refusal to represent us in certain corporate finance transactions for a period of one year following the closing of the Private Placement. After payment of commissions and expenses associated with the offering, we received net proceeds of approximately \$6.9 million in the private placement financing.

In connection with the above stock issuances, except as otherwise disclosed we did not pay any underwriting discounts or commissions. None of the sales of securities described or referred to above was registered under the Securities Act of 1933, as amended (the “Securities Act”). Each of the purchasers fell into one or more of the categories that follow: one of our existing shareholders, one of our creditors, one of our current or former officers or directors, one of our employees, one of our service providers, or an accredited investor with whom we or one of our affiliates had a prior business relationship. As a result, no general solicitation or advertising was used in connection with the sales. In making the sales without registration under the Securities Act, the company relied upon one or more of the exemptions from registration contained in Sections 4(2) of the Securities Act, and in Regulation D promulgated under the Securities Act.

#### **Securities Issued in 2009-2010 Private Placement**

##### *First Closing: 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 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 20<sup>th</sup> 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.

The Form of Subscription Agreement, Form of Warrant, the Registration Rights Agreement, and Amendment No. 1 to the Registration Rights Agreement are referenced at Exhibits 10.18, 10.19 and 10.20 and 10.21 hereto.

*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 first 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 first 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 first 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 Closing: 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 (or have used) 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 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.

*Third and Fourth Closings: December 31, 2009 and January 4, 2010*

The Company completed a third and fourth closing of its private placement, on December 31, 2009 and January 4, 2010, respectively, resulting in gross proceeds to the Company of approximately \$540,000, thereby completing our private placement.

Pursuant to Subscription Agreements entered into with the investors, the Company sold 10 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 \$480,000 in the third and fourth closings of the private placement. The Company intends to use (or has used) the net proceeds from the Private Placement for general corporate purposes, including clinical trial expenses, research and development expenses, and general and administrative expenses, including payment of accrued legal expenses incurred in connection with successfully defending the Company from actions brought by the Company's former CEO, Leonard Brandt.

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 December 31, 2009 closing of the private placement, the Placement Agent received (i) a cash fee of \$4,320, (ii) a cash expense allowance of \$8,640, and (iii) a five year non-callable warrant to purchase 14,400 shares of the Company's common stock at an exercise price of \$.33 per share.

For its services in connection with the January 4, 2010 closing of the private placement, the lead Placement Agent received (i) a cash fee of \$1,080, (ii) a cash expense allowance of \$2,160, and (iii) a five year non-callable warrant to purchase 3,600 shares of the Company's common stock at an exercise price of \$.33 per share.

In connection with the third and fourth closings 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 earlier closings 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"), the Company 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. The Company 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.

### **June 3, 2010 Bridge Financing**

On June 3, 2010, we entered into a Bridge Note and Warrant Purchase Agreement (the "Purchase Agreement") with John Pappajohn, pursuant to which, Mr. Pappajohn agreed to purchase two secured promissory notes (each, a "Note") in the aggregate principal amount of \$500,000 with each Note in the principal amount of \$250,000 maturing on December 2, 2010. On June 3, 2010, Mr. Pappajohn loaned the Company \$250,000 in exchange for the first Note (there were no warrants issued in connection with this first Note).

We agreed to issue to Mr. Pappajohn a warrant to purchase up to 250,000 shares of common stock (the "Warrant") upon the issuance of the second Note, at an exercise price (subject to customary anti-dilution adjustments) equal to the fair market value per share at the time of issuance of the Warrant. Issuance of the Warrant to Mr. Pappajohn is subject to and conditioned upon the purchase by Mr. Pappajohn of the second Note. In the event a warrant is issued to Mr. Pappajohn, the company and Mr. Pappajohn will execute a registration rights agreement in respect of the securities issuable upon exercise of the Warrant.

Each Note accrues interest at a rate of 9% per annum which will be paid together with the repayment of the principal amount at the earliest of (i) the maturity date; (ii) prepayment of the Note at the option of the Company (iii) closing of a financing in which the aggregate proceeds to the Company are not less than \$3,000,000 or (iv) the occurrence of an Event of Default (as defined in the Note). The Purchase Agreement and each Note grants Mr. Pappajohn a senior security interest in and to all of the Company's existing and future right, title and interest in its tangible and intangible property. Each Note includes provisions intended to protect the right of the holder of the Note.

The Purchase Agreement, form of Note, and form of Warrant are referenced at Exhibits 10.25, 10.26 and 10.27 hereto.

In issuing the Note to Mr. Pappajohn 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 the Note was issued to an accredited investor, without a view to distribution, and was not issued through any general solicitation or advertisement. We made this determination based on the representations of Mr. Pappajohn 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 Note for investment purposes for his 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 Mr. Pappajohn understood that the securities issuable pursuant to the Purchase Agreement may not be sold or otherwise disposed of without registration under the Securities Act or an applicable exemption therefrom.

ITEM 16. Exhibits and Financial Statement Schedules.

(a) The following exhibits are filed herewith:

<b>Exhibit Number</b>	<b>Exhibit Title</b>
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 Amendment of Certificate of Incorporation, dated January 8, 2007.
3.1.6	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	Amended and Restated 2006 Stock Incentive Plan. Incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A (File No. 000-26285) filed with the Commission on April 1, 2010.*
5.1	Opinion of Stubbs, Alderton & Markiles, LLP.
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.
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. Incorporated by reference to Exhibit 10.18 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.19 Form of Warrant. Incorporated by reference to Exhibit 10.19 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.20 Registration Rights Agreement. Incorporated by reference to Exhibit 10.20 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.21 Amendment No. 1 to Registration Rights Agreement. Incorporated by reference to Exhibit 10.21 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.22 Form of Indemnification Agreement. Incorporated by reference to Exhibit 10.22 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.23 Employment Agreement by and between the Registrant and Paul Buck effective as of February 18, 2010.\*
- 10.24 Consulting Agreement by and among CNS Response, Inc. and Henry T. Harbin, effective January 1, 2010. Incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q (File Number 000-26285) filed with the Securities and Exchange Commission on May 14, 2010.
- 10.25 Bridge Note and Warrant Purchase Agreement, dated as of June 3, 2010, between CNS Response, Inc. 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 7, 2010.



10.26	Form of 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 7, 2010.
10.27	Form of Warrant. 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 7, 2010.
10.28	Placement Agent Agreement dated August 3, 2009 between the Registrant and Maxim Group LLC.
10.29	Form of warrant issued to Placement Agent.
10.30	Form of Registration Rights Agreement dated August 26, 2009 between the Registrant and Maxim Group, LLC.
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.
23.2	Consent of Stubbs, Alderton & Markiles, LLC (included in Exhibit 5.1)

\* Indicates a management contract or compensatory plan.

(b) Financial Statement Schedules

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or notes thereto.

ITEM 17. Undertakings.

(a) *Rule 415 Offering.* The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(5)(ii) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(h) *Request for Acceleration of Effective Date or filing of registration statement becoming effective upon filing.*

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Costa Mesa, State of California, on July 2, 2010.

**CNS RESPONSE, INC.**  
(Registrant)

By: /s/ George Carpenter

George Carpenter  
Chief Executive Officer and Secretary  
(Principal Executive Officer)

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates stated.

Signature	Title	Date
<u>/s/ George Carpenter</u> George Carpenter	Chief Executive Officer and Secretary, and Chairman of the Board (Principal Executive Officer)	July 2, 2010
<u>/s/ Paul Buck</u> Paul Buck	Chief Financial Officer (Principal Financial and Accounting Officer)	July 2, 2010
<u>*</u> David B. Jones	Director	July 2, 2010
<u>*</u> Jerome Vaccaro, M.D.	Director	July 2, 2010
<u>*</u> Henry T. Harbin, M.D.	Director	July 2, 2010
<u>*</u> John Pappajohn	Director	July 2, 2010
<u>*By : George Carpenter</u> George Carpenter As Attorney-In-Fact		

EXHIBIT INDEX

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5.1	Opinion of Stubbs, Alderton & Markiles, LLP.
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- 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. Incorporated by reference to Exhibit 10.18 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.19 Form of Warrant. Incorporated by reference to Exhibit 10.19 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.20 Registration Rights Agreement. Incorporated by reference to Exhibit 10.20 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.21 Amendment No. 1 to Registration Rights Agreement. Incorporated by reference to Exhibit 10.21 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.22 Form of Indemnification Agreement. Incorporated by reference to Exhibit 10.22 to the Registrant's Annual Report on Form 10-K (File Number 000-26285) filed with the Securities and Exchange Commission on December 30, 2009.
- 10.23 Employment Agreement by and between the Registrant and Paul Buck effective as of February 18, 2010.\*
- 10.24 Consulting Agreement by and among CNS Response, Inc. and Henry T. Harbin, effective January 1, 2010. Incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q (File Number 000-26285) filed with the Securities and Exchange Commission on May 14, 2010.
- 10.25 Bridge Note and Warrant Purchase Agreement, dated as of June 3, 2010, between CNS Response, Inc. 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 7, 2010.
- 10.26 Form of 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 7, 2010.
- 10.27 Form of Warrant. 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 7, 2010.
- 10.28 Placement Agent Agreement dated August 3, 2009 between the Registrant and Maxim Group LLC.
- 10.29 Form of warrant issued to Placement Agent.
- 10.30 Form of Registration Rights Agreement dated August 26, 2009 between the Registrant and Maxim Group, LLC.

- 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.
- 23.2 Consent of Stubbs, Alderton & Markiles, LLC (included in Exhibit 5.1)

\* Indicates a management contract or compensatory plan.

STATE of DELAWARE  
CERTIFICATE of AMENDMENT of  
CERTIFICATE of INCORPORATION  
of STRATIVATION, INC.

Strativation, Inc, (the "Corporation") a corporation organized and existing under and by virtue of the Delaware General Corporation Law ("DGCL") does hereby certify:

FIRST: That the Board of Directors of the Corporation, by the unanimous written consent of its members, filed with the minutes of the Board, adopted resolutions proposing and declaring advisable the following amendments to the Certificate of Incorporation of the Corporation:

RESOLVED FURTHER, that to effectuate the Reverse Split, Article Fourth of the Certificate of Incorporation, as amended and in effect on the date hereof (the "Certificate of Incorporation"), be amended by adding the following paragraphs thereto:

"Upon the date that this Certificate of Amendment to the Certificate of Incorporation of the Corporation becomes effective in accordance with the General Corporation Law of the State of Delaware (the "Effective Date"), each fifty (50) shares of common stock, par value \$0.001 per share ("Old Common Stock"), of the Corporation issued and outstanding immediately prior to the Effective Date shall be, without any action of the holder thereof, automatically reclassified as and converted into one (1) share of common stock, par value \$0.001 per share ("New Common Stock"), of the Corporation,

"Notwithstanding the immediately preceding paragraph, no fractional shares of New Common Stock shall be issued to the holders of record of Old Common Stock in connection with the foregoing reclassification of shares of Old Common Stock, and no certificates or scrip representing any such fractional shares shall be issued. In lieu of such fraction of a share, any holder of such fractional share shall be entitled receive one whole share of the New Common Stock.

"Each stock certificate that, immediately prior to the Effective Date, represented shares of Old Common Stock shall, from and after the Effective Date, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of New Common Stock into which the shares of Old Common Stock represented by such certificate shall have been reclassified. A letter of transmittal will provide the means by which each holder of record of a certificate that represented shares of Old Common Stock shall receive, upon surrender of such certificate, a new certificate representing the number of whole shares of New Common Stock into which the shares of Old Common Stock represented by such certificate shall have been reclassified."

SECOND: That in lieu of a meeting and vote of the stockholders of the Corporation, pursuant to Section 228 of the DGCL, a written consent setting forth resolutions approving the amendments set forth above was signed by the holders of outstanding common stock having not less than the minimum number of votes necessary to authorize or take action at a meeting at which all shares entitled to vote thereon were present and voted, and written notice of the adoption and approval of the amendments has been given as provided in Section 228 of the DGCL to every stockholder entitled to such notice.

THIRD: That the foregoing amendment of the Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 of the DGCL.

[Remainder of Page Intentionally Left Blank, Signature Page Follows]

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed on this 29th day of December, 2006.

STRATIVATION, INC.

By: /s/ Silas Phillips  
Silas Philips  
Chief Executive Officer

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July 2, 2010

CNS Response, Inc.  
85 Enterprise, Suite 410  
Aliso Viejo, CA 92656

Re: CNS Response, Inc.  
Registration Statement on Form S-1

Ladies and Gentlemen:

At your request, we have examined the Registration Statement on Form S-1 (the "**Registration Statement**") to which this letter is attached as Exhibit 5.1 filed by CNS Response, Inc., a Delaware corporation (the "**Company**"), in order to register under the Securities Act of 1933, as amended (the "**Act**"), the resale by the selling shareholders identified in the prospectus constituting a part of the Registration Statement of an aggregate of 47,470,823 shares of issued and outstanding Common Stock of the Company and 18,409,015 shares of Common Stock of the Company issuable upon exercise of outstanding warrants (the "**Warrants**") issued by the Company, and any additional shares of Common Stock of the Company which may be registered pursuant to Rule 462(b) under the Act (the "**Shares**").

We have examined originals or certified copies of such corporate records of the Company and other certificates and documents of officials of the Company, public officials and others as we have deemed appropriate for purposes of this letter. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to authentic original documents of all copies submitted to us as conformed and certified or reproduced copies.

Based on the foregoing, we are of the opinion that (i) the 47,470,823 shares of issued and outstanding Common Stock have been duly authorized, and are validly issued, fully paid and non-assessable and (ii) the 18,409,015 shares of Common Stock issuable upon exercise of the Warrants have been duly authorized and, when issued upon such exercise in accordance with the terms of the Warrants and following receipt by the Company of the consideration therefor, shall be duly and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an Exhibit to the Registration Statement and to the use of our name in the Prospectus constituting a part thereof. We assume no obligation to inform you of any facts, circumstances, events or changes in the law that may hereafter be brought to our attention that may alter, affect or modify the opinion expressed herein.

Very truly yours,

/s/ Stubbs Alderton & Markiles, LLP  
STUBBS ALDERTON & MARKILES, LLP

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February 18, 2010

Paul Buck  
203 Calle Felicidad  
San Clemente, CA 92672

Dear Paul,

On behalf of CNS Response, Inc. (the "Company"), I am pleased to offer you a position with the Company based upon the following terms:

1. Position. Upon acceptance of this offer, you will become Chief Financial Officer of the Company, reporting to the Chief Executive Officer. You will be expected to devote at least forty (40) hours per week to the performance of your duties (except for vacation periods as set forth herein and reasonable periods of illness or other incapacities permitted by Company's general employment policies) and to give your best efforts to such duties. Your position may require that you travel from time to time as the Company may reasonably request and as shall be appropriate and necessary in the performance of your duties.

2. Effective Date. The effective date of employment shall be: 2/18/2010.

3. AT-WILL EMPLOYMENT. YOU SHOULD BE AWARE THAT YOUR EMPLOYMENT WITH THE COMPANY IS FOR NO SPECIFIED PERIOD AND CONSTITUTES "AT-WILL" EMPLOYMENT. AS A RESULT, YOU ARE FREE TO TERMINATE YOUR EMPLOYMENT AT ANY TIME, FOR ANY REASON OR FOR NO REASON. SIMILARLY, THE COMPANY IS FREE TO TERMINATE YOUR EMPLOYMENT, AT ANY TIME, FOR "CAUSE" OR FOR NO CAUSE. "CAUSE" SHALL MEAN YOUR: (A) INDICTMENT OR CONVICTION OF ANY FELONY OR OF ANY CRIME INVOLVING DISHONESTY OR MORAL TURPITUDE; (B) PARTICIPATION IN ANY FRAUD AGAINST COMPANY; (C) PERSISTENT FAILURE TO SUBSTANTIALLY PERFORM YOUR MATERIAL JOB DUTIES; PROVIDED, HOWEVER, THAT THE CHIEF EXECUTIVE OFFICER OR THE BOARD OF DIRECTORS SHALL PROVIDE YOU WRITTEN NOTICE OF SUCH FAILURE AND YOU SHALL HAVE FIFTEEN (15) DAYS TO CURE; AND (D) INTENTIONAL DAMAGE TO ANY PROPERTY OF COMPANY. IN THE EVENT OF TERMINATION OF YOUR EMPLOYMENT, YOU WILL NOT BE ENTITLED TO ANY PAYMENTS, BENEFITS, OR EMPLOYMENT COMPENSATION OTHER THAN AS SET FORTH HEREIN. IF COMPANY TERMINATES YOUR EMPLOYMENT WITHOUT CAUSE OR YOU "INVOLUNTARILY TERMINATE" YOUR EMPLOYMENT WITH THE COMPANY, YOU SHALL RECEIVE, AS SEVERANCE, YOUR SALARY AND BENEFITS FOR A PERIOD EQUAL TO SIX (6) MONTHS, PAYABLE IN ONE LUMP SUM UPON TERMINATION. YOU SHALL BE CONSIDERED TO INVOLUNTARILY TERMINATE YOUR EMPLOYMENT WITH THE COMPANY IF THE COMPANY (A) COMMITS A BREACH OF THIS OFFER LETTER WHICH REMAINS UNCURED FIFTEEN (15) DAYS AFTER YOU PROVIDE WRITTEN NOTICE TO THE COMPANY OF SUCH BREACH, OR (B) CHANGES, WITHOUT YOUR CONSENT OR PURSUANT TO A CORPORATE TRANSACTION (AS DEFINED IN SECTION 6 BELOW), YOUR TITLE OR RESPONSIBILITIES SO THAT YOU ARE NO LONGER THE CHIEF FINANCIAL OFFICER OF THE COMPANY. IF YOUR EMPLOYMENT IS TERMINATED BY COMPANY WITH CAUSE OR YOU VOLUNTARILY TERMINATE YOUR EMPLOYMENT, YOU SHALL NOT BE ENTITLED TO SEVERANCE.

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4 . Compensation. The Company will pay you a salary of \$208,000 per annum, payable in amounts of \$8,000 twice-monthly, less applicable withholdings. Your salary will begin as of the effective date of employment. The first and last payment by the Company to you will be prorated, if necessary, to reflect a commencement or termination date other than the first or last working day of a pay period. Your salary and performance shall be reviewed at least annually by the Chief Executive Officer or the Company's board of directors. You may receive increases in annual salary from time to time as determined by the Chief Executive Officer or the Board, but in no event shall your annual salary be decreased below \$208,000.

5 . Vacation and Benefits. Upon the Effective Date of your employment and then for so long as you are employed by the Company you will accrue 1.67 days of paid time off ("PTO") for each full month you are employed by the Company. Vacation days shall be deducted from your accrued PTO. You shall be entitled to health and dental insurance coverage for you and your dependents, with premiums paid in full by Company, effective immediately upon your commencement of employment. You will also be entitled to standard fringe benefits in accordance with the Company's practices covering employees, as such benefits may be in effect from time to time.

6 . Stock Option. Upon your acceptance of employment with the Company, you will be granted an option (the "Option") to purchase 450,000 shares of the Company's Common Stock at such time as determined by the Company's Board of Directors. The Option will be subject to the terms and conditions of a stock option agreement between you and the Company (the "Stock Option Agreement") and, at the discretion of the Company's Board of Directors, either (i) the Company's 2010 Stock Incentive Plan, if adopted by the Company's Board of Directors or (ii) the Company's 2006 Stock Incentive Plan. The Stock Option Agreement shall set forth the exercise price of the Option, which will be the closing price of the Company's common stock as quoted on the Over-The-Counter Bulletin Board on the trading day immediately preceding the grant date of the Option. The Stock Option Agreement will also provide that the Option will vest in equal monthly installments over a period of 48 months, commencing on the grant date of the Option until the Option is fully exercisable, subject to your continued service to the Company. The Stock Option Agreement will further provide that the vesting schedule of the Option will be subject to partial acceleration in the event that the Company is involved in a Corporate Transaction (as defined below). In the event of a Corporate Transaction, a portion of your unvested Option determined in accordance with the following formula will vest: the number of unvested options determined immediately prior to the closing of the Corporate Transaction multiplied by a ratio, the numerator of which equals the number of days elapsed between the grant date of the Option and the closing date of the Corporate Transaction and the denominator of which equals 1,460 days (the total vesting period of the Option). A Corporate Transaction shall mean: (i) the sale, lease, transfer or other disposition of all or substantially all of the assets of the Company, or (ii) the acquisition of the Company by another entity by means of merger, consolidation, share exchange, reorganization or otherwise pursuant to which shares of capital stock of the Company are converted into cash, securities or other property of the acquiring entity or any of its subsidiaries or parent entities and which results in the holders of voting securities (excluding shares of the surviving entity held by holders of the capital stock of the Company acquired by means other than the exchange or conversion of the capital stock of the Company for shares of the surviving entity) of the Company immediately prior to such merger, consolidation, share exchange, reorganization or sale of assets beneficially owning, directly or indirectly, less than a majority of the combined voting power of the surviving entity resulting from such merger, consolidation, share exchange, reorganization or sale of assets.

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7 . Employment, Confidential Information, Invention Assignment and Arbitration Agreement. As a condition of accepting this offer of employment, you will be required to complete, sign and return the Company's standard form of Confidential Information, Invention Assignment and Arbitration Agreement.

8 . Immigration Laws. For purposes of federal immigration laws, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided within 3 business days of the effective date of your employment, or your employment relationship with the Company may be terminated.

9. Conflicting Employment. During the period that you render services to the Company, you will not engage in any employment, business or activity that is in any way competitive with the business or proposed business of the Company. You will disclose to the Company in writing any other gainful employment, business or activity that you are currently associated with or participate in that competes with the Company. You will not assist any other person or organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company. You represent that your signing of this offer letter, the Stock Option Agreement and the Company's Confidential Information, Invention Assignment and Arbitration Agreement and your commencement of employment with the Company will not violate any agreement currently in place between yourself and any current or past employers.

10. Entire Agreement. This offer letter, the Confidential Information, Invention Assignment and Arbitration Agreement and, upon its execution, the Stock Option Agreement, set forth the terms of your employment with the Company and supersede any and all prior representations and agreements, whether written or oral.

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11. Amendment. This offer letter can only be amended in writing signed by you and an officer of the Company. Any waiver of a right under this offer letter must be in writing.

12. Governing Law. This offer letter will be governed under the laws of the State of California applicable to such agreements made and to be performed entirely within such State.

We look forward to you joining the Company. If the foregoing terms are agreeable, please indicate your acceptance by signing the enclosed copy of this letter in the space provided below and returning it to me within three days.

Sincerely,

CNS RESPONSE, INC.

By: /s/ George Carpenter  
George C. Carpenter IV  
CEO

AGREED AND ACCEPTED:

/s/ Paul Buck

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August 3, 2009

Mr. George Carpenter  
Chief Executive Officer  
CNS Response, Inc.  
2755 Bristol Street, Suite 285  
Costa Mesa, CA 92626

Re: Private Placement of Securities

Dear Mr. Carpenter:

This Placement Agency Agreement (the "Agreement") confirms the retention of Maxim Group LLC ("Maxim" or "Placement Agent") by CNS Response, Inc., a Delaware corporation ("CNS" or the "Company"), to provide, on an exclusive basis, certain investment banking services in connection with a "best efforts" private placement of Units (as defined below) consisting of securities of the Company (the "Private Placement"). Each Unit ("Unit") shall consist of: (i) 180,000 shares of the Company's common stock at \$0.30 per share ("Common Stock") and (ii) warrants to purchase 90,000 shares of common stock for \$0.30 per share (the "Warrants") for \$54,000 per Unit. The Units are sometimes referred to herein as the "Private Placement Securities" or the "Securities." The investors introduced by Maxim to the Company in connection with the financing contemplated hereunder are referred to herein each as an "Investor" and collectively as the "Investors."

## 1. PLACEMENT

(a) The Private Placement shall be a "best efforts" placement consisting of a minimum of seventy-five (75) Units, or four million fifty thousand dollars (\$4,050,000) (the "Private Placement Minimum Amount") and up to a maximum of one hundred fifty (150) Units, or eight million dollars (\$8,100,000), at an offering price of \$54,000 per Unit (the "Private Placement Maximum Amount"). The Company has granted the Placement Agent the option to exercise an over-allotment option to sell up to an additional twenty-two and five tenths (22.5) Units (the "Over-Allotment Option"). The Shares and Warrants, or the other agreements or instruments entered into in connection with the Private Placement shall have such other features as are agreed to by the Company and Maxim and memorialized in the Offering Documents (as defined below) including, without limitation, the registration rights described in Section 1(e) below as well as those described in the subscription documents included in the Offering Documents, as defined below, for the shares of Common Stock receivable upon the exercise of the Warrants, or issuable as part of the Units.

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Members FINRA & SIPC

405 Lexington Ave. \* New York, NY 10174 \* tel (212) 895-3500 \* (800) 724-0761 \* fax (212) 895-3783 \* www.maximgrp.com  
New York, NY \* Long Island, NY \* Red Bank, NJ

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(b) Maxim will, on an exclusive basis, conduct the Placement on a “best efforts” basis to accredited investors, only, as meant in Regulation D. If at least the Private Placement Minimum Amount has been subscribed for and accepted by the Company at any time during the Private Placement Offering Period, as defined below, the Company will promptly conduct an initial closing (the “Initial Closing”) and may conduct subsequent closings (each, a “Subsequent Closing” and together with the Initial Closing, each, a “Closing” and collectively, the “Closings”), until the date on which the Maximum Amount is subscribed for by Investors and accepted by the Company (the “Final Closing Date”). Unless terminated earlier in the Company’s or Maxim’s sole discretion, the offering period for the Private Placement (“Private Placement Offering Period”) will expire on the earlier to occur of: (i) September 30, 2009, unless extended in the mutual discretion of the Company and Maxim (the “Termination Date”), (ii) the date on which the Private Placement Maximum Amount is subscribed for and accepted by the Company, or (iii) the termination of the Private Placement or this Agreement, but in any event no later than December 31, 2009. Any Closing shall be undertaken in a manner agreed to by the Company and Maxim. Unless the Private Placement Minimum Amount is subscribed for and accepted by the Company by the Termination Date, the Private Placement will be terminated and all subscription proceeds will be returned to Investors without interest or deduction. The minimum subscription amount per investor shall be Fifty Four Thousand Dollars (\$54,000.00) which amount may be reduced and partial Units may be issued and sold at the discretion of the Company and the Placement Agent.

(c) The Private Placement will be made pursuant to the Offering Documents, as defined below. The Securities will not be registered under the Securities Act of 1933, as amended, or any applicable successor statute (the “Act”), but will be issued in reliance on the private offering exemption available under Section 4(2) of the Act and the Rules and Regulations, as defined below, promulgated thereunder, including Regulation D (“Regulation D”). Maxim understands that all subscriptions for Units are subject to acceptance by the Company. The Company and Maxim reserve the right in their reasonable discretion to accept or reject any or all subscriptions for Units, in whole or in part, regardless whether any funds have been deposited into an escrow account. Any subscription monies received by Maxim from Investors will be handled in accordance with Rule 15c2-4 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), whether or not Maxim is subject to the Exchange Act, and as otherwise may be prescribed by the terms of the Offering Documents (as defined in Section 2 below). As used herein, the term “Rules and Regulations” means the applicable rules and regulations promulgated under the Securities Act and the Exchange Act.

(d) Until the Closing (as defined below) is held, all subscription funds received shall be held by American Stock Transfer & Trust Company (the “Escrow Agent”). Maxim shall not have any independent obligation to verify the accuracy or completeness of any information contained in any Subscription Documents (as defined in Section 2 below) or the authenticity, sufficiency or validity of any check delivered by any prospective Investor in payment for the Units, nor shall Maxim incur any liability with respect to any such verification or failure to verify, unless it had actual knowledge that any information in the Subscription Documents was untrue. All subscription checks and funds shall be promptly and directly delivered without offset or deduction to the Escrow Agent.



(e) In the event that the Private Placement Minimum Amount is raised, the Company agrees to file a registration statement, on a form to be agreed upon by the Company and Maxim (the "Registration Statement"), with the Securities and Exchange Commission (the "SEC") no later than sixty (60) days following the Closing, covering the resale of the shares of Common Stock: (i) included in the Units, (ii) issuable upon the exercise of the Warrants, and (iii) underlying any Placement Agent Warrant (as defined below) issued to Maxim in connection with the Private Placement. In addition, the Company shall use reasonable efforts to have such Registration Statement declared effective by the SEC by no later than one hundred-eighty (180) days following the Final Closing of the Private Placement with the SEC (the "Target Effective Date"), and to maintain the effectiveness of such Registration Statement until sooner of the second (2nd) anniversary of the date of such effectiveness on the date that all of such shares may be sold by the Investor without restrictions. The terms of such registration rights are more fully described in the Offering Documents.

## 2. OFFERING DOCUMENTS AND RELATED MATTERS

(a) The Company has prepared an Offering Document which includes: (i) the Form 10-KSB for the year ended September 30, 2008 as filed with the Securities and Exchange Commission on January 13, 2009 and amended on January 28, 2009, (ii) the subscription booklet, (iii) the form of Warrants, and (iv) the Offering term sheet, relating to the Private Placement (such Offering Documents and any amendments or supplements thereto prepared and furnished by the Company, being referred to herein as the "Offering Documents"), which Offering Documents, among other things, describes the Private Placement and certain investment risks relating thereto.

(b) The Company has been and will continue to be responsible for preparing and filing required documentation, if any, with the authorities in the United States or any state located therein (and subsequent to, if required by the laws of any such jurisdiction) in connection with the distribution of the Offering Documents to prospective Investors (the parties acknowledging, however, that the Private Placement is intended and expected to be wholly or partially exempt from filing requirements in the United States by reason of an "accredited investor" exemption).

(c) Maxim and its counsel and the Company and its counsel have or will jointly prepare a form of subscription agreement (the "Subscription Agreement") and a form of purchaser questionnaire (collectively, with the Subscription Agreement, the Note, the Warrant or other documents required in connection with the Private Placement, the "Subscription Documents"), which Subscription Documents shall contain such representations, warranties, conditions and covenants as are customary in private placements of corporate debt and equity securities with United States accredited investors. Maxim and its counsel have had or will have an opportunity to review the final form of the Offering Documents and Subscription Documents prior to the distribution thereof to prospective Investors, and the Offering Documents and the Subscription Documents will be the only offering documents (other than cover letters which may be used by Maxim, and any documents made available to Investors in accordance with the terms of the Offering Documents) shown to prospective Investors. The Company and its counsel will advise Maxim and its counsel, in writing of those jurisdictions in which the Securities may lawfully be offered and sold, and the manner in which the Securities may lawfully be offered and sold in each such jurisdiction in connection with the Private Placement, and Maxim agrees that the Securities will be offered or sold only in such jurisdictions and in the manner specified by the Company; provided, however, that Maxim shall not be responsible for independently verifying such written advice with respect to the jurisdictions in which the Securities may be offered and sold and with respect to the manner in which the Securities may be offered and sold in such jurisdictions. Notwithstanding the foregoing, Maxim shall determine whether it is licensed to offer and sell the Securities in each jurisdiction in which it intends to do so.

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Members FINRA & SIPC

405 Lexington Ave. \* New York, NY 10174 \* tel (212) 895-3500 \* (800) 724-0761 \* fax (212) 895-3783 \* www.maximgrp.com  
New York, NY \* Long Island, NY \* Red Bank, NJ

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(d) The Private Placement will be made in accordance with the requirements of Section 4(2) under the Act and/or Regulation D only to investors that qualify as accredited investors, as defined in Rule 501(a) under the Act (“Accredited Investors”), purchasing for their own account for investment purposes only and not for distribution in violation of securities laws. Furthermore, prospective Investors will have been provided with the Offering Documents and access to the management of the Company and afforded the opportunity to ask questions.

(e) The Company recognizes, agrees and confirms that Maxim (or any selling agent permitted to be utilized by Maxim under Section 3(a) hereof): (i) will use and rely primarily on the information contained in the Offering Documents and the Subscription Documents and on information available from generally recognized public sources in performing the services contemplated by this Agreement without having independently verified the same; (ii) is authorized, as the Company’s exclusive financial advisor and placement agent in connection with the Private Placement, to transmit to any prospective Investor a copy or copies of the Offering Documents, the Subscription Documents and any other documentation supplied to Maxim for transmission to any prospective Investor by or on behalf of the Company or by any of the Company’s officers, representatives or agents, in connection with the performance of Maxim’s services hereunder or any transaction contemplated hereby; (iii) does not assume responsibility for the accuracy or completeness of any information contained in the Offering Documents and the Subscription Documents or any such other information; (iv) will not make an appraisal of the Company or any assets of the Company or the securities being offered by the Company in the Private Placement; and (v) retains the right to continue to perform due diligence of the Company during the course of the Company’s engagement of Maxim.

### 3. PLACEMENT AGENT MATTERS

(a) Subject to the provisions of this Agreement and to the performance by the Company of all of its obligations to be performed hereunder, Maxim agrees to use its best efforts to assist in arranging for sales of Private Placement Securities. The Company recognizes that “best efforts” does not assure that the Private Placement will be consummated. It is understood and agreed that this Agreement does not create any partnership, joint venture or other similar relationship between or among Maxim and the Company, and that Maxim is acting only as a sales agent. The Company hereby agrees that Maxim shall have the right to utilize other selling broker-dealers in connection with the Private Placement on terms approved by Maxim.

(b) For the services of Maxim hereunder, the Company will pay or caused to be paid to Maxim the following fees at each Closing in connection with the sale of Private Placement Securities to persons introduced to the Company by the Placement Agent Private Placement, subject to the limitations set forth in Section (c) below:

(i) a cash payment equal to 10.0% of the gross proceeds received by the Company from the sale of the Private Placement Securities, payable at each applicable Closing, in lawful money of the United States by check or wire transfer of immediately available funds;

(ii) a non-accountable expense allowance equal to 2.0% of the gross proceeds received by the Company from the sale of the Private Placement Securities, payable at each applicable Closing, in lawful money of the United States by check or wire transfer of immediately available funds;

(iii) a warrant (the "Placement Agent Warrant") to purchase such number of shares of Common Stock, equal to 10.0% of the aggregate number of securities sold in the Offering, at 110% of the offering price of the Units ("Exercise Price"), as defined in the Offering Documents, exercisable for a period of five (5) years from the date of issuance, subject to customary anti-dilution protection rights contained in warrants of this type.

The Placement Agent Warrant will be issued at the applicable Closing pursuant to Warrant Certificates to be signed by the Company, as applicable. The Placement Agent Warrant shall provide, among other things:

(A) that the Placement Agent Warrant shall:

(1) be exercisable at the Exercise Price, as applicable; and

(2) expire five (5) years from the date of issuance, unless otherwise agreed to.

(B) for registration rights on the same terms granted to the Investors,

(C) for such other terms as are normal and customary for Placement Agent Warrants issued to placement agents.

(c) For the services of Maxim hereunder, the Company will pay or caused to be paid to Maxim the following fees at each Closing in connection with the Private Placement for the sale of the Private Placement Securities to persons not introduced to the Company by the Placement Agent:

(i) a cash payment equal to 3.0% of the gross proceeds received by the Company from the sale of the Private Placement Securities, payable at each applicable Closing, in lawful money of the United States by check or wire transfer of immediately available funds;

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(ii) a non-accountable expense allowance equal to 2.0% of the gross proceeds received by the Company from the sale of the Private Placement Securities, payable at each applicable Closing, in lawful money of the United States by check or wire transfer of immediately available funds;

(iii) the Placement Agent to purchase such number of shares of Common Stock, equal to 3.0% of the aggregate number of securities sold in the Offering, at 110% of the offering price of the Units, as defined in the Offering Documents, exercisable for a period of five (5) years from the date of issuance, subject to customary anti-dilution protection rights contained in warrants of this type.

(d) Upon receipt by the Company from a proposed Investor of completed Subscription Documents, and such other documents as the Company requests, the Company and Maxim will determine in their reasonable discretion whether they wish to accept or reject the subscription.

#### 4. PAYMENT BY COMPANY OF EXPENSES

The Company will pay for and whether or not any Securities are sold in connection with the Private Placement, all expenses of the Company relating to the Private Placement, including, without limitation: (i) the preparation, printing, reproduction and filing of the Offering Documents and all other documents relating to the Private Placement, and any supplements or amendments thereto, including the fees and expenses of counsel to the Company, and the cost of all copies thereof; (ii) the issuance, sale, transfer and delivery of the Private Placement Securities, including any transfer or other taxes payable thereon and the fees of any transfer agent or registrar; (iii) the public registration and listing of, or registration and qualification of the Securities pursuant to the resale registration statement required to be filed in connection with the sale of the Securities or otherwise and for the securing of an exemption therefrom under state or foreign "blue sky" or securities laws, including, without limitation, filing fees payable in the jurisdictions in which such registration or qualification or exemption therefrom is sought, the costs of preparing preliminary, supplemental and final "blue sky surveys" relating to the offer and sale of the Securities; (iv) the filing fees, if any, payable to the applicable securities regulatory authorities, including, but not limited to, the FINRA in connection with filings made via the FINRA's CobraDesk filing system; (v) all Escrow Agent fees; and (vi) all road show expenses of the Company, travel for Company employees and other related expenses of the Company. The Company will pay or promptly reimburse Maxim, as the case may be for all reasonable out-of-pocket expenses of Maxim relating to activities under this Agreement (including legal fees incurred by Maxim) in an amount not to exceed \$25,000 in the aggregate, which amount will be offset against the non-accountable expense allowance referred to in Section 3(b) and 3(c) hereof.

#### 5. TERMINATION OF PRIVATE PLACEMENT

The Private Placement may be terminated: (i) by Maxim or the Company at any time upon ten (10) days prior written notice; (ii) by the Company on September 30, 2009 or any day thereafter, on prior written notice to Maxim; or (iii) immediately by Maxim upon giving written notice to the Company, but, with respect to clause (iii), only in the event that:

(a) in the opinion of Maxim, the Offering Documents contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements appearing therein not misleading in the light of the circumstances in which they were made, and the Company shall not have corrected such untrue statement or omission to the reasonable satisfaction of Maxim and its counsel within ten (10) days after the Company receives notice of such untrue statement or omission, provided that notwithstanding such ten (10) day period, no Closing shall occur hereunder until Maxim shall notify the Company that it is satisfied, in its reasonable determination, that the Company has taken such steps (including circulating amended offering materials and afforded prospective Investors a reasonable opportunity to review such amendments) to allow the applicable Closing to occur; or

(b) the Company shall be in material breach of any representation, warranty or covenant made by it in this Agreement, any Subscription Document or any other document relating to the Private Placement (“Cause”); or

(c) (i) any calamitous domestic or international event or act or occurrence has taken place and, in Maxim’s opinion, has or will materially disrupt general securities markets in the United States in the immediate future; or (ii) if trading on the New York Stock Exchange, the American Stock Exchange, or in the over-the-counter market shall have been suspended or minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required on the over-the-counter market by the Financial Industry Regulatory Authority, (“FINRA”) or by order of the SEC or any other government authority having jurisdiction; or (iii) if the United States shall have become subject to an act of terrorism or involved in a war, major hostilities or the like; or (iv) if a banking moratorium has been declared by a New York State or federal authority; or (v) if the Company shall have sustained a material loss, whether or not insured, by reason of fire, flood, accident or other calamity; or (vii) if there shall have been such material adverse change in the conditions or prospects of the Company, involving a change not contemplated by the Offering Documents; or (viii) if there shall have been such material adverse general market conditions as in Maxim’s reasonable judgment would make it inadvisable to proceed with the Private Placement or the sale or delivery of the Securities.

## 6. PRIVATE PLACEMENT OFFERING PERIOD; CLOSINGS

Subject to the terms and conditions set forth herein, the Units which are the subject of the Private Placement will be offered as described in Section 1(b) hereof. Unless the Private Placement Minimum Amount is subscribed for and accepted by the Company by the Termination Date (as the same may be extended pursuant to the terms hereof), the Private Placement will be terminated and all subscription proceeds will be returned to Investors without interest or deduction. At any Closing, the Company shall deliver to the Investors instruments or preferred stock or warrant certificates representing the securities underlying the Units and instruments representing the Placement Agent Warrants, duly executed by the Company, together with such other closing documentation as may be required by Maxim in its reasonable discretion in order to affect the applicable Closing. Any date on which a Closing occurs is referred to herein as a “Closing Date.”

**7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY**

The Company hereby represents, warrants, covenants and agrees with and to Maxim: (i) as of the date hereof, (ii) as of each applicable Closing Date and (iii) as of the date of the filing of the Registration Statement (or any amendment or supplement thereto), as follows and except as disclosed in the Company's periodic reports as filed with the SEC.

(a) The Company has been validly formed and legally exists as a corporation in good standing under the laws of the State of Delaware. The Company has full corporate power and authority to conduct its business as currently conducted, and is in good standing in the jurisdiction in which the conduct of its businesses or the nature of its properties requires such qualification or authorization, except where the failure to be so qualified or authorized and in good standing would not have a material adverse effect on the business and financial condition of the Company or any other Subsidiary (as defined below) of the Company, each taken as a whole (a "Material Adverse Effect"). As of the date hereof, the Company does not have, directly or indirectly, any subsidiaries other than as disclosed in the Company's filings with the SEC (each, a "Subsidiary" and collectively, the "Subsidiaries"). Each Subsidiary has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its organization, has the power and authority to own its properties and to conduct its business and is duly qualified and authorized to transact business and is in good standing in each jurisdiction in which the conduct of its business or the nature of its properties requires such qualification or authorization, except where the failure to be so qualified or authorized and in good standing would not have a Material Adverse Effect.

(b) Except for the Subsidiaries, the Company holds no ownership or other interest, nominal or beneficial, direct or indirect, in any corporation, partnership, joint venture or other business entity. Other than as described in the Company's filings with the SEC, all of the issued and outstanding capital stock of each Subsidiary is owned by the Company, free and clear of any lien, charge, mortgage, pledge, security interest, claim, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever (each, a "Lien"), and has been duly authorized and validly issued, and is non-assessable.

The authorized capital stock of the Company consists of 750,000,000 shares of capital stock, of which: (i) 750,000,000 are classified as Common Stock, par value \$0.001 per share, and (ii) none are classified as preferred stock, par value \$0.001 per share. As of the date hereof and as of each Closing Date, 28,872,476 shares of the Company's Common Stock, 0 shares of Series A Preferred Stock and 0 shares of Series B Preferred Stock and no other shares of capital stock of the Company are or will be issued and outstanding, except as otherwise contemplated by the Offering Documents and all such shares of capital stock are, as the case may be, duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights. The shares of Common Stock underlying the Warrants and the Placement Agent Warrants, will be duly reserved, and when issued in accordance with the terms of the Private Placement, will be validly issued, fully paid and non-assessable and not subject to preemptive or any other similar rights and no personal liability will attach to the ownership thereof. The outstanding options, warrants and other convertible securities of the Company are as set forth in the Offering Documents and the Company's filings with the SEC. Except as disclosed in the Offering Documents, neither the Company nor any Subsidiary is a party to an agreement, instrument or understanding which calls for, and no securities of the Company or any Subsidiary contain provisions relating to, the resetting or repricing of any debt or equity security instrument of the Company or any Subsidiary. Neither the issuance of the Securities nor the consummation of the Private Placement will trigger any resetting or repricing of any debt or equity security instrument of the Company or any Subsidiary.

(c) This Agreement, the Subscription Documents, the Warrants, the Placement Agent Warrants, and all other documents to be entered into by the Company in connection with the transactions described in the Offering Documents have been duly 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 insofar as enforcement of the indemnification or contribution provisions hereof may be limited by applicable laws or principles of public policy and except further as to enforcement, to the availability of equitable remedies and limitations imposed by bankruptcy, insolvency, reorganization and other similar laws and related court decisions relating to or affecting creditors' rights generally.

(d) Neither the Offering Documents, the Registration Statement, the Subscription Documents nor any of the Company's filings with the SEC (collectively, the "Company Documents") contain or will contain any untrue statement of a material fact, and the Company Documents will not omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, except that the Company shall have no liability for any information provided to the Company in writing by, and relating to, Maxim, for use in and used in the Offering Documents. It is understood that any summary in the Offering Documents of a document which appears therein in full (either as signed or substantially in the form to be signed) does not constitute an untrue or misleading statement merely because it is a summary; provided, however, that any such summary does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading. If, at any time before the Private Placement is completed or terminated or before all subscriptions are accepted by the Company, there should be any change which would cause the Company Documents not to comply with this Section 7(d), the Company will promptly advise Maxim thereof and make any necessary corrective filings with the SEC and prepare and furnish Maxim with, for distribution to Investors, after prior review and approval by Maxim and its counsel (such approval not to be unreasonably withheld), such copies of such supplements or amendments to the Offering Documents and the Subscription Documents as will cause the Offering Documents and the Subscription Documents, as so supplemented or amended, to comply with this Section 7(d), and will authorize Maxim to make to Investors, if: (i) deemed necessary by counsel to Maxim and approved by Maxim, or (ii) if deemed necessary by counsel to the Company, an offer of rescission.

(e) Except as disclosed in the Company Documents, since March 31, 2009, there has been no material adverse change (or any development involving a prospective material adverse change), whether or not arising from transactions in the ordinary course of business, in or affecting: (i) the business, condition (financial or otherwise), results of operations, shareholders' equity, properties or prospects of the Company and each Subsidiary, taken as a whole; (ii) the long-term debt or capital stock of the Company or any of its Subsidiaries; or (iii) the Private Placement or consummation of any of the other transactions contemplated by this Agreement. Since the date of the latest Company balance sheet presented in or attached to the Offering Documents, and other than as described in the Offering Document, neither the Company nor any Subsidiary has incurred or undertaken any liabilities or obligations, whether direct or indirect, liquidated or contingent, matured or unmatured, or entered into any transactions, including any acquisition or disposition of any business or asset, which are material to the Company and the Subsidiaries taken as a whole, except for liabilities, obligations and transactions which are disclosed in the Offering Documents and the exhibits thereto.

(f) Neither the Company nor any Subsidiary is in: (i) violation of its certificate or articles of incorporation, by-laws or other organizational documents, (ii) default under, and no event has occurred which, with notice or lapse of time or both, would constitute a default under or result in the creation or imposition of any Lien upon any of its property or assets pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject or (iii) violation in any respect of any law, rule, regulation, ordinance, directive, judgment, decree or order of any judicial, regulatory or other legal or governmental agency or body, foreign or domestic, except (in the case of clause (ii) above) for any Lien disclosed in the Offering Documents and the exhibits thereto and except, in the cases of (ii) and (iii), where such defaults or violations do not, individually or in the aggregate, have a Material Adverse Effect.

(g) The execution, delivery and performance of this Agreement, all Company Documents and all other documents to be entered into by the Company in connection with any transaction described in the Offering Documents or in connection with the Private Placement, and the consummation of the transactions contemplated hereby, have been or will be prior to such execution, delivery, performance or consummation, as the case may be, duly and validly authorized by the Company and do not and will not: (i) constitute, or result in, a breach or violation of any of the terms, provisions or conditions of the Certificate or Articles of Incorporation, Bylaws or other governing documents of the Company or any of the Subsidiaries, (ii) constitute, or result in, a material violation of any applicable statute, law, ordinance or regulation of any state, territory or other jurisdiction, or (iii) violate, constitute, or result in, a default under (or an event which with the passing of time or the giving of notice or both would constitute a default under) or breach of the terms, provisions or conditions of any material indenture, note, contract, commitment, instrument or document to which the Company or any of the Subsidiaries is or will be a party or by which the Company, any of the Subsidiaries or any of its properties are bound, or any award, judgment, decree, rule or regulation of any court or governmental or regulatory agency or body having jurisdiction over the Company or any of the Subsidiaries or its activities or properties, the result of which would have a Material Adverse Effect. No consent, approval, authorization or order of any court or governmental or regulatory agency or body or any individual or entity is required on the part of the Company for the lawful consummation of the transactions contemplated hereby and thereby, except for such consents and approvals with respect to the offer and sale of the Securities in certain jurisdictions which are identified to Maxim by counsel for the Company.



(h) Each of the Company and the Subsidiaries has all necessary consents, approvals, authorizations, orders, registrations, qualifications, licenses, filings and permits of, with and from all applicable judicial, regulatory and other legal or governmental agencies and bodies and all third parties, foreign and domestic (collectively, the "Consents"), to own, lease and operate their respective properties and conduct their respective businesses as are now being conducted and as disclosed in the Offering Documents, except where the failure to have any such Consent would not have a Material Adverse Effect. Each such Consent is valid and in full force and effect, and neither the Company nor any Subsidiary has received written notice of any investigation or proceedings which results in or, if decided adversely to the Company or any Subsidiary, could reasonably be expected to result in, the revocation of, or imposition of a materially burdensome restriction on, any Consent.

(i) Each of the Company and its Subsidiaries is in compliance with all applicable laws, rules, regulations, ordinances, directives, judgments, decrees and orders, foreign and domestic, except where the failure to so comply does or would not have a Material Adverse Effect.

(j) Except as disclosed in the Offering Documents, there is no judicial, regulatory, arbitral or other legal or governmental proceeding or other litigation or arbitration, domestic or foreign, pending to which the Company or any Subsidiary is a party or of which any property, operations or assets of the Company or any Subsidiary is the subject which, would have a Material Adverse Effect. No such proceeding, litigation or arbitration is threatened or contemplated, and the defense of all such proceedings, litigation and arbitration against or involving the Company or any Subsidiary would not have a Material Adverse Effect.

(k) [ ] whose report is included or attached to the Form 10-K included in the Offering Documents, are independent public accountants as required by the Securities Act, the Exchange Act and the Rules and Regulations.

(l) Except as disclosed in the Offering Documents, and except for such matters that, would not have a Material Adverse Effect there are no claims, actions, suits, investigations or proceedings before or by any arbitrator, court, governmental authority or instrumentality pending or threatened against or affecting the Company or any of its subsidiaries or involving the properties of the Company which would affect the transactions or other acts contemplated by this Agreement or the validity or enforceability of this Agreement.

(m) Neither the Company nor any of its Subsidiaries has violated or is currently in violation of any provisions of: (a) any federal or state environmental law, (b) Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"), (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, (e) the Foreign Corrupt Practices Act, or (f) the Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, and the rules and regulations promulgated under any such law, or any successor law, except for such violations which, singly or in the aggregate, would not have a Material Adverse Effect.

(n) Except as disclosed in the Offering Documents, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or Maxim for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement or, to the Company's knowledge, any arrangements, agreements, understandings, payments or issuance with respect to the Company or any of its officers, directors, shareholders, partners, employees, Subsidiaries or affiliates that may affect Maxim's compensation.

(o) The financial statements, including the notes thereto, and the supporting schedules included, attached to or incorporated by reference in the Form 10-K, as amended, included in the Offering Documents and the Offering Documents present fairly, in all material respects the financial position as of the dates indicated and the cash flows and results of operations for the periods specified of the Company and its consolidated Subsidiaries and the other entities for which financial statements are included, attached to or incorporated by reference in the Offering Documents. Except as otherwise stated in the Offering Documents and the Company Documents, said financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved. The supporting schedules included, attached to or incorporated by reference in the Offering Documents and the Company Documents present fairly the information required to be stated therein. The other financial and statistical information included in the Offering Documents and the Company Documents present fairly the information included therein in all material respects.

(p) The Company and its Subsidiaries maintain a system of internal accounting and other controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with United States generally accepted accounting principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(q) Other than as described in the Offering Documents, neither the Company nor any of its affiliates (within the meaning of Rule 144 under the Securities Act) (collectively, "Affiliates") has, prior to the date hereof, made any offer or sale of any securities which could be "integrated" for purposes of the Act with the offer and sale of the Securities pursuant to the Offering Documents or the Registration Statement.

(r) All private offers and sales of securities prior to the date hereof by the Company or any Subsidiary have been validly exempt from registration under the Act and have been properly registered with all applicable state securities authorities pursuant to appropriate "blue sky" filings or otherwise and if not properly filed or registered, all such purchasers in such private offerings have received an offer of rescission, which has been prepared and offered to purchasers in accordance with the laws and regulations of each state in which such rescission offer was required to be made. Additionally, rescission has not been offered to purchasers that would not be entitled to any such rescission based on the expiration of the applicable statute of limitations in the state in which such purchaser resides.

(s) Except as disclosed in the Offering Documents, no holder of any security of the Company or any Subsidiary has any rights to require registration of any such security as part or on account of, or otherwise in connection with, the offer and sale of the Securities contemplated by the Registration Statement, and any such rights so disclosed have either been fully complied with by the applicable entity or effectively waived by the holders thereof, and any such waivers remain in full force and effect.

(t) Neither the Company nor any of its respective directors, officers, employees, agents or representatives ("Company Representatives") has taken or will take any action which has caused or may cause the Private Placement not to qualify for exemption from the registration requirements of the Act or of United States federal, state or other securities or other laws. In connection with the Private Placement, neither the Company nor the Company Representatives shall offer or cause to be offered the Securities by any form of general solicitation or general advertising as defined in Rule 502(c) of Regulation D. Other than as described in the Offering Documents, the Company and the Company Representatives have not taken and shall not take any action (except for actions contemplated by the Offering Documents) that would cause the Private Placement to be integrated with other transactions under Rule 502(a) of Regulation D.

(u) No relationship, direct or indirect, exists between the Company or any of its Affiliates, on the one hand, and any director, officer, shareholder, customer or supplier of the Company or any Affiliate of them, on the other hand, which is required by the Act or the Exchange Act to be described in the Form 10-K included in the Offering Documents which is not so described and described as required. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members, except as disclosed in the Form 10-K included in the Offering Documents. The Company has not, in violation of the Sarbanes-Oxley Act of 2002 ("Sarb-Ox"), directly or indirectly, including through a Subsidiary (other than as permitted under the Sarb-Ox for depository institutions), extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer of the Company.

(v) The Company is in material compliance with the provisions of Sarb-Ox and the rules and regulations promulgated thereunder and related or similar rules and regulations promulgated by NASDAQ or any other governmental or self regulatory entity or agency, except for such violations which, singly or in the aggregate, would not have a Material Adverse Effect.

(w) With the exception of product liability insurance, the Company and/or the Subsidiaries maintain insurance in such amounts and covering such risks as they reasonably consider adequate for the conduct of their businesses and the value of their properties and as is customary for companies engaged in similar businesses in similar industries, all of which insurance is in full force and effect. There are no claims by the Company or any Subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause. The Company reasonably believes that it will be able to renew its existing insurance, if any, as and when such coverage expires or will be able to obtain replacement insurance adequate for the conduct of its business.

(x) No "prohibited transaction" (as defined in either Section 406 of the ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended from time to time (the "Code")), "accumulated funding deficiency" (as defined in Section 302 of ERISA) or other event of the kind described in Section 4043(b) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived) has occurred with respect to any employee benefit plan for which the Company or any Subsidiary would have any liability; each employee benefit plan of the Company or any Subsidiary is in compliance in all material respects with applicable law, including (without limitation) ERISA and the Code; the Company has not incurred and does not expect to incur liability under Title IV of ERISA with respect to the termination of, or withdrawal from any "pension plan"; and each employee benefit plan of the Company or any Subsidiary that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which could cause the loss of such qualification.

(y) The Company and each Subsidiary owns or leases all such properties as are necessary to the conduct of their businesses as presently operated and as proposed to be operated as described in the Offering Documents. The Company and each Subsidiary have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens and encumbrances, except such as are described in the Offering Documents or such as would not have a Material Adverse Effect. Any real property and buildings held under lease or sublease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material to, and do not interfere with, the use made and proposed to be made of such property and buildings by the Company and the Subsidiaries. Neither the Company nor any Subsidiary has received any notice of any claim adverse to its ownership of any real or personal property or of any claim against the continued possession of any real property, whether owned or held under lease or sublease by the Company or any Subsidiary.

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(z) The Company and each Subsidiary: (i) owns or possesses adequate right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, formulae, customer lists, and know-how and other intellectual property (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures, "Intellectual Property") necessary for the conduct of their respective businesses as being conducted and as described in the Offering Documents and (ii) does not believe that the conduct of their respective businesses does or will conflict with, and have not received any notice of any claim of conflict with, any such right of others. All material technical information developed by and belonging to the Company or any Subsidiary which has not been patented has been, to the Company's knowledge, kept confidential so as, among other things, all such information may be deemed proprietary to the applicable entity. Neither the Company nor any Subsidiary has granted or assigned to any other person or entity any right to manufacture, have manufactured, assemble or sell the current products and services of the Company or any Subsidiary or those products and services described in the Offering Documents. After due investigation, there is no infringement by third parties of any such Intellectual Property; there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's or any Subsidiary's rights in or to any such Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such claim. There is no pending or threatened action, suit, proceeding or claim by others that the Company or any Subsidiary infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any other fact which would form a reasonable basis for any such claim.

(aa) Except as disclosed in the Company Documents, and except for such matters that, individually or in the aggregate, would not have a Material Adverse Effect:

(i) the Company and each of its Subsidiaries are, and have been, in compliance with all Environmental Laws (as defined below), and neither the Company nor any of its Subsidiaries has received any: (A) communication that alleges that the Company or any such Subsidiary is in violation of, or has liability under, any Environmental Law, (B) written request for information pursuant to any Environmental Law, or (C) notice regarding any requirement that is proposed for adoption or implementation under any Environmental Law and that would be applicable to the operations of the Company or any of its Subsidiaries;

(ii) (A) The Company and each of its Subsidiaries have obtained and are in compliance with all permits, licenses and governmental authorizations pursuant to all Environmental Laws (collectively, "**Environmental Permits**") necessary for their operations as currently conducted, (B) all such Environmental Permits are valid and in good standing, and (C) neither the Company nor any of its Subsidiaries has been advised by any governmental entity or authority of any actual or potential change in the status or terms and conditions of any Environmental Permit;

(iii) there are no Environmental Claims pending or threatened, against the Company or any of its Subsidiaries;

(iv) there have been no Releases of any Hazardous Material that could reasonably be expected to form the basis of any Environmental Claim against the Company or any of its Subsidiaries or against any person whose liabilities for such Environmental Claims the Company or any of its Subsidiaries has, or may have, retained or assumed, either contractually or by operation of law; and

(v) there have been no Releases of any Hazardous Material that could reasonably be expected to form the basis of any Environmental Claim against the Company or any of its Subsidiaries or against any person whose liabilities for such Environmental Claims the Company or any of its Subsidiaries has, or may have, retained or assumed, either contractually or by operation of law; and

(vi) (A) neither the Company nor any of its Subsidiaries has retained or assumed, either contractually or by operation of law, any liabilities or obligations that could reasonably be expected to form the basis of any Environmental Claim against the Company or any Subsidiary, and (B) no Environmental Claims are pending against any person or entity whose liabilities for such Environmental Claims the Company or any Company Subsidiary has, or may have, retained or assumed, either contractually or by operation of law.

As used in this Agreement, the terms: (A) "Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, orders, demands, directives, claims, investigations, proceedings or notices of violation by or from any person or entity alleging liability of whatever kind or nature arising out of, based on or resulting from (y) the presence or release of, or exposure to, any Hazardous Materials at any location; or (z) the failure to comply with any Environmental Law; (B) "Environmental Laws" means all applicable federal, state, local and foreign laws, rules, regulations, orders, decrees, judgments, legally binding agreements or Environmental Permits issued, promulgated or entered into by or with any governmental entity or authority, relating to pollution, natural resources or protection of endangered or threatened species, human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata); (C) "Hazardous Materials" means (y) any petroleum or petroleum products, radioactive materials or wastes, asbestos in any form, urea formaldehyde foam insulation and polychlorinated biphenyls; and (z) any other chemical, material, substance or waste that in relevant form or concentration is prohibited, limited or regulated under any Environmental Law; and (D) "Release" means any actual or threatened release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

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New York, NY \* Long Island, NY \* Red Bank, NJ

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(bb) Each of the Company and the Subsidiaries has accurately prepared and filed all federal, state, foreign and other tax returns that are required to be filed by it and has paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including without limitation, all sales and use taxes and all taxes which the Company or any Subsidiary is obligated to withhold from amounts owing to employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return). No deficiency assessment with respect to a proposed adjustment of the Company or any Subsidiary's federal, state, local or foreign taxes is pending or threatened. The accruals and reserves on the books and records of the Company and the Subsidiaries in respect of tax liabilities for any taxable period not finally determined are adequate to meet any assessments and related liabilities for any such period and, since the date of the Company's most recent audited financial statements, the Company and the Subsidiaries have not incurred any liability for taxes other than in the ordinary course of its business. There is no tax lien, whether imposed by any federal, state, foreign or other taxing authority, outstanding against the assets, properties or business of the Company or any Subsidiary.

(cc) Neither the Company any Subsidiary nor any of their respective employees or agents has at any time during the last five (5) years: (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) made any payment to any federal or state governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments that are not prohibited by the laws of the United States of any jurisdiction thereof.

(dd) No labor disturbance by the employees of the Company or any Subsidiary currently exists or, to the knowledge of the Company, is likely to occur.

(ee) The Company has not offered, or caused Maxim to offer, the Securities to any person or entity with the intention of unlawfully influencing: (i) a customer or supplier of the Company or any Subsidiary to alter the customer's or supplier's level or type of business with the Company or any Subsidiary or (ii) a journalist or publication to write or publish favorable information about the Company, any Subsidiary or its products or services.

(ff) The Company will not offer the Securities for sale hereunder on the basis of any communications or documents relating to Maxim or the Securities except the Offering Documents and the exhibits thereto and documents described or referred to therein, including the Subscription Documents.

(gg) So long as any of the Securities are "restricted securities" within the meaning of Rule 144(a)(3) under the Act, the Company, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, or is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2b under the Exchange Act, provide to each holder of Units, and the underlying shares of Common Stock, and to each prospective purchaser (as designated by such holder) of Units, and the underlying shares of Common Stock, upon the request of such holder or prospective holder, any information required to be provided by Rule 144A(d)(4) under the Act.

(hh) Neither the Company nor any Subsidiary is and, at all times up to and including consummation of the transactions contemplated by this Agreement, and after giving effect to application of the net proceeds of the Private Placement, will not be, subject to registration as an “investment company” under the Investment Company Act of 1940, as amended, and is not and will not be an entity “controlled” by an “investment company” within the meaning of such act. The Company will: (i) utilize the proceeds of the Placement in accordance with the “Use of Proceeds” section of the Offering Documents and (ii) initially utilize the proceeds of the Placement and all other funds of the Company in such a manner so as to cause the Company not to be subject to the 1940 Act, and will thereafter use its best efforts to avoid the Company’s becoming subject to the 1940 Act.

(ii) In addition to the foregoing, to the extent not set forth herein, Maxim may rely on the representations and warranties made by the Company in the Subscription Agreement provided by the Company and used in connection with the Private Placement.

#### **8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF MAXIM**

Maxim hereby represents and warrants to, and covenants with, the Company that:

(a) This Agreement has been duly authorized, executed and delivered by Maxim and constitutes the legal, valid and binding obligation of Maxim, enforceable against it in accordance with its terms, except insofar as enforcement of the indemnification or contribution provisions hereof may be limited by applicable laws or principles of public policy and subject, as to enforcement, to the availability of equitable remedies and limitations imposed by bankruptcy, insolvency, reorganization and other similar laws and related court decisions relating to or affecting creditors’ rights generally.

(b) Maxim will cooperate with the Company to ensure that the offering and sale of the Securities will comply with the requirements of the Act, including, without limitation, the general conditions contained in Regulation D and the federal securities laws, and will follow the reasonable advice of the Company with respect to the manner in which to offer and sell the Securities so as to ensure that the offering and sale thereof will comply with the securities laws of any jurisdiction in which Securities are offered by Maxim, and Maxim will not make an offer of Securities in any jurisdiction in which the Company advises it in writing that such offer would be unlawful for Maxim to offer or sell securities.

(c) Maxim is: (i) a registered broker-dealer under the Exchange Act; (ii) a member in good standing of the FINRA; and (iii) registered as a broker-dealer in each jurisdiction in which it is required to be registered as such in order to offer and sell the Securities in such jurisdiction.



(d) Maxim has not and will not make an offer of Securities (or of any securities, the offering of which may be integrated with the Private Placement) on the basis of any communications or documents relating to the Company or the Securities except the Offering Documents and the exhibits thereto and documents described, referred to or incorporated by reference therein (including the Subscription Documents). Maxim will deliver a copy of the Offering Documents to each prospective Investor solicited by it prior to such offeree's execution of the Subscription Documents or, in the case of amendments or supplements to the Offering Documents (other than those amendments and supplements approved in writing by the Company but designated in writing as not subject to this requirement), prior to such offeree's execution of an acknowledgment of receipt of such amendment or supplement and reconfirmation of intent to subscribe.

(e) Maxim will not transmit to the Company any written offer from an offeree to purchase Securities unless, it has a pre-existing relationship with such offeree, and immediately prior thereto, it reasonably believes that: (i) the offeree is an Accredited Investor; and (ii) the offeree meets all other offeree and/or purchaser suitability standards, if any, required under applicable securities laws and regulations.

(f) Maxim will periodically notify the Company of the jurisdiction in which the Securities are being offered by it or will be offered by it pursuant to this Agreement, and will periodically notify the Company of the status of the offering conducted pursuant to this Agreement.

## 9. COVENANTS

The Company covenants to Maxim that it shall:

(a) Notify Maxim as soon as practicable, and confirm such notice promptly in writing: (i) when any event shall have occurred during the period commencing on the date hereof and ending on the later of the date of the Final Closing as a result of which the Offering Documents would include 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 not misleading, and (ii) of the receipt of any notification with respect to the modification, rescission, withdrawal or suspension of the qualification or registration of the Securities or of an exemption from such registration or qualification in any jurisdiction. The Company will use its reasonable best efforts to prevent the issuance of any such modification, rescission, withdrawal or suspension and, if any such modification, rescission, withdrawal or suspension is issued, to obtain the lifting thereof as promptly as possible.

(b) Not supplement or amend the Offering Documents unless Maxim and its counsel shall have approved of such supplement or amendment in writing, such approval not to be unreasonably withheld, delayed or conditioned. If, at any time during the period commencing on the date hereof and ending on the date of the Final Closing, any event shall have occurred as a result of which the Offering Documents contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or if, in the opinion of counsel to the Company or counsel to Maxim, it is necessary at any time to supplement or amend the Offering Documents to comply with the Act, Regulation D or any applicable securities or "blue sky" laws, the Company will promptly prepare an appropriate supplement or amendment (in form and substance reasonably satisfactory to Maxim and its counsel) which will correct such statement or omission or which will effect such compliance.

(c) Include all the shares of Common Stock underlying the Notes, Warrants and the Placement Warrants, and all shares of Common Stock included as part of the Units ("Registrable Securities"), issued in this Placement in a registration statement of its securities under the Act to be filed with the SEC within sixty (60) days following the initial Closing of the Placement (the "Target Filing Date") and will use its best efforts to have the SEC declare such registration statement effective by no later than one hundred-eighty (180) days following the initial Closing of the Placement (the "Target Effective Date"), and to maintain the effectiveness of such registration statement until the sooner of the second (2nd) anniversary of the final Closing of the Placement and the date that all such securities may be sold without repetition. In addition, Investors shall be provided with certain "piggy back" registration rights as described in the Offering Documents. The Company will prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective until the sale of the securities registered thereunder, and shall comply with the provisions of the Act with respect to the disposition of all securities owned by the Investors and Maxim that are covered by such registration statement during such period in accordance with the intended methods of disposition by the Investors and Maxim. The Company will furnish to the Investors and Maxim such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as the Investors and Maxim may request in order to facilitate the disposition of the shares of Common Stock which may be owned by the Investors and Maxim. The Company shall bear all expenses of the Registration Statement, (but not any fees and expenses, if any, of counsel or other advisors to the Investors and Maxim), all of which shall be payable upon the initial filing of the Registration Statement. The Company shall also pay all expenses of the Investors and Maxim for any "144 opinions" or other opinions which are required in connection with any transfers of Securities made by such parties under Rule 144 or any other applicable sale or transfer (including, without limitation, sales made pursuant to prospectus delivery). In addition to the foregoing, as of the Closing, the Company also grants to Maxim, with respect to the shares of Common Stock underlying the Placement Agent Warrants, each of the registration rights and anti-dilution protections granted to the Investors in the Placement are provided for in the Placement Agent Warrants. In the event the SEC determines any registration statement filed pursuant hereto constitutes a primary offering of securities by the Company and/or requires any Investor to be named as an underwriter, or otherwise restricts the number of Registrable Securities that can be registered in a given registration statement citing the percentage of Registrable Securities to be registered as compared to the then-current public float or market capital of the Company ("SEC Caused Event"), Maxim understands and agrees that the Company may reduce, on a pro-rata basis, the total number of Registrable Securities to be registered on behalf of each such Investor.

(d) Use its best good faith efforts to, within sixty (60) days of the Closing, obtain a "key man" life insurance policy with a nationally recognized carrier and with the Company as the beneficiary on the life of George Carpenter in an amount no less than \$2,000,000 worth of coverage.

(e) Deliver without charge to Maxim such number of copies of the Offering Documents and any supplement or amendment thereto as may reasonably be requested by Maxim.

(f) [Intentionally Omitted]

(g) Not solicit any offer to buy or offer to sell Securities by any form of general solicitation or advertising, including, without limitation, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over the Internet, television or radio or at any seminar or meeting whose attendees have been invited by any general solicitation or advertising.

(h) At all times during the period commencing on the date hereof and ending on the date of the Final Closing, provide to each prospective Investor or his purchaser representative, if any, on reasonable request, such information (in addition to that contained in the Offering Documents) concerning the Private Placement, the Company, the Securities and any other relevant matters as it possesses or can acquire without unreasonable effort or expense and extend to each prospective investor or his purchaser representative, if any, the opportunity to ask questions of, and receive answers from the Company concerning the terms and conditions of the Private Placement and the business of the Company and to obtain any other additional information, to the extent it possesses the same or can acquire it without unreasonable effort or expense, as such prospective Investor or purchaser representative may consider necessary in making an informed investment decision or in order to verify the accuracy of the information furnished to such prospective Investor or purchaser representative, as the case may be.

(i) Notify Maxim promptly of the acceptance or rejection of any subscription.

(j) File a Notice of Sales of Securities on Form D with the SEC no later than 15 days after the first sale of the Securities, if required by law. The Company shall, through Maxim's counsel, file promptly such amendments to such Notices on Form D as shall become necessary and shall also comply with any filing requirement imposed by the laws of any province or jurisdiction in which offers and sales are made. The Company shall furnish Maxim with copies of all such filings. The Company acknowledges that it shall be liable for all filing fees and expenses, as well as Maxim's counsel's legal fees, in all state and federal filings made in connection with the sale or proposed sale of Securities.

(k) Place the following legend on all certificates representing the Securities:

"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."

(l) Not, directly or indirectly, engage in any act or activity which may jeopardize the status of the offering and sale of the Securities as exempt transactions under the Act or under the securities or "blue sky" laws of any jurisdiction in which the Private Placement may be made.

(m) Not and shall use its best efforts to ensure that none of its Affiliates shall sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Act of the issue, offer or sale of the Securities to the Investors.

(n) Apply the net proceeds from the sale of the Securities in accordance with the description thereof in the Offering Documents.

(o) Not, during the period commencing on the date hereof and ending on the date of the Final Closing, issue any press release or other communication or hold any press conference with respect to the Company, its financial condition, results of operations, business properties, assets, liabilities or future prospects of the Private Placement, without the prior written consent of Maxim, which consent will not be unreasonably withheld.

(p) Not, prior to the completion of the Private Placement, bid for, purchase, attempt to induce others to purchase, or sell, directly or indirectly, any shares of Common Stock or any other securities in violation of the provisions of Regulation M under the Exchange Act.

(q) Use its good faith best efforts after the date hereof to become compliant with all aspects of the Sarbanes-Oxley Act of 2002 ("Sarb-Ox") and the rules and regulations promulgated thereunder that are applicable to the Company at the date of this Agreement and the rules and regulations with respect to Sarb-Ox that are now or will be applicable to the Company from time to time including, without limitation, those provisions relating to loans to Company officers and directors (it being covenanted and agreed to by the Company that it shall not, after the date hereof, make any loans to any officer or director of the Company).

(r) Not, for a period of one (1) year from the Final Closing Date, increase the base salary of any officer of the Company in excess of ten percent (10%) per year.

(s) Within one business day of the filing of the Registration Statement, the Company will prepare and file, through Maxim's counsel, the selling stockholder resale offering described in the Registration Statement for review by the Financial Industry Regulatory Authority ("FINRA") via the FINRA's CobraDesk filing system ("CobraDesk Filing") for the purpose of having the prospectus contained within the Registration Statement treated as a "base prospectus" in connection with such resale offering. The Company will use its best efforts to have the CobraDesk Filing approved by the FINRA within thirty (30) days of the Target Filing Date. The Company shall be liable for Maxim's counsel's legal fees in connection therewith. The Company shall bear all expenses of the CobraDesk Filing, including fees and expenses, if any, of counsel or other advisors to the Investors or Maxim. In all circumstances, the Company shall pay for all FINRA filing fees associated with the CobraDesk Filing.

The Company agrees to cooperate with Maxim and/or its counsel and to promptly supply all necessary information for completion of the CobraDesk Filing to Maxim and/or its counsel. The Company agrees to indemnify each of Maxim and its counsel for any and all statements and/or representations made by the Company to Maxim and/or its counsel included by Maxim and/or its counsel in the CobraDesk Filing.

(t) (A) issue a press release accurately describing and disclosing the transactions contemplated hereby on the Closing Date, (B) file with the SEC a report on Form 8-K or Form 10-Q disclosing the transactions contemplated hereby within four (4) business days after the Closing Date, and (C) timely file with the SEC a Form D promulgated under the Act as required under Regulation D.

(u) So long as any Investor owns any of the Securities, timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Section 13(a) or 15(d) of the Exchange Act. If at any time for 12 months following the Closing and while any Investor owns any of the Securities, the Company is not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, it will prepare and furnish to each Investor and make publicly available in accordance with Rule 144(c) promulgated under the Act annual and quarterly financial statements, together with a discussion and analysis of such financial statements in form and substance substantially similar to those that would otherwise be required to be included in reports required by Section 13(a) or 15(d) of the Exchange Act, as well as any other information required thereby, in the time period that such filings would have been required to have been made under the Exchange Act. The Company further covenants that for 12 months following the Closing and it will take such further action as any holder of the Securities may reasonably request, all to the extent required from time to time to enable such holder to sell the Common Stock underlying the Securities without registration under the Exchange Act under Rule 144 promulgated under the Act. Upon the request of any such holder, the Company shall deliver thereto a written certification of a duly authorized officer as to whether it has complied with such requirements.

(v) The Company shall at all times have authorized, and reserved for the purpose of issuance, a sufficient number of shares of Common Stock issuable upon exercise of the Warrants and the Placement Agent Warrants to provide for the issuance of all of such shares. Prior to complete exercise of the Warrants and the Placement Agent Warrants, the Company shall not reduce the number of shares of Common Stock reserved for issuance hereunder without the prior written consent of the Holder except for a reduction proportionate to a reverse stock split, which reverse stock split affects all shares of Common Stock equally.

If the Company would be, if exercise of the Warrants or Placement Agent Warrants, as applicable, were to be delivered on such date, precluded from issuing the full number of shares of Common Stock as would then be issuable if upon the exercise of the Warrants and the Placement Agent Warrants, due to the unavailability of a sufficient number of shares of authorized but unissued or re-acquired Common Stock, then the Board of Directors of the Company shall promptly (and in any case within 30 days from such date) prepare and mail to the stockholders of the Company proxy materials requesting authorization to amend the Company's articles of incorporation to increase the number of shares of Common Stock which the Company is authorized to issue to at least a number of shares equal to the sum of (1) all shares of Common Stock then outstanding, (2) the number of shares of Common Stock issuable on account of all outstanding warrants, options and convertible securities (other than the Warrants and Placement Agent Warrants) and on account of all shares of Common Stock reserved under any stock option, stock purchase, warrant or similar plan, and (3) the number of shares of Common Stock to be issued upon exercise of all Warrants and Placement Agent Warrants.

(w) Give prompt written notice to Maxim of any breach by it of any representation, warranty or other agreement contained in this Agreement, or any other document to which the Company, the Placement Agent and Investor has relied or is relying on in connection with the Offering ("Transaction Documents"), as well as any events or occurrences arising after the date hereof, which would reasonably be likely to cause any representation or warranty or other agreement of such party, as the case may be, contained in the Transaction Documents to be incorrect or breached as of and after the Closing Date. However, no disclosure by any party pursuant to this Section shall be deemed to cure any breach of any representation, warranty or other agreement contained in any Transaction Documents.

(x) To the extent necessary, promptly seek the listing of all shares of Common Stock underlying the Securities offered in the Offering not previously listed as such shares of Common Stock are issued on the securities exchange, market or other quotation system on which the Common Stock is then listed or traded and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all such securities from time to time issuable under the terms of the Warrants or Placement Agent Warrants. Once listed, the Company shall maintain the Common Stock's authorization for listing on a securities exchange, market or other quotation system on which the Common Stock is then listed or traded. The Company shall promptly provide to Maxim copies of any notices it receives from the securities exchange, market or other quotation system on which the Common Stock is then listed or traded regarding the continued eligibility of the Common Stock for listing on such a securities exchange, market or other quotation system. The Company shall pay all fees and expenses in connection with satisfying its obligations hereunder.

(y) In addition to the foregoing, to the extent not set forth herein, Maxim may rely on the covenants made by the Company in the Subscription Documents used in connection with the Private Placement.

#### 10. CONDITIONS OF MAXIM'S OBLIGATIONS

The obligations of Maxim pursuant to this Agreement shall be subject, in its discretion, to the continuing accuracy of the representations and warranties of the Company contained herein and in each certificate and document contemplated under this Agreement to be delivered to Maxim or otherwise at any Closing (including, without limitation, all Subscription Documents), as of the date hereof and as of the Closing Date or the date of any Closing subsequent to the Closing Date, to the performance by the Company of its obligations hereunder, and to the following conditions:

(a) At each Closing, Maxim shall have received the favorable legal opinion of Sonnenschein, Nath & Rosenthal, LLP, outside legal counsel to the Company, in the form and substance reasonably satisfactory to Maxim and substantially to the effect that:

(i) The Company has been duly organized and is validly existing and in good standing under the laws of its state of incorporation, has all requisite corporate power and authority necessary to own or hold its properties and conduct its business and, to our knowledge, is duly qualified or licensed to do business as a foreign corporation in each other jurisdiction in which the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to so qualify or be licensed would not have a Material Adverse Effect;

(ii) Each Subsidiary is validly existing and in good standing under the laws of the jurisdiction of its organization, has the corporate power and authority to own its properties and to conduct its business and, to our knowledge, is duly qualified and authorized to transact business and is in good standing in each jurisdiction in which the conduct of its business or the nature of its properties requires such qualification or authorization, except where the failure to be so qualified or authorized and in good standing could not reasonably be expected to have a Material Adverse Effect. To our knowledge, all of the issued and outstanding capital stock of each Subsidiary is owned by the Company, free and clear of any liens except as disclosed in the Offering Documents and the Company Documents;

(iii) Each of the Agreement, the Escrow Agreement by and among Maxim, the Company and the Escrow Agent, the Securities, Placement Agent Warrants and the Subscription Documents has been duly and validly authorized, executed and delivered by the Company and is the valid and binding obligation of the Company enforceable against it in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting the rights and remedies of creditors generally and to general equitable principles;

(iv) The authorized capital stock of the Company as of the date hereof (before giving effect to the transactions contemplated by this Agreement) is as set forth in the Form 10-K as filed with the Securities and Exchange Commission on January 13, 2009 and as amended on January 28, 2009. The Securities and the Common Stock underlying each of the Warrants and the Placement Agent Warrants, will be duly reserved, and when issued in accordance with the terms of the Private Placement, will be validly issued, fully paid and non-assessable and, to our knowledge, will not have been issued in violation of or subject to any statutory preemptive or any other similar rights that entitle or will entitle any Person to acquire any shares of Common Stock from the Company upon issuance thereof and no personal liability will attach to the ownership thereof;

(v) Assuming: (i) the accuracy of the information provided by the Investors in the Subscription Documents, (ii) that Maxim has complied in all material respects with the requirements of Section 4(2) of the Act (and the provisions of Regulation D promulgated thereunder), and (iii) the filing of Form D relating to the Private Placement, the issuance and sale of the Units, and the securities included therein, is exempt from registration under the Act and Regulation D promulgated thereunder;

(vi) Neither the execution, delivery and performance of this Agreement and consummation of the transactions contemplated by the Private Placement and the Offering Documents do not and will not: violate or conflict with any provision of the certificate or articles of incorporation, by-laws or other governing documents of the Company or any of its Subsidiaries.

(vii) To our knowledge, no consent approval authorization, order, registration, filing, qualification, license or permit of or with any court or any judicial, regulatory or other legal or governmental agency or body is required for the execution, delivery and performance of this Agreement or consummation of the transactions contemplated by this Agreement, the Private Placement and the Offering Documents, except for (1) such as may be required under state securities or blue sky laws in connection with the sale of the Securities by the Company, and (2) such as have been made or obtained under the Act;

(b) At the Initial Closing and each Subsequent Closing, Maxim shall have received warrant certificates for Warrants sold to the Investors in the Placement, duly executed and made out in the name of such Investors for the amount of Warrants purchased.

(c) At the Initial Closing and each Subsequent Closing, Maxim shall have received stock certificates for Common Stock sold to the Investors in the Placement, duly executed and made out in the name of such Investors for the number of shares of Common Stock purchased.

(d) At the Initial Closing and each Subsequent Closing, Maxim shall have received the applicable fees payable and securities issuable to Maxim as described in Section 3 hereof.

(e) To use its best good faith efforts to, within sixty (60) days of the Closing, obtain a "key man" life insurance policy with a nationally recognized carrier and with the Company as the beneficiary on the life of each of George Carpenter in an amount no less than \$2,000,000 worth of coverage each.



(f) At each Closing, Maxim shall have received a certificate of the chief executive officer of both the Company, dated, as applicable, as of the Closing Date or the date of such Closing, to the effect that, as of the date of this Agreement and as of the applicable date, the representations and warranties of the Company contained herein were and are accurate, and that, as of the applicable date, the obligations to be performed by the Company hereunder on or prior thereto have been fully performed.

(g) At each Closing, Maxim shall have received a duly executed management confirmation letter from the directors and officers the Company, relating to certain information appearing in the Offering Documents.

(h) At each Closing, Maxim shall have received a certificate of the Secretary of the Company, dated, as applicable, as of the date of such Closing, certifying to the charter, by-laws, good standing in its state of incorporation and board resolutions relating to the Placement.

(i) On or prior to the Initial Closing Date or the date of any Subsequent Closing, as the case may be, Maxim shall have been furnished with: (i) such information, documents and certificates as it may reasonably require for the purpose of enabling it to review the matters referred to in this Section 10 and in order to evidence the accuracy, completeness or satisfaction of any of the representations, warranties, covenants, agreements or conditions herein contained, and (ii) such other closing documentation as may be required in order to affect the applicable Closing or as Maxim may otherwise reasonably request.

(j) All proceedings taken in connection with the issuance, sale and delivery of the Securities and the Placement Agent Warrant shall be reasonably satisfactory in form and substance to Maxim and its counsel, and Maxim shall have received certified resolutions or minutes of the Board of Directors of the Company authorizing each of the transactions contemplated by this Agreement.

(k) Any certificate or other document signed by any officer of the Company and delivered to Maxim and its counsel as required hereunder shall be deemed a representation and warranty by the Company hereunder as to the statements made therein. If any condition to Maxim's obligations hereunder have not been fulfilled as and when required to be so fulfilled, Maxim may terminate this Agreement or, if Maxim so elects, in writing waive any such conditions which have not been fulfilled or extended the time for their fulfillment. In the event that Maxim elects to terminate this Agreement, Maxim shall notify the Company of such election in writing. Upon such termination, neither party shall have any further liability nor obligation to the other except as provided in Section 11 hereof.

(l) On or prior to or following the Closing Date, as the case may be, Maxim shall have been furnished such information, documents and certificates as it may reasonably require for the purpose of enabling it to review the matters referred to in this Section 10 and in order to evidence the accuracy, completeness or satisfaction of any of the representations, warranties, covenants, agreements or conditions herein contained, or as it may otherwise reasonably request.

(m) If there is more than one Closing, then at each such Closing there shall be delivered to Maxim updated opinions, certificates or other information described in this Section 10.

#### 11. INDEMNIFICATION

(a) The Company agrees to indemnify and hold harmless Maxim, any person who controls Maxim within the meaning of the Act, Section 20(a) of the Exchange Act or any applicable statute, and each partner, director, officer, employee, agent, legal counsel and representative of Maxim and its representatives from and against any and all losses, damages, obligations, penalties, judgments, awards, costs, expenses, liabilities, claims or disbursements, and any and all actions, suits, proceedings and investigations in respect thereof and any and all legal and other costs, expenses and disbursements in giving testimony or furnishing documents in response to a subpoena or otherwise (including, without limitation, the costs, expenses and disbursements, as and when incurred, of investigating, preparing, pursuing or defending against any such action, suit, proceeding or investigation (whether or not in connection with litigation in which any Indemnified Party, as defined below, is a party)) which any such person may incur or which may be made or brought against any such person directly or indirectly, caused by, relating to, based upon, arising out of or in connection with: (i) Maxim's acting for the Company, including, without limitation, any act or omission by Maxim in connection with its acceptance of or the performance or non-performance of its obligations under the Agreement (ii) any breach of any of the agreements, representations, warranties or covenants of the Company contained in or contemplated by this Agreement or the Subscription Documents, including, without limitation, those arising out of or based on any alleged untrue statement of a material fact or omission to state a material fact required to be stated in either the Offering Documents or the Subscription Documents or necessary in order to make the statements appearing therein not misleading in the light of the circumstances in which they were made, (iii) any violation of any federal or state securities laws attributable to the Private Placement, or (iv) any violation of law by the Company or any Affiliate thereof, or any director, officer, employee, agent or representative of any of them, related to or arising out of the Private Placement. This indemnity agreement by, and the agreements, warranties and representations of the Company shall survive the offer, sale and delivery of the Securities and the termination of this Agreement and shall remain in full force and effect regardless of any investigation made by or on behalf of any person indemnified hereunder, and termination of this Agreement and acceptance of any payment for the Securities hereunder.

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Members FINRA & SIPC  
405 Lexington Ave. \* New York, NY 10174 \* tel (212) 895-3500 \* (800) 724-0761 \* fax (212) 895-3783 \* www.maximgrp.com  
New York, NY \* Long Island, NY \* Red Bank, NJ

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(b) If any action, suit, proceeding or investigation is commenced against Maxim, its present and former affiliated entities, managers, members, officers, employees, legal counsel, agents and controlling persons (within the meaning of the federal securities laws), and the officers, directors, partners, stockholders, members, managers, employees, legal counsel, agents and controlling persons of any of them (the "Indemnified Party" or "Indemnified Parties") in respect of which indemnity may be sought against one or more of the Company or any affiliates thereof (the "Indemnifying Party" or "Indemnifying Parties"), the Indemnified Party shall notify the Indemnifying Party or Parties with reasonable promptness in writing of the institution of such action; *provided, however*, the failure to give such notice shall not release the Indemnifying Party or Parties from its or their obligation to indemnify the Indemnified Party hereunder, except to the extent the Indemnifying Party shall have been materially prejudiced by such delay and shall not release the Indemnifying Party or Parties from any other obligations or liabilities to the Indemnified Party in any event. The Indemnifying Party or Parties shall at its or their own expense assume the defense of such action, including the employment of counsel reasonably acceptable to the Indemnified Party. If, in the reasonable judgment of counsel to Maxim, the assumptions by counsel chosen by the Indemnifying Party would adversely affect the Indemnified Party, then the Indemnified Party or Parties shall have the right to retain counsel of its own choice to represent it, and the fees, expenses and disbursements of such counsel shall be borne by the Indemnifying Party or Parties. Any such counsel shall, to the extent consistent with its professional responsibilities, cooperate with the Company in any defense, except such matters in respect of which the Indemnified Parties counsel shall advise the Indemnified Parties that such cooperation would impair a defense available to the Indemnified Parties that is unavailable to the Company. Notwithstanding anything herein to the contrary, no Indemnifying or Indemnified Party shall, without the prior written consent of Maxim and the Indemnifying Party, settle or compromise any claim, or permit a default or consent to the entry of any judgment in respect thereof, unless such settlement, compromise or consent (i) includes, as an unconditional term thereof, the giving by the claimant to all Indemnified Parties of an unconditional release from all liability in respect of such claim, and (ii) does not contain any factual or legal admission by or with respect to an Indemnified Party or an adverse statement with respect to the character, professionalism, expertise or reputation of any Indemnified Party or any action or inaction of any Indemnified Party. In the event the Indemnifying Party or Parties assume a defense hereunder, the Indemnified Party shall be entitled to retain its own counsel in connection therewith and, except as provided below, shall bear the fees and expenses of any such counsel, and counsel to the Indemnified Party or Parties shall cooperate with such counsel to the Indemnifying Party in connection with such proceeding. If the Indemnifying Party or Parties assume the defense hereunder and an Indemnified Party reasonably determines that there are or may be differing or additional defenses available to the Indemnified Party which are not available to the Indemnifying Party, or that there is or may be a conflict between the respective positions of the Indemnifying Party and of the Indemnified Party in conducting the defense of any action, then the Indemnifying Party shall bear the reasonable fees and expenses of any counsel retained by the Indemnified Party in connection with such proceeding. All references to the Indemnified Party contained in this Section 11(b) include, and extend to and protect with equal effect, any persons who may control the Indemnified Party within the meaning of the Act, Section 20(a) of the Exchange Act or any applicable statute, any successor to the Indemnified Party and each of its partners, officers, directors, employees, agents and representatives. The indemnity agreements set forth in this Section 11 shall be in addition to any other obligations or liabilities of the Indemnifying Party or Parties hereunder or at common law or otherwise.

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Members FINRA & SIPC

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(c) If recovery is not available under the foregoing indemnification provisions of this Section 11, for any reason other than as specified therein, the party entitled to indemnification by the terms thereof shall be entitled to contribution to losses, damages, liabilities and expenses of the nature contemplated by such indemnification provisions. In determining the amount of such contribution, there shall be considered the relative benefits received by the Company on the one hand, and Maxim on the other hand from the Private Placement (which shall be deemed to be the portion of the proceeds of the Private Placement realized by each party), the parties' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, the relative culpability of the parties, the relative benefits received by the parties and any other equitable considerations appropriate under the circumstances. No party shall be liable for contribution with respect to any action or claim settled without its consent. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this Section 11, notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 11 or otherwise. For purposes of this Section 11, each person, if any, who controls a party to this Agreement within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act shall have the same rights to contribution as that party to this Placement Agreement.

(d) In any claim for indemnification for United States Federal or state securities law violations, the party seeking indemnification shall place before the court the position of: (i) the SEC and (ii) if applicable, any state securities commissioner or agency having jurisdiction with respect to the issue of indemnification for securities law violations.

## 12. MISCELLANEOUS

(a) The agreements set forth in this Agreement have been made and are made solely for the benefit of the Company, Maxim, the Investors with respect to Sections 7 and 9, and the respective Affiliates, heirs, personal representatives and permitted successors and assigns thereof, and except as expressly provided herein nothing expressed or mentioned herein is intended or shall be construed to give any other person, firm or corporation any legal or equitable right, remedy or claim under or in respect of this Agreement or any representation, warranty or agreement herein contained. The term "successors and assigns" as used herein shall not include any purchaser of any Securities merely because of such purchase.

(b) Neither party will be liable to the other by reason of any failure in performances of this Agreement if the failure arises out of the unavailability of third party communication facilities or energy sources or acts of God, acts of governmental authority, acts of terrorism, fires, strikes, delays in transportation, riots or war, or any cause beyond the reasonable control of such party.

(c) Any notice or other communication required or appropriate under the provisions of this Agreement shall be given in writing addressed (or sent by facsimile transmission, with confirmation of receipt) as follows: (i) if to the Company, at the address set forth above, Attention: President, Fax No.: (954) 598-7996; and (ii) if to Maxim, Maxim Group LLC, 405 Lexington Avenue, New York, NY 10174, Attention: Mr. Clifford Teller, Fax No.: (212) 895-3783; with a copy to James Siegel, 405 Lexington Avenue, New York, NY 10174, Attention: James Siegel, Esq., Fax No.: (212) 895-3888, or at such other address as any party may designate to the others in accordance with this Section 12(c).

(d) This Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to conflicts of law provisions thereof (other than Section 5-1401 of the New York General Obligations Law).

(e) Any legal suit, action or proceeding arising out of or relating to this 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) waives any objection which they may now have or hereafter have to the venue of any such suit, action or proceeding, and (ii) irrevocably consents 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 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.

(f) This Agreement constitutes the entire agreement between the parties hereto with respect to the Private Placement and supercedes any and all prior agreements, and may be amended or modified only by a duly authorized writing signed by such parties. This Agreement may be executed in any number of counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute a single instrument.

[SIGNATURE PAGE FOLLOWS]

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This Placement Agency Agreement is executed and shall be effective as of August 3, 2009.

Very truly yours,

**MAXIM GROUP LLC**

By: \_\_\_\_\_  
Name:  
Title:

**ACCEPTED AND AGREED TO:**

**CNS RESPONSE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

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**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. W-M809-PA

Void after: August 26, 2014

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THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. EASTERN TIME  
ON AUGUST 26, 2014 (THE "EXPIRATION DATE")

WARRANT TO PURCHASE SHARES

This Warrant is being issued to the Maxim Partners LLC ("Holder") by CNS Response, Inc., a Delaware corporation (the "Company") in connection with its services under the Placement Agency Agreement, dated August 3, 2009, by and between the Company and the Holder in connection with the Company's private offering to select, accredited investors of units, each unit comprised of 180,000 shares of Common Stock and a five-year warrant to purchase 90,000 shares of the Company's Common Stock at an exercise price of \$0.30 per share, in accordance with, and subject to, the terms and conditions described in the Company's private offering pursuant to that certain Private Placement Memorandum dated August 26, 2009, as amended or supplemented from time to time (the "Memorandum").

Simultaneously with the issuance of this Warrant, the Holder and the Company shall enter into a Registration Rights Agreement, dated as of the date hereof (the "Agreement"). 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 two hundred and seventy-four thousand, eight hundred and sixty-seven (274,867) fully paid and nonassessable Shares (as defined below) at the Exercise Price (as defined below) (subject to adjustment as set forth in Section 6 below).

2. Definitions.

( a ) Exercise Price. The exercise price for the Shares initially shall be 110% of the Investor Warrant exercise price issued in the Company's private offering pursuant to the Memorandum, or \$0.33 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, and the term "Warrant Shares" shall mean the Shares purchasable upon exercise of this Warrant.

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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 Warrant 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 Warrant 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 Warrant 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 Warrant Shares 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 Warrant Shares 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 Warrant Shares (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 Warrant Shares, or in the Exercise Price, the Company shall promptly notify the holder of such event and of the number of Warrant Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

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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 as follows:

(a) This Warrant has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company 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 equitable remedies.

(b) The execution and delivery of, or performance by the Company under this Warrant 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 on the Company.

9. Representations and Warranties by the Holder. The Holder represents and warrants to the Company as follows:

(a) The Holder is an “accredited investor” as defined by Rule 501 under the Securities Act of 1933, as amended (the “Act”), and is capable of evaluating the merits and risks of its investment in the Warrant and the Warrant Shares, and has the ability and capacity to protect its interests.

(b) The Holder understands that the Warrant and the Warrant Shares are not presently registered, but the Holder is entitled to certain rights as set forth in the Agreement.

(c) The Holder is acquiring the Warrant and the Warrant Shares 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 Warrant Shares 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 Warrant and the Warrant Shares is not a liquid investment.

10. Restrictive Legend.

The Warrant Shares (unless registered under 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.

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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.

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

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 in the form attached hereto. With respect to any offer, sale or other disposition of this Warrant or any Warrant Shares prior to registration of such Warrant or the Warrant 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 Warrant Shares and indicating whether or not under the Act certificates for this Warrant or the Warrant 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 Warrant Shares, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 11 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 Warrant Shares transferred in accordance with this Section 11 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 Warrant Shares to an affiliated entity without the prior written consent of the Company so long as such assignment complies with applicable law.

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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 Warrant 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 accordance 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 Warrant Shares, shall survive the exercise of this Warrant.

*[Signature Page Follows]*

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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)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

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**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 26, 2009 among CNS Response, Inc., a Delaware corporation (the "Company"), and the Maxim Group, LLC ("Maxim").

WHEREAS, the Company and the Holder have entered into that certain Placement Agency Agreement, dated August 3, 2009 (the "Agency Agreement") in connection with the Company's private offering to select, accredited investors of units (the "Investors" and, together with Maxim, the "Holders"), each unit comprised of 180,000 shares of Common Stock, and a five-year warrant to purchase 90,000 shares of the Company's Common Stock at an exercise price of \$0.30 per share (the "Investor Warrants"), in accordance with, and subject to, the terms and conditions described in that certain Private Placement Memorandum, dated August 26, 2009, as amended or supplemented from time to time (the "Memorandum");

WHEREAS, the Company and the Investors entered into Subscription Agreements, a form of which is attached hereto as Annex C (the "Subscription Agreement"); and

WHEREAS, pursuant to the terms of the Memorandum and in connection with the Holder's services under the Agency Agreement, the Company shall issue to the Holder certain warrants to purchase the Company's Common Stock (the "Placement Agent Warrants", and, together with the Investor Warrants, the "Warrants").

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Definitions. 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 180<sup>th</sup> 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) 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.

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“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 Warrants.

“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 Filing Date, 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) The Company shall effect a filing with respect to the public offering contemplated by the Registration Statement (an "Issuer Filing") with the Financial Industry Regulatory Authority Corporate Financing Department pursuant to the applicable FINRA Rule within one (1) Trading Day of the date that the Registration Statement is filed with the Commission and pay the filing fee required by such Issuer Filing. The Company shall use commercially reasonable efforts to pursue the Issuer Filing until FINRA issues a letter confirming that it does not object to the terms of the offering contemplated by the Registration Statement.

(h) (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.

(i) 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.

(j) 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.

(k) 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 for a period not to exceed sixty (60) calendar days (which need not be consecutive days) in any twelve (12) month period.

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

(m) 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), and (C) if not previously paid by the Company in connection with an Issuer Filing, with respect to any filing that may be required to be made by any broker through which a Holder intends to make sales of Registrable Securities with FINRA pursuant to the applicable FINRA Rule, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale, (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) No Piggyback on Registrations. Except as set forth on Schedule 6(b) attached hereto, neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statement other than the Registrable Securities. The Company shall not file any other registration statements until there is an effective Registration Statement(s) pursuant to which the Holders are permitted to utilize a Prospectus to resell all Registrable Securities or such Registrable Securities may be resold by the Holders pursuant to Rule 144(k), provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement.

(c) 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.

( d ) 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).

(e) 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.

(f) 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.

(g) 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 Placement Agent Warrant.

(h) 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.

(i) 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.

(j) 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.

( k ) 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.

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

( m ) 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.

(n) 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.

( o ) 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

**MAXIM GROUP LLC**

By: \_\_\_\_\_  
Name:  
Title:

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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;
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- 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.

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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.

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## 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

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

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(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):

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**2. Address for Notices to Selling Securityholder:**

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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 Registrable Securities.*

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

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**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% or 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:

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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

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INVESTOR SUBSCRIPTION AGREEMENT

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CONSENT OF INDEPENDENT REGISTERED  
PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Amendment No. 1 to Registration Statement on Form S-1 of CNS Response, Inc. to be filed on or about July 2, 2010 of our report dated December 29, 2009 relating to the consolidated financial statements of CNS Response, Inc. and its subsidiaries which expresses an unqualified opinion and includes an explanatory paragraph relating to a going concern uncertainty appearing in the Annual Report on Form 10-K of CNS Response, Inc. for the two-year period ended September 30, 2009.

/s/Cacciamatta Accountancy Corporation  
CACCIAMATTA ACCOUNTANCY CORPORATION

Santa Ana, California  
July 2, 2010

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