

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported): **October 1, 2010**

CNS RESPONSE, INC.

(Exact name of Company as specified in its charter)

Delaware
(State or other
jurisdiction of
incorporation)

0-26285
(Commission File No.)

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

85 Enterprise, Suite 410
Aliso Viejo, CA 92656
(Address of principal executive offices)

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

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

On October 1, 2010, CNS Response Inc. (the "Company") entered into a Note and Warrant Purchase Agreement (the "Purchase Agreement") with two investors ("Investors"), pursuant to which it issued to the Investors secured convertible promissory notes ("Notes") in the aggregate principal amount of \$1,011,688 and warrants ("Warrants") to purchase up to 1,686,144 shares of common stock of the Company. The Investors were John Pappajohn, a director of the Company, and SAIL Venture Partners LP, of which David Jones, a director of the Company, is a managing partner.

The Company received \$500,000 in gross proceeds from the issuance to the Investors of Notes in the aggregate principal amount of \$500,000 and Warrants to purchase up to 833,332 shares. The Company also issued Notes in the aggregate principal amount of \$511,688, and Warrants to purchase up to 852,812 shares, to Mr. Pappajohn in exchange for the cancellation of two convertible promissory notes originally issued to him on June 3, 2010 and July 25, 2010 in the aggregate principal amount of \$500,000 (and accrued and unpaid interest on those notes) and a warrant to purchase up to 250,000 shares originally issued to him on July 25, 2010. The transaction closed on October 1, 2010.

The Purchase Agreement provides for the issuance and sale of Notes, for cash or in exchange for outstanding convertible notes, in the aggregate principal amount of up to \$3,000,000 plus an amount corresponding to accrued and unpaid interest on any exchanged notes, and Warrants to purchase a number of shares corresponding to 50% of the number of shares issuable on conversion of the Notes. The agreement provides for the possible investment by additional investors and for multiple closings in addition to the October 1, 2010 closing, but mandates that no closings may occur after January 31, 2011. The Purchase Agreement also provides that the Company and the holders of the Notes will enter into a registration rights agreement covering the registration of the resale of the shares underlying the Notes and the Warrants.

The Notes mature on October 1, 2011 (subject to earlier conversion or prepayment), earn interest equal to 9% per year with interest payable at maturity, and are convertible into shares of common stock of the Company at a conversion price of \$0.30. The conversion price is subject to adjustment upon (1) the subdivision or combination of, or stock dividends paid on, the common stock; (2) the issuance of cash dividends and distributions on the common stock; (3) the distribution of other capital stock, indebtedness or other non-cash assets; and (4) the completion of a financing at a price below the conversion price then in effect. The Notes can be declared due and payable upon an event of default, defined in the Notes to occur, among other things, if the Company fails to pay principal and interest when due, in the case of voluntary or involuntary bankruptcy or if the Company fails to perform any covenant or agreement as required by the Note.

The obligations of the Company under the terms of the Notes are secured by a security interest in the tangible and intangible assets of the Company, pursuant to a Security Agreement, dated as of October 1, 2010, by and between the Company and John Pappajohn, as administrative agent for the holders of the Notes. The agreement and corresponding security interest terminate if and when holders of a majority of the aggregate principal amount of Notes issued have converted their Notes into shares of common stock.

The Warrants expire on September 20, 2017 and are exercisable for shares of common stock of the Company at an exercise price of \$0.30. Exercise price and number of shares issuable upon exercise are subject to adjustment (1) upon the subdivision or combination of, or stock dividends paid on, the common stock; (2) in case of any reclassification, capital reorganization or change in capital stock and (3) upon the completion of a financing at a price below the exercise price then in effect.

The form of Note, form of Warrant, Purchase Agreement and Security Agreement are attached as Exhibits 4.1, 4.2, 10.1 and 10.2 hereto and are incorporated by reference herein. The foregoing description of the Notes, the Warrants, the Purchase Agreement and the Security Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the aforementioned exhibits.

Item 3.02 Unregistered Sales of Equity Securities.

The description of the Notes and the Warrants is incorporated herein by reference to Item 2.03 hereof and the full text of the form of Note and form of Warrant attached hereto as Exhibits 4.1 and 4.2.

The Notes and Warrants were issued by the Company under the exemption from registration afforded by Section 4(2) of the Securities Act of 1933, as amended, and Regulation D promulgated thereunder, as they were issued to accredited investors, without a view to distribution, and were not issued through any general solicitation or advertisement.

Item 9.01 **Financial Statements and Exhibits.**

Exhibit 4.1 Form of Note.

Exhibit 4.2 Form of Warrant.

Exhibit 10.1 Note and Warrant Purchase Agreement, dated as of October 1, 2010.

Exhibit 10.2 Security Agreement, dated as of October 1, 2010.

SIGNATURES

Pursuant to the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CNS Response, Inc.

By: /s/ Paul Buck

Paul Buck

Chief Financial Officer

October 7, 2010

THIS NOTE AND ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THIS NOTE OR SUCH SHARES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

CNS RESPONSE, INC.
FORM OF SECURED CONVERTIBLE PROMISSORY NOTE

\$ [_____]

_____, 2010
Aliso Viejo, California

FOR VALUE RECEIVED, CNS Response, Inc., a Delaware corporation (the “**Company**”), promises to pay to [_____] (“**Holder**”), or its registered assigns, in lawful money of the United States of America, the principal sum of [_____] (\$[_____]), together with a single payment of accrued interest calculated based on the actual days outstanding and a 360 day year at a rate of nine percent (9%). Such interest shall be paid pursuant to Section 2 below (“**Interest Payment**”). All unpaid principal, together with the accrued interest and other amounts payable under this Secured Convertible Promissory Note (this “**Note**”) shall be due and payable, unless converted in accordance with Section 6 hereof, on the earliest of (i) the maturity date of October 1, 2011, (ii) prepayment of this Note pursuant to Section 3 below, or (iii) when, upon or after the occurrence of an Event of Default (as defined below), such amounts are made due and payable in accordance with the terms hereof. This Note is one of a series of Notes (the “**Notes**”) issued pursuant to that certain Note and Warrant Purchase Agreement, dated as of October 1, 2010, by and among the Company and each of the entities set forth on Schedule A thereto (the “**Agreement**”).

The following is a statement of the rights of Holder and the conditions to which this Note is subject, and to which the Company and Holder agree:

1. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

(a) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(b) “**Closing Bid Price**” and “**Closing Sale Price**” mean, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg Financial Markets, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or last trade price, respectively, of such security prior to 4:00 p.m., New York Time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotations Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

- under this Note.
- (c) “**Company**” includes the corporation initially executing this Note and any Person which shall succeed to or assume the obligations of the Company under this Note.
- (d) “**Convertible Securities**” means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for Common Stock.
- (e) “**Holder**” shall mean the Person specified in the introductory paragraph of this Note or any other Person who is the registered holder of this Note.
- (f) “**Majority Holders**” means the holders of Notes representing at least a majority of the aggregate principal amount outstanding under all of the Notes issued pursuant to the Agreement.
- (g) “**Options**” means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.
- (h) “**Outstanding Debt**” shall mean, as of a particular time, the sum of (i) the then outstanding principal amount of this Note and (ii) the amount of interest due pursuant to the Interest Payment.
- (i) “**Person**” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.
- (j) “**Principal Market**” means the OTC Bulletin Board or principal stock exchange or trading market for the Common Stock, if any.
- (k) “**Securities Act**” shall mean the Securities Act of 1933, as amended.
- (l) “**Security Agreement**” means that certain Security Agreement, dated October 1, 2010, by and between the Company and John Pappajohn, as administrative agent on behalf of the Secured Parties (as defined therein).
- (m) “**Subsidiary**” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the total voting power of equity entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees or other governing body thereof is at the time owned or controlled by such Person (regardless of whether such equity is owned directly or through one or more other Subsidiaries of such Person or a combination thereof).
- (n) “**Trading Day**” means any day on which the Common Stock is traded on the Principal Market; provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00 p.m., New York Time).

2. **Interest Payment.** Subject to Section 3, the Interest Payment shall be payable at the same time the principal amount of the Note is repaid as described in the first paragraph hereof.

3. **Prepayment.** This Note may be prepaid, in whole or part, at any time by the Company. All prepayment amounts shall first be applied to any accrued interest with the remainder applied towards the outstanding principal (“**Full Prepayment**” or “**Partial Prepayment**”). Holder agrees to deliver the original of this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed along with an indemnity with respect thereto in a form satisfactory to the Company) at the closing of the Full Prepayment for cancellation or Partial Prepayment for the appropriate principal adjustment; *provided, however*, that upon Full Prepayment of the amounts set forth above with respect to the Outstanding Debt, the Outstanding Debt shall be deemed satisfied and paid in full and the Company shall have no other obligation with respect to the Outstanding Debt, whether or not this Note is delivered for cancellation as set forth in the preceding sentence.

4. **Notice of Defaults.** The Company shall furnish to Holder written notice of the occurrence of any Event of Default hereunder promptly following the occurrence thereof.

5. **Events of Default.**

(a) The occurrence of any of the following shall constitute an “**Event of Default**”:

(i) Failure of the Company to pay the principal or the Interest Payment on this Note when due.
(ii) Failure of the Company to perform or observe any covenant or agreement as required by this Note or the Agreement and continuation of such failure for a period of ten (10) days following written notice from Holder.

(iii) The Company commences a voluntary bankruptcy filing.

(iv) A court of competent jurisdiction enters an order of decree under any bankruptcy law that is not vacated, set aside or reversed within sixty (60) days.

(v) The Company fails to comply with the use of proceeds as set forth in Section 4.2(e) of the Agreement.

(vi) Any representation or warranty of the Company made in this Note or the Agreement is proven not to have been true and correct in any material respect as of the date of this Note.

(b) If an Event of Default occurs and is continuing, Holder may exercise any or all of the following rights and remedies:

(i) Declare the Note and the Interest Payment be immediately due and payable, and upon such declaration, the Note and the Interest Payment shall immediately be due and payable, without presentment, demand, protest or any notice of any kind, all of which are expressly waived.

(ii) Exercise any and all other rights and remedies available to Holder and otherwise available to creditors at law and in equity.

6. **Conversion.** The Notes shall be convertible into shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”), on the terms and conditions set forth in this Section 6.

(a) Conversion Right.

(i) At any time or times on or after the date hereof, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into fully paid and nonassessable shares of Common Stock in accordance with Section 6(c), at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock equal to or in excess of one half of one share, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all stock transfer, stamp, documentary and similar taxes (excluding any taxes on the income or gain of the Holder) that may be payable with respect to the issuance and delivery of shares of Common Stock to the Holder upon conversion of any Conversion Amount.

(ii) If all or any of the principal and accrued but unpaid interest underlying this Note remains outstanding prior to the next sale by the Company, subsequent to the financing pursuant to which this Note was issued, to one or more investors of securities (the "**Financing Securities**"), in one transaction or a series of related transactions (a "**Qualified Financing**"), the principal amount of this Note plus all accrued but unpaid interest thereon, or any portion thereof, shall, at the option of the Holder, be converted into Financing Securities at a price per share equal to the lower of (i) the Conversion Price (as defined below) or (ii) the price per share payable by the investors in the Qualified Financing. As a precondition to the conversion of principal and accrued but unpaid interest under this Note, the Holder must, unless waived by the Company, satisfy all reasonable conditions established by the Company and the lead investor(s) in the applicable financing, including without limitation, qualifying as an "accredited investor" (if such qualification is a condition to participating in such offering) and the execution and delivery by the Holder of all documents reasonably required to be delivered in connection with such financing. The Company covenants that all shares of Financing Securities issued upon conversion will, upon issuance, be fully paid and non-assessable and free from all taxes, liens and charges caused or created by the Company with respect to the issue thereof. Notice of a Qualified Financing shall be given by the Company to the Holder at least five (5) days prior to the closing date of such financing. If this Note is converted into Financing Securities in such financing, this Note shall be surrendered to the Company within five (5) days of the closing of such financing at the Company's registered office. The Holder or the Holder's nominee or permitted assignee, shall be entitled to be entered in the books of the Company as the holder of the number of Financing Securities into which this Note is convertible in accordance with the provisions hereof and, as soon as practicable thereafter, the Company shall deliver to the Holder or, subject as aforesaid, its nominee or permitted assignee, a certificate for such Financing Securities. Any part of this Note may be converted as provided herein and all references in this Note to conversion of this Note shall be deemed to include conversion of such part.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 6(a)(i) (the "**Conversion Rate**") shall be determined by dividing (x) the Conversion Amount by (y) the Conversion Price.

"**Conversion Amount**" means the sum of (A) the portion of the principal to be converted, redeemed or otherwise with respect to which this determination is being made and (B) accrued and unpaid interest with respect to such principal.

"**Conversion Price**" means, as of any Conversion Date (as defined below) or other date of determination, \$0.30, subject to adjustment as provided herein.

(c) Mechanics of Conversion

(i) *Optional Conversion.* To convert any Conversion Amount into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 4:00 p.m., New York Time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the “**Conversion Notice**”) to the Company and (B) if required by Section 6(c)(ii), cause the Note to be delivered to the Company as soon as practicable on or following such date. On or before 4:00 p.m., New York Time, on the first (1st) Business Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile a confirmation of receipt of such Conversion Notice to the Holder (at the facsimile number provided in the Conversion Notice) and the Company’s transfer agent, if any (the “**Transfer Agent**”). On or before 4:00 p.m., New York Time, on the third (3rd) Business Day following the date of receipt of a Conversion Notice (the “**Share Delivery Date**”), the Company shall issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the Note is physically surrendered for conversion as required by Section 6(c)(ii) and the outstanding principal of the Note is greater than the principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than three (3) Business Days after receipt of the Note and at its own expense, issue and deliver to the Holder a new Note representing the outstanding principal not converted. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of the Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(i i) *Book-Entry.* Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of the Note in accordance with the terms hereof, the Holder shall not be required to physically surrender the Note to the Company unless (A) the full Conversion Amount represented by the Note is being converted or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting physical surrender and reissue of the Note. The Holder and the Company shall maintain records showing the principal and interest converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of the Note upon conversion.

7. *Rights upon Issuance of Other Securities*

(a) Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock; Stock Dividends If the Company at any time, or from time to time, subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time, or from time to time, combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment under this Section 7(b) shall become effective at the close of business on the date the subdivision or combination becomes effective or, in the case of a stock dividend or distribution, the date of such event.

(c) (i) *Adjustment of Conversion Price upon Cash Dividends and Distributions.* If the Company at any time, or from time to time, pays a dividend or makes a distribution in cash to the record holders of any class of Common Stock, then immediately after the close of business on the day that the Common Stock trades ex-distribution, the Conversion Price then in effect shall be reduced to an amount equal to the product of (i) the Conversion Price in effect immediately prior to such dividend or distribution and (ii) the quotient determined by dividing (A) the Closing Sale Price of the Common Stock on the day that the Common Stock trades ex-distribution by (B) the sum of (1) the Closing Sale Price of the Common Stock on the day that the Common Stock trades ex-distribution plus (2) the amount per share of such dividend or distribution. The Company shall not be required to give effect to any adjustment in the Conversion Price pursuant to this Section 7(c) unless and until the net effect of one or more adjustments (each of which shall be carried forward until counted toward an adjustment), determined in accordance with this Section 7(c), shall have resulted in a change of the Conversion Price by at least 1%, and when the cumulative net effect of more than one adjustment so determined shall be to change the Conversion Price by at least 1%, such change in the Conversion Price shall thereon be given effect.

(ii) *Adjustment of Conversion Price upon Distributions of Capital Stock, Indebtedness or Other Non-Cash Assets* If the Company at any time, or from time to time, distributes any shares of capital stock of the Company (other than Common Stock), evidences of indebtedness or other non-cash assets (including securities of any person other than the Company but excluding (1) dividends or distributions paid exclusively in cash or (2) dividends or distributions referred to in Section 7(b)) to the record holders of any class of Common Stock, then the Conversion Price then in effect shall be reduced to an amount equal to the product of (A) the Conversion Price then in effect and (B) a fraction of which the numerator shall be the Closing Sale Price share of the Common Stock on the record date fixed for determination of stockholders entitled to receive such distribution less the fair market value on such record date (as determined by the Company's board of directors) of the portion of the capital stock, evidences of indebtedness or other non-cash assets so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date) and of which the denominator shall be the Closing Sale Price per share of the Common Stock on such record date. Notwithstanding the foregoing, if the securities distributed by the Company to the record holders of any class of Common Stock consist of capital stock of, or similar equity interests in, a Subsidiary or other business unit, the Conversion Price shall be decreased so that the same shall be equal to the rate determined by multiplying the Conversion Price in effect on the record date with respect to such distribution by a fraction the numerator of which shall be the average Closing Sale Price of one share of Common Stock over the Spinoff Valuation Period (as defined below) and of which the denominator shall be the sum of (x) the average Closing Sale Price of one share of Common Stock over the ten consecutive Trading Day period (the "**Spinoff Valuation Period**") commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences on the Common Stock on the Principal Market or any national or regional exchange or market on which the Common Stock is then listed or quoted and (y) the average Closing Sale Price over the Spinoff Valuation Period of the portion of the securities so distributed applicable to one share of Common Stock, such adjustment to become effective immediately prior to the opening of business on the fifteenth Trading Day after the date on which "ex-dividend trading" commences.

(d) Ratchet. In the event the Company shall issue Common Stock, or securities convertible, exchangeable or exercisable into Common Stock (excluding in each case shares issued (i) in any of the transactions described in Subsections (a), (b) and (c) above, (ii) upon exercise of options granted to the Company's employees, directors, consultants or officers under a plan or plans or individual compensation arrangements adopted by the Company's board of directors, if such shares would otherwise be included in this Subsection (d), (iii) upon conversion of shares or exercise of options and warrants outstanding as of the date hereof, or (iv) to shareholders of any Company which merges into the Company in proportion to their stock holdings of such Company immediately prior to such merger, upon such merger), for consideration per share, exercise price per share, conversion price per share or exchange price per share (as the case may be) ("Offering Price") less than the then applicable Conversion Price, the Conversion Price shall be adjusted immediately thereafter so that it shall equal such Offering Price. Such adjustment shall be made successively whenever any such issuance is made.

(e) Other Events; Other Dividends and Distributions. If any event occurs of the type contemplated by the provisions of this Section 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's board of directors shall make in good faith an adjustment in the Conversion Price so as to protect the rights of the Holder under the Note; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 7.

(f) Notice of Adjustment. Whenever the Conversion Price is adjusted pursuant to this Section 7, the Company shall promptly mail notice of such adjustment to each Holder, which notice shall set forth the Conversion Price after adjustment, the date on which such adjustment became effective and a brief statement of the facts resulting in such adjustment.

8. **Successors and Assigns**. Subject to the restrictions on transfer described in Sections 10 and 12 below, the rights and obligations of the Company and Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

9. **Waiver and Amendment**. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Majority Holders. Any such amendment, waiver or modification effected in accordance with this paragraph shall be binding upon the Company and each Holder, it being understood and agreed that such written consent will affect all Notes and be binding on all holders thereof regardless of whether any particular holder executed such consent.

10. **Transfer of this Note**. With respect to any offer, sale or other disposition of this Note, Holder will give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of Holder's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect, as applicable). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Holder that Holder may sell or otherwise dispose of this Note, all in accordance with the terms of the notice delivered to the Company. This Note thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and the Premium Payment and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary. Notwithstanding the foregoing, Holder may assign this Note to an affiliated entity without the prior written consent of the Company so long as such assignment complies with applicable law.

11. **Assignment by the Company.** Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, in whole or in part (other than by operation of law) by the Company without the prior written consent of the Majority Holders.

12. **Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth on the signature page hereto, or at such other address or facsimile number as a party shall have furnished to the other party in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one business day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.

13. **Employees and Agents.** Holder may take any action hereunder by or through agents or employees so long as such agents or employees are duly authorized to so act on behalf of the Holder.

14. **Payment.** Payment shall be made in lawful tender of the United States.

15. **Expenses; Waivers.** If this Note is not paid when due and Holder takes any action to enforce Holder's rights hereunder, the Company shall promptly pay upon demand by Holder all such reasonable costs of collection, including reasonable attorneys' fees, whether or not litigation is commenced. The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument. The Company also shall pay for all attorney's fees incurred by Holder related to the drafting and preparation of this Note.

16. **Governing Law.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California, or of any other state.

17. **Effectiveness.** This Note shall become effective upon the execution by the Company and Holder.

18. **Security Agreement.** The obligations of the Company under this Note are secured in accordance with, and entitled to the benefits of, the Security Agreement, except that such benefits shall expire on the date that holders of a majority of the aggregate principal amount of Notes issued have converted their Notes in accordance with the terms hereof.

[Signatures Appear on Following Page]

The Company has caused this Note to be issued as of the date first written above and agrees to all the terms set forth above.

CNS RESPONSE, INC.

By: _____

Name: Paul Buck

Title: Chief Financial Officer

Address: 85 Enterprise, Suite 410
Aliso Viejo, CA 92656

Accepted and agreed:

HOLDER:

Name and Position

Address:

EXHIBIT I

**CNS RESPONSE, INC.
CONVERSION NOTICE**

Reference is made to the Convertible Note (the "Note") issued to the undersigned by CNS Response, Inc. (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock par value \$0.001 per share (the "Common Stock") of the Company, as of the date specified below.

Date of Conversion: _____

Aggregate Conversion Amount to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: _____

Facsimile Number: _____

Authorization: _____

By: _____

Title: _____

Dated: _____

Account Number: _____
(if electronic book entry transfer)

Transaction Code Number: _____
(if electronic book entry transfer)

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.

Void after
September 30, 2017

FORM OF WARRANT TO PURCHASE SHARES

This Warrant is issued to [] (“**Holder**”) by CNS Response, Inc., a Delaware corporation (the “**Company**”), in connection with the contemporaneous issuance to the Holder of a Note in the aggregate principal amount of \$[] (the “**Note**”). All capitalized terms not defined in this Warrant shall have the meaning ascribed to them in the Note.

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth, 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 up to [] fully paid and nonassessable Shares (as defined below) at the Exercise Price (as defined below).

2. Definitions.

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

(b) Exercise Period. This Warrant shall be exercisable, in whole or in part, during the term commencing on the date hereof and ending on the expiration of this Warrant pursuant to Section 14 hereof.

(c) The Shares. The term “**Shares**” shall mean shares of the Company’s common stock, par value \$0.001 per share.

3. Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with the terms hereof, 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 in substantially the form attached hereto as Exhibit A to the Secretary of the Company at its principal offices; and

(ii) the payment to the Company of an amount equal to the aggregate Exercise Price for the number of Shares being purchased, either in cash (through a check payable to the Company or by wire transfer to an account designated by the Company) or as provided in Section 4 below.

4 . Net Exercise. In lieu of making a cash payment upon the exercise of this Warrant, the holder of this Warrant may, at such holder's option, elect to receive shares equal to the value of this Warrant (or the portion thereof being exercised) by surrender of this Warrant at the principal office of the Company together with notice of such election, in which event the Company shall issue to the holder hereof a number of Shares computed using the following formula:

$$\frac{Y(A - B)}{X} = A$$

Where

X — The number of Shares to be issued to the holder of this Warrant.

Y — The number of Shares purchasable under this Warrant.

A — The fair market value of one Share.

B — The Exercise Price (as adjusted to the date of such calculations).

For purposes of this Section 4, the fair market value of a Share shall mean the closing price of the Shares quoted in the over-the-counter market or any exchange on which the Shares are listed, whichever is applicable, as published in The Wall Street Journal on the date of determination of fair market value. If the Shares are not traded on the over-the-counter market or on an exchange, the fair market value shall be the price per Share that the Company could obtain from a willing buyer for Shares sold by the Company from authorized but unissued Shares, as such prices shall be determined in good faith by the Company's board of directors.

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

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

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

(a) Subdivisions, Combinations and Other Issuances. If the Company shall at any time prior to the expiration of this Warrant subdivide the Shares, by split-up or otherwise, or combine its Shares, or issue additional shares of its Shares as a dividend, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 7(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 7(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 7(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) Ratchet. In the event the Company shall issue Shares, or securities convertible, exchangeable or exercisable into Shares (excluding in each case shares issued (i) in any of the transactions described in Subsections (a) and (b) above, (ii) upon exercise of options granted to the Company's employees, directors, consultants or officers under a plan or plans or individual compensation arrangements adopted by the Company's board of directors, if such shares would otherwise be included in this Subsection (c), (iii) upon conversion of shares or exercise of options and warrants outstanding as of the date hereof, or (iv) to shareholders of any Company which merges into the Company in proportion to their stock holdings of such Company immediately prior to such merger, upon such merger), for consideration per share, exercise price per share, conversion price per share or exchange price per share (as the case may be)("Offering Price") less than the then applicable Exercise Price, the Exercise Price shall be adjusted immediately thereafter so that it shall equal such Offering Price and the number of shares issuable upon exercise of this Warrant shall be proportionately increased immediately thereafter. Such adjustments shall be made successively whenever any such issuance is made.

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

8 . No Fractional Shares or Scrip. No fractional shares or scrip representing 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.

9. Representations of the Company. The Company represents and warrants to Holder that the representations and warranties made by the Company in Section 2 of the Agreement are true, correct and complete as of the date hereof. In addition, the Company represents that the Shares necessary for a cash exercise of this Warrant are duly reserved.

10. Representations and Warranties by the Holder. The Holder represents and warrants to the Company that the representations and warranties made by the Holder in Section 3 of the Agreement are true, correct and complete as of the date hereof.

11. Restrictive Legend.

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

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

THE SALE OF SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED UNLESS THE SALE IS SO EXEMPT.

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

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

14. Amendments and Waivers. Any provision of this Warrant may be amended, waived or modified upon the written consent of the Company and the Majority Holders. Any such amendment, waiver or modification effected in accordance with this paragraph shall be binding upon the Company and Holder, it being understood and agreed that such written consent will affect all Warrants and be binding on all holders thereof regardless of whether any particular holder executed such consent.

15. 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 Note or to such electronic mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 14.

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

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

[Signature Page Follows]

Issued this ___ day of October ___, 2010.

CNS RESPONSE, INC.

By: _____

Name: George Carpenter

Title: Chief Executive Officer

Address: 85 Enterprise, Suite 410
Aliso Viejo, CA 92626

Accepted and agreed:

Name and Position

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. Method of Exercise (Please initial the applicable blank):

___ 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.

___ The undersigned elects to exercise the attached Warrant by means of the net exercise provisions of Section 4 of the Warrant.
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 Section 10 of the attached Warrant are true and correct as of the date hereof.

(Signature)

(Name)

(Title)

(Date)

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:

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this “**Agreement**”) is made as of October 1, 2010 by and between CNS Response, Inc., a Delaware corporation (the “**Company**”), and the investors listed on Schedule A hereto (each, an “**Investor**” and together, the “**Investors**”).

AGREEMENT

In consideration for the mutual promises and covenants herein, the parties agree as follows:

SECTION 1 – PURCHASE AND SALE OF NOTES AND WARRANTS

1.1 **Purchase and Sale of Notes and Warrants.** The Company has authorized the issuance and sale, in accordance with the terms hereof, of Secured Convertible Promissory Notes in the original aggregate principal amount of up to \$3,000,000 plus an amount corresponding to accrued and unpaid interest payable on any Existing Notes (as defined below) exchanged in this financing (the sum of \$3,000,000 plus such amount, the “**Note Cap Amount**”), substantially in the form attached as Exhibit A hereto (individually, a “**Note**” and, collectively, the “**Notes**”), and warrants to purchase shares of the common stock of the Company, par value \$0.001 per share (the “**Common Stock**”), substantially in the form attached as Exhibit B hereto (individually, a “**Warrant**” and collectively, the “**Warrants**”). On the terms and subject to the conditions set forth in this Agreement, at the Closings (as defined below) the Company agrees to issue to each Investor, and each Investor agrees to purchase from the Company, or exchange pursuant to Section 4.3 hereof (“**Exchange**”) Existing Notes and Existing Warrants (as defined below) for, (i) Notes in the principal amounts set forth on Schedule A hereto and (ii) Warrants, for the aggregate consideration set forth opposite such Investor’s name on Schedule A hereto. The Notes and the Warrants to be purchased or received upon Exchange hereunder are sometimes referred to herein, collectively, as the “**Securities**”. The financing pursuant to which the Company is issuing the Securities is hereinafter referred to as the “**Financing**”.

1.2 **Closings.**

(a) **Initial Closing.** The initial purchase and sale of the Securities and Exchange of Existing Notes and Warrants shall take place at a closing (the “**Initial Closing**”) which shall take place remotely via exchange of documents and signatures at 10:00 a.m. Eastern Time on the day immediately following execution and delivery of this Agreement, or at such other place and time as may be agreed to among the Company and the Investors. At the Initial Closing, the Company shall deliver to each of the Investors purchasing Securities for cash at such closing a Note in the face amount set forth opposite such Investor’s name on Schedule A under the column entitled “Purchase Price / Principal Amount of Note (Initial Closing)”, and a Warrant to purchase a number of shares of Common Stock corresponding to fifty percent (50%) of the number of shares of Common Stock issuable upon conversion of such Note, against receipt of a check subject to collection or a wire transfer in immediately available funds of the purchase price, to an account designated by the Company. At the Initial Closing, the Company shall deliver to each Investor exchanging Securities for Existing Notes and Existing Warrants at such closing a Note in the face amount corresponding to the principal amount plus accrued and unpaid interest with respect to such Existing Notes, and a Warrant to purchase a number of shares of Common Stock corresponding to fifty percent (50%) of the number of shares of Common Stock issuable upon conversion of such new Note, against receipt of the certificate(s) representing the Existing Notes and Existing Warrants subject to such Exchange.

(b) Additional Closings. The Company shall have the right, on one or more occasions, to hold additional closings (each, an “**Additional Closing**”, and collectively with the Initial Closing, the “**Closings**”, and individually, a “**Closing**”), pursuant to which it shall have the right to issue and sell additional Notes and Warrants to additional Investors or existing Investors and to exchange Existing Notes and Warrants (provided that no Additional Closings shall take place later than January 31, 2011). At each Additional Closing, the Company shall deliver to each Investor purchasing Notes for cash at such closing a Note in the face amount of the purchase price paid by such Investor for such Note, and a Warrant to purchase a number of shares of Common Stock corresponding to fifty percent (50%) of the number of shares of Common Stock issuable upon conversion of such Note, against receipt of a check subject to collection or a wire transfer in immediately available funds of the purchase price, to an account designated by the Company. At each Additional Closing, the Company shall deliver to each Investor exchanging Securities for Existing Notes and Existing Warrants at such closing a Note in the face amount corresponding to the principal amount plus accrued and unpaid interest with respect to such Existing Notes, and a Warrant to purchase a number of shares of Common Stock corresponding to fifty percent (50%) of the number of shares of Common Stock issuable upon conversion of such new Note, against receipt of the certificate(s) representing the Existing Notes and Existing Warrants subject to such Exchange. By receiving Securities at an Additional Closing, each Investor so receiving Securities thereby represents that its representations and warranties contained in Section 3 are true and correct as of the date of such Additional Closing. The aggregate amount of Notes that may be issued at Closings hereunder shall in no event exceed the Note Cap Amount. The Company shall have the right to update Schedule A in order to add information regarding Additional Closings, which shall not be deemed to be an amendment to this Agreement.

The obligation of each Investor to purchase and pay for the Notes and Warrants to be delivered at a Closing is, unless waived by such Investor, subject to the condition that the Company’s representations and warranties contained in Section 2 are true, complete and correct on and as of such Closing date. The obligation of the Company to sell and issue Notes and Warrants to be delivered at a Closing is, unless waived by the Company, subject to the condition that the relevant Investor’s representations and warranties contained in Section 3 are true, complete and correct on and as of the Closing Date.

SECTION 2 - REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to each Investor as follows:

2.1 Existence of Company. The Company is a duly organized Delaware corporation. The Company is validly existing in all jurisdictions where it conducts its business.

2.2 Authority to Execute. The execution, delivery and performance by the Company of (i) this Agreement, (ii) the Notes and the Warrants to be issued pursuant to the terms of this Agreement, (iii) the Security Agreement, dated as of October 1, 2010, by and between the Company and John Pappajohn, as administrative agent on behalf of the Secured Parties (as defined therein)(the “**Security Agreement**”) and (iv) any financing statements thereunder (collectively, the “**Loan Documents**”) are within the Company’s corporate powers, have been duly authorized by all necessary corporate action, do not and will not conflict with any provision of law or organizational document of the Company (including its Certificate of Incorporation or Bylaws) or of any agreement or contractual restrictions binding upon or affecting the Company or any of its property and need no further stockholder or creditor consent.

2 . 3 No Stockholder Approval Required. No approval of the Company’s stockholders is required for (i) the entry by the Company into this Agreement or the Security Agreement, (ii) the issuance of the Notes and Warrants contemplated by this Agreement, (iii) the granting of the security interest under the terms of the Notes or (iv) the issuance of any shares of stock upon conversion of the Notes or exercise of the Warrants.

2 . 4 Valid Issuance. The shares of stock to be issued upon conversion of the Notes and exercise of the Warrants contemplated by this Agreement will be, upon conversion and exercise in accordance with the terms of the Notes or the Warrants, as applicable, and in the case of the Warrants upon payment of the exercise price therefor in accordance with the terms of such Warrants, validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Loan Documents, the documents entered into by the investors and other parties in the financing giving rise to repayment of the Notes, applicable state and federal securities laws and liens or encumbrances created by or imposed by the Investor. Assuming the accuracy of the representations of the Investor in Section 3 of this Agreement, such Notes and Warrants and the shares of stock to be issued upon conversion of such Notes and exercise of such Warrants will be issued in compliance with all applicable federal and state securities laws. The issuance of such Notes, Warrants and shares will not trigger any anti-dilution protections, except as may be the case with respect to the Existing Notes (as defined below) and the related warrants.

2 . 5 Binding Obligation. This Agreement is, and the other Loan Documents when delivered hereunder will be, legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors’ rights generally and to general equitable principles.

2 . 6 Litigation. Other than the litigation disclosed in the Company’s most recent SEC Reports (as defined below), no litigation or governmental proceeding is pending or threatened against the Company which may have a materially adverse effect on the financial condition, operations or prospects of the Company, and to the knowledge of the Company, no basis therefore exists.

2 . 7 Intellectual Property. To the best of the Company's knowledge, the Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes necessary for its business as now conducted and as presently proposed to be conducted, without any known infringement of the rights of others. There are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes of any other person or entity other than such licenses or agreements arising from the purchase of "off the shelf" or standard products.

2 . 8 SEC Reports. The Company has timely filed all forms, reports, schedules, proxy statements, registration statements and other documents (including all exhibits thereto) required to be filed by it with the Securities and Exchange Commission (the "SEC") pursuant to the federal securities laws and the SEC rules and regulations thereunder, together with all certifications required pursuant to the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**") (as they have been amended since the time of their filing, including all exhibits thereto, the "**SEC Reports**"). Each of the SEC Reports complied in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the "**Securities Act**") and the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), the Sarbanes-Oxley Act and the rules and regulations of the SEC under all of the foregoing. None of the SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

SECTION 3 - REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor represents and warrants to the Company as follows:

3.1 Authorization; Binding Obligations. The Investor has full power and authority to enter into this Agreement and each of the other Loan Documents to which he, she or it is a party, and this Agreement and each other Loan Document constitutes a valid and legally binding obligation of each Investor, enforceable against each Investor in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors' rights generally and to general equitable principles.

3.2 Accredited Investor. The Investor is an "accredited investor" within the meaning of SEC Rule 501 of Regulation D promulgated under the Securities Act.

3.3 Investment for Own Account. The Notes and Warrants issued pursuant to this Agreement and the shares of stock to be issued upon conversion of such Notes and exercise of such Warrants are being, and will be, acquired for his, her or its own account, for investment 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.

3.4 Knowledge and Experience. The Investor has such knowledge and experience in financial and business matters that (s)he is capable of evaluating the merits and risks of an investment in the Securities and of making an informed investment decision with respect thereto, has the ability and capacity to protect his/her interests and can bear the economic risk of the acceptance of the Securities, including a total loss of his/her investment.

3.5 Opportunity to Ask Questions. The Investor has had the opportunity to ask questions and receive answers from the Company or any authorized person acting on its behalf concerning the Company and its business and to obtain any additional information, to the extent possessed by the Company (or to the extent it could have been acquired by the Company without unreasonable effort or expense) necessary to verify the accuracy of the information received by the Investor. In connection therewith, the Investor acknowledges that (s)he has had the opportunity to discuss the Company's business, management and financial affairs with the Company's management or any authorized person acting on its behalf.

3.6. Receipt of Information. The Investor has received and reviewed all the information concerning the Company, the Securities and the shares of common stock underlying such Securities, both written and oral, that the Investor desires. Without limiting the generality of the foregoing, the Investor has been furnished with or has had the opportunity to acquire, and to review: all information, both written and oral, that the Investor desires with respect to the Company's business, management, financial affairs and prospects. In determining whether to make this investment, the Investor has relied solely on his/her own knowledge and understanding of the Company and its business based upon the Investor's own due diligence investigations and the Company's filings with the SEC.

SECTION 4 - COVENANTS OF THE COMPANY

4.1 Registration Rights Agreement. Notwithstanding any provision in the Loan Documents to the contrary, the Company agrees that all securities issued upon conversion of the Notes and exercise of the Warrants contemplated by this Agreement will be subject to a Registration Rights Agreement between the Company and each Investor. In the event that the terms of such Notes and Warrants do not provide for such a Registration Rights Agreement, the Company agrees to work with each Investor in good faith to prepare and execute such a Registration Rights Agreement on terms reasonably satisfactory to each Investor at or prior to the time of conversion or exercise.

4.2 Restrictive Covenants. Without the consent of the holders of Notes representing at least a majority of the aggregate principal amount outstanding under all of the Notes issued pursuant to this Agreement (the "**Majority Holders**"), the Company shall not:

- (a) effect a merger, reorganization, or sell, exclusively license or lease, or otherwise dispose of any assets of the Company with a value in excess of \$20,000, other than in the ordinary course of business;
- (b) borrow, guaranty or otherwise incur indebtedness in excess of \$100,000;
- (c) acquire all or substantially all of the properties, assets or stock of any other corporation or entity or assets with a value greater than \$50,000; or

(d) form, contribute capital or assets to, or make a loan or advance in excess of \$50,000 to (i) any partially-owned or wholly-owned subsidiary formed or acquired after the date of this Agreement, (ii) a joint venture or (iii) a similar business entity;

(e) use the proceeds from the Financing for any purpose other than for the current operations of the Company, it being understood that the Majority Holders will review for payment certain obligations of the Company after the Initial Closing and will approve payment thereof;

provided, however, that the rights of the Investor under this Section 4.2 shall not apply (1) after the repayment in full of the Notes or (2) in connection with a transaction that provides for the repayment in full of the Notes upon the closing of such transaction.

4.3 Outstanding Debt. In the event an Investor, who has previously purchased notes from the Company and received related warrants (i) pursuant to that certain Bridge Note and Warrant Purchase Agreement, dated as of June 3, 2010, by and between the Company and John Pappajohn, and as amended or (ii) as part of the issuance of notes to Deerwood Partners LLC and Deerwood Holdings LLC on July 5, 2010 and August 20, 2010 (such notes purchased pursuant to (i) and (ii) above, the "Existing Notes" and such warrants received pursuant to (i) and (ii) above, the "Existing Warrants"), purchases Notes pursuant to this Agreement in the aggregate principal amount of 50% of the aggregate principal amount of such Investor's Existing Notes, the Company shall cause such Investor's Existing Notes and Existing Warrants to be amended to reflect the terms of the Notes issued pursuant to this Agreement, or, at the Company's option, exchange such Investor's Existing Notes and Existing Warrants for Notes and Warrants issued pursuant to this Agreement.

SECTION 5 - MISCELLANEOUS

5.1 No Waiver; Cumulative Remedies. No failure or delay on the part of any party to any Loan Document in exercising any right or remedy under, or pursuant to, any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy or power preclude other or further exercise thereof, or the exercise of any other right, remedy or power. The remedies in the Loan Documents are cumulative and are not exclusive of any remedies provided by law.

5.2 Amendments and Waivers. Except as otherwise expressly set forth in this Agreement, any term of this Agreement may be amended (either retroactively or prospectively) with the written consent of the Company and the Majority Holders. Any amendment effected in accordance with this Section 5.2 shall be binding upon each Investor, each future holder of Securities and the Company.

5 . 3 Notices, Etc. All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person, sent by facsimile transmission to the number set forth on the signature page hereof only if a hard copy is sent by U.S. mail to the recipient within 24 hours of facsimile transmission, or such other number as may hereinafter be designated in writing by the recipient to the sender, or duly sent by first class registered or certified mail, return receipt requested, postage prepaid, or overnight delivery service (e.g., Federal Express) addressed to such party (i) if to the Company, at the address set forth on the signature page hereof or (ii) if to an Investor, at the address set forth on Schedule A hereof or such other address as may hereafter be designated in writing by the addressee to the sender. All such notices, advises and communications shall be deemed to have been received: (a) in the case of personal delivery, on the date of such delivery; (b) in the case of facsimile transmission, on the date of transmission; and (c) in the case of mailing or delivery by service, on the date of delivery as shown on the return receipt or delivery service statement.

5.4 Costs and Expenses. The Company agrees to be responsible for its costs and expenses incurred in connection with the preparation of the Loan Documents and to reimburse each Investor for all of its costs and expenses incurred in connection with the preparation of the Loan Documents, including legal fees of each Investor's outside counsel. If any litigation, contest, dispute, suit, proceeding or action is instituted between or among any of the parties hereto regarding the enforcement or interpretation of this Agreement or any of the Exhibits hereto, the prevailing party shall be entitled to reimbursement from the other party or parties for all reasonable expenses, costs, charges and other fees (including legal fees) incurred in connection with or related to such dispute.

5.5 Governing Law. The Loan Documents shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California or of any other state; provided, however, that the perfection of the security interests in the Collateral shall be governed and controlled by the laws of the relevant jurisdiction or jurisdictions under the UCC. The Company and each Investor consent to personal jurisdiction in Orange County, California.

5 . 6 Severability. If any term in this Agreement is held to be illegal or unenforceable, the remaining portions of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if this Agreement did not contain the term held to be illegal or unenforceable.

5 . 7 Binding Effect; Assignment. The Loan Documents shall be binding upon and inure to the benefit of the Company and each Investor and their respective successors and assigns. The Company may not assign its rights or interest under the Loan Documents without the prior written consent of the Majority Holders.

5 . 8 Transfer of Securities. Notwithstanding the legend required to be placed on the Securities by applicable law, no registration statement or opinion of counsel shall be necessary: (a) for a transfer of Securities to the respective estate of each Investor or for a transfer of Securities by gift, will or intestate succession of each Investor to his or her spouse or to the siblings, lineal descendants or ancestors each Investor or his or her spouse, if the transferee agrees in writing to be subject to the terms hereof to the same extent as if he or she were the original Investor hereunder; or (b) for a transfer of Securities pursuant to SEC Rule 144 or any successor rule, or for a transfer of Securities pursuant to a registration statement declared effective by the SEC under the Securities Act relating to the Securities.

5.9 Survival of Representations, Warranties and Covenants. The representations and warranties of the parties contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement indefinitely, and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the other parties. The covenants of the parties contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement until such time as the Notes have been paid in full.

5.10 California Commissioner of Corporations. THE SALE OF THE 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 PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION FOR SUCH SECURITIES PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATIONS BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first written above.

CNS RESPONSE, INC.

By: /s/ Paul Buck
Name: Paul Buck
Title: Chief Financial Officer

INVESTOR:

By: _____
Name:
Title:

CNS RESPONSE, INC.

SECURITY AGREEMENT

SECURITY AGREEMENT (this "*Agreement*"), dated as of October 1, 2010, by and between CNS Response, Inc., a Delaware corporation (the "*Company*"), and John Pappajohn, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined below).

WHEREAS, in connection with the execution and delivery of this Agreement, the Company is entering into a Note and Warrant Purchase Agreement (the "*Purchase Agreement*") with each of the entities set forth on Schedule A thereto, as such schedule may be updated from time to time in accordance with the terms of such agreement (the "*Investors*");

WHEREAS, each Investor has agreed to purchase from the Company a secured convertible promissory note pursuant to, and upon the terms and subject to the conditions set forth in, the Purchase Agreement;

WHEREAS, each Investor who is a holder of Existing Notes has agreed to subordinate right of payment under the Existing Notes in full to the Company's repayment of the Obligations (as defined below); and

WHEREAS, the obligations of each Investor to the Company under the Purchase Agreement are conditioned upon, among other things, the execution and delivery by the Company of an agreement in the form hereof to secure (a) the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Notes, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees (including fees and disbursements of counsel), costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Company to the Investors under the Purchase Agreement and the other Loan Agreements and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Company under or pursuant to the Purchase Agreement and the other Loan Agreements (all of the obligations described in the preceding clauses (a) and (b) being referred to herein collectively as the "*Obligations*").

NOW THEREFORE, in consideration of these premises and in order to induce the Investors to enter into the Purchase Agreement, the Company and the Administrative Agent, for its benefit and for the ratable benefit of the Secured Parties, hereby agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Definition of Terms Used Herein. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. All terms defined in the UCC (as defined herein) and not defined in this Agreement shall have the meanings specified therein; the term “instrument” shall have the meaning specified in Article 9 of the UCC.

SECTION 1.02. Definition of Certain Terms Used Herein. As used herein, the following terms shall have the following meanings:

“**Account Debtor**” shall mean any Person who is or who may become obligated to the Company under, with respect to, or on account of, an Account.

“**Collateral**” shall mean all right, title or interest now owned or at anytime hereafter acquired by the Company or in which the Company now has or at any time in the future may acquire any right, title or interest in all (a) Accounts, (b) Chattel Paper, (c) Commercial Tort Claims, (d) Deposit Accounts, (e) Documents, (f) Electronic Chattel Paper, (g) Equipment, (h) General Intangibles, (i) Instruments, (j) Inventory, (k) Investment Property, (l) Letter-of-Credit Rights, (m) Supporting Obligations, (n) all books and records pertaining to the foregoing and (o) to the extent not otherwise included, all Proceeds and products of any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

“**Copyright License**” shall mean any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by the Company or which the Company otherwise has the right to license, or granting any right to the Company under any Copyright now or hereafter owned by any third party, and all rights of the Company under any such agreement.

“**Copyrights**” shall mean all of the following now owned or hereafter acquired by the Company: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise and (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office.

“**Documents**” shall mean all instruments, files, records, ledger sheets and documents covering or relating to any of the Collateral.

“**Event of Default**” shall have the meaning ascribed to such term in the Notes.

“**Existing Note Documents**” shall mean (i) the Bridge Note and Warrant Purchase Agreement, dated as of June 3, 2010, by and between the Company and John Pappajohn, (ii) the Existing Notes and related warrants, (iii) the Guaranty, dated July 5, 2010, by SAIL Venture Partners, LP executed in favor of Deerwood Holdings, LLC, (iv) the Guaranty, dated July 5, 2010, by SAIL Venture Partners, LP executed in favor of Deerwood Partners, LLC, (v) the Guaranty, dated August 20, 2010, by SAIL Venture Partners, LP executed in favor of Deerwood Holdings, LLC, and (vi) the Guaranty, dated August 20, 2010, by SAIL Venture Partners, LP executed in favor of Deerwood Partners, LLC.

“General Intangibles” shall mean all choses in action and causes of action and all other assignable intangible personal property of the Company of every kind and nature (other than Accounts) now owned or hereafter acquired by the Company, including interests in any trust, corporate or other business records, contract rights, indemnification claims, Intellectual Property, goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by or granted to the Company to secure payment by an Account Debtor of any of the Accounts.

“Intellectual Property” shall mean all intellectual and similar property of the Company of every kind and nature now owned or hereafter acquired by the Company, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

“License” shall mean any Patent License, Trademark License, Copyright License or other license or sublicense to which the Company is a party.

“Lien” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Notes” shall mean those certain Secured Convertible Promissory Notes issued pursuant to the Purchase Agreement.

“Patent License” shall mean any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by the Company or which the Company otherwise has the right to license, is in existence, or granting to the Company any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of the Company under any such agreement.

“Patents” shall mean all of the following now owned or hereafter acquired by the Company: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

“*Perfection Certificate*” shall mean a certificate substantially in the form of Annex 1 hereto, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by an officer of the Company.

“*Secured Parties*” shall mean (a) the Investors, (b) the Administrative Agent and (c) the successors and assigns of each of the foregoing.

“*Trademark License*” shall mean any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by the Company or which the Company otherwise has the right to license, or granting to the Company any right to use any Trademark now or hereafter owned by any third party, and all rights of the Company under any such agreement.

“*Trademarks*” shall mean all of the following now owned or hereafter acquired by the Company: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office, any State of the United States or any similar offices in any other country or any political subdivision thereof, and all extensions or renewals thereof, (b) all goodwill associated therewith or symbolized thereby and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

“*UCC*” shall mean the Uniform Commercial Code as amended from time to time.

ARTICLE II

Security Interest

SECTION 2.01. Security Interest. As security for the payment and performance in full of the Obligations, the Company hereby grants, mortgages, pledges, hypothecates and transfers to the Administrative Agent, its successors and assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Administrative Agent, its successors and assigns, for the ratable benefit of the Secured Parties, a continuing security interest in all of the Company’s right, title and interest now owned or at any time hereafter acquired by the Company or in which the Company now has or any time in the future may acquire any right, title or interest, in, to or under the Collateral (the “*Security Interest*”). The Company hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements (including fixture filings), and amendments thereto that contain the information required by the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment (without the signature of the Company), including (a) whether the Company is an organization, the type of organization and any organizational identification number issued to the Company and (b) in the case of a financing statement filed as a fixture filing or covering Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Collateral relates. The Company agrees to provide such information to the Administrative Agent promptly upon request. The Company ratifies and authorizes the filing by the Administrative Agent of any financing statement filed prior to the date hereof. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, the Administrative Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person’s written acknowledgment thereof. Without limiting the generality of the foregoing, the Company will join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent’s security interest therein and obtaining an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

The Administrative Agent is further authorized to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by the Company, without the signature of the Company, and naming the Company as debtor and the Administrative Agent as secured party.

SECTION 2.02. No Assumption of Liability. The Security Interest is granted as security only and shall not subject the Administrative Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of the Company with respect to or arising out of the Collateral. In no event shall the Administrative Agent or any other Secured Party be deemed a trustee or become liable as a trustee as a result of the grant of the Security Interest in any interest in any trust.

ARTICLE III

Representations and Warranties

The Company represents and warrants to the Administrative Agent and the other Secured Parties that:

SECTION 3.01. Title and Authority. The Company has good and valid rights in, and title to, the Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Administrative Agent the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval which has been obtained.

SECTION 3.02. Filings. (a) A Perfection Certificate has been duly prepared, completed and executed by the Company and the information set forth therein, including the exact legal name of the Company, is correct and complete. Fully executed Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Collateral have been delivered to the Administrative Agent for filing in each governmental, municipal or other office specified in the Perfection Certificate, which are all the filings, recordings and registrations that are necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements or amendments.

(b) The Company represents and warrants that fully executed security agreements in the form hereof and containing a description of all Collateral consisting of Intellectual Property with respect to United States Patents and United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights have been delivered to the Administrative Agent for recording by the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. Section 261, 15 U.S.C. Section 1060 or 17 U.S.C. Section 205 and the regulations thereunder, as applicable, and otherwise as may be required pursuant to the laws of any other necessary jurisdiction, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative Agent (for the benefit of the Secured Parties) in respect of all Collateral consisting of Patents, Trademarks and United States registered Copyrights in which a security interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, or in any other necessary jurisdiction, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary (other than the financing statements referred to above in Section 3.02(a) and such actions as are necessary to perfect the Security Interest with respect to any Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed after the date hereof).

SECTION 3.03. Validity of Security Interest. The Security Interest constitutes (a) a legal and valid security interest in all the Collateral securing the payment and performance of the Obligations, (b) a perfected security interest in all Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions and (c) a security interest that shall be perfected in all Collateral in which a security interest may be perfected upon the receipt and recording of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, within the three month period (commencing as of the date hereof) pursuant to 35 U.S.C. Section 261, 15 U.S.C. Section 1060 or 17 U.S.C. Section 205 and otherwise as may be required pursuant to the laws of any other necessary jurisdiction. The Security Interest is and shall be prior to any other Lien on any of the Collateral (now held or hereafter acquired).

SECTION 3.04. Absence of Other Liens. The Collateral is owned by the Company free and clear of any Lien other than those arising under the Existing Note Documents. Other than as contemplated by the Existing Note Documents, the Company has not filed or consented to the filing of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Collateral, (b) any assignment in which the Company assigns any Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (c) any assignment in which the Company assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect. The Company does not hold any Commercial Tort Claim or Letter-of-Credit Right. Except with respect to any rights arising under the Existing Note Documents, no Person has control (as defined in the UCC) over the Company's Deposit Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights.

ARTICLE IV

Covenants

SECTION 4.01. Change of Name; Location of Collateral; Records; Place of Business. (a) The Company agrees promptly to notify the Administrative Agent in writing of any change (i) in its corporate name, (ii) in the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility) other than with respect to Collateral (A) consisting of goods in transit between facilities, whether in vehicles owned by the Company or on common carriers and (B) located in temporary warehousing which will remain in such warehousing for no longer than one month, (iii) in its identity or type of organization or legal structure, (iv) in its Federal Taxpayer Identification Number or organizational identification number, as applicable or (v) in its jurisdiction of organization. The Company agrees promptly to provide the Administrative Agent with certified organizational documents reflecting any of the changes described in the preceding sentence. The Company agrees not to effect or permit any change referred to in the preceding sentences unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral. The Company agrees promptly to notify the Administrative Agent if any material portion of the Collateral owned or held by the Company is damaged or destroyed.

(b) The Company agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Collateral owned by it as is consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which the Company is engaged, but in any event to include complete accounting records indicating all payments and proceeds received with respect to any part of the Collateral, and, at such time or times as the Administrative Agent may reasonably request, promptly to prepare and deliver to the Administrative Agent a duly certified schedule or schedules in form and detail satisfactory to the Administrative Agent showing the identity, amount and location of any and all Collateral.

SECTION 4.02. Changes to Perfection Certificate. The Company shall notify the Administrative Agent promptly after any change to any of the information set forth in the Perfection Certificate.

SECTION 4.03. Protection of Security. The Company shall, at its own cost and expense, take any and all actions necessary to defend title to the Collateral against all Persons and to defend the Security Interest of the Administrative Agent in the Collateral and the priority thereof against any Lien.

SECTION 4.04. Further Assurances. The Company agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Administrative Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be promptly pledged and delivered to the Administrative Agent, duly endorsed in a manner satisfactory to the Administrative Agent. Without limiting the generality of the foregoing, the Company hereby authorizes the Administrative Agent, with prompt notice thereof to the Company, to supplement this Agreement by adding additional schedules hereto to specifically identify any asset or item that may constitute Copyrights, Patents or Trademarks; provided, however, that the Company shall have the right, exercisable within 10 days after it has been notified by the Administrative Agent of the specific identification of such Collateral, to advise the Administrative Agent in writing of any inaccuracy of the representations and warranties made by the Company hereunder with respect to such Collateral. The Company agrees that it will use its reasonable best efforts to take such action as shall be necessary in order that all representations and warranties hereunder shall be true and correct with respect to such Collateral within 30 days after the date it has been notified by the Administrative Agent of the specific identification of such Collateral. Upon the request of the Administrative Agent, the Company will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights. Upon the request of the Administrative Agent, the Company will (a) immediately deliver to the Administrative Agent appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property, all letters of credit, and all other Accounts at any time evidenced by promissory notes, trade acceptances or other instruments, (b) cause any securities intermediaries to show on their books that the Administrative Agent is the entitlement holder with respect to any Investment Property, and/or obtain agreements to establish control (as defined in the UCC) in favor of the Administrative Agent from such securities intermediaries, in form and substance satisfactory to the Administrative Agent with respect to any Investment Property, as requested by the Administrative Agent and (c) provide such notice, obtain such acknowledgements and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights, as the Administrative Agent shall reasonably specify.

SECTION 4.05. Inspection and Verification. The Administrative Agent and such Persons as the Administrative Agent may reasonably designate shall have the right to inspect the Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the Collateral is located, to discuss the Company's affairs with the officers of the Company and their independent accountants and to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Collateral, including, in the case of Accounts or Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Collateral for the purpose of making such a verification. The Administrative Agent shall have the absolute right to share any information it gains from such inspection or verification with any Secured Party.

SECTION 4.06. Taxes; Encumbrances. At its option and after notice to the Company, the Administrative Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral and may pay for the maintenance and preservation of the Collateral to the extent the Company fails to do so as required by this Agreement, and the Company agrees to reimburse the Administrative Agent on demand for any payment made or any expense incurred by the Administrative Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.06 shall be interpreted as excusing the Company from the performance of, or imposing any obligation on the Administrative Agent or any Secured Party to cure or perform, any covenants or other promises of the Company with respect to taxes, assessments, charges, fees, liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Agreements.

SECTION 4.07. Assignment of Security Interest. If at any time the Company shall take a security interest in any property of an Account Debtor or any other Person to secure payment and performance of an Account, the Company shall promptly assign such security interest to the Administrative Agent. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other Person granting the security interest.

SECTION 4.08. Continuing Obligations of the Company. The Company shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof, and the Company agrees to indemnify and hold harmless the Administrative Agent and the Secured Parties from and against any and all liability for such performance.

SECTION 4.09. Use and Disposition of Collateral. The Company shall not make or permit to be made an assignment, pledge or hypothecation of the Collateral or shall grant any other Lien in respect of the Collateral. The Company shall not make or permit to be made any transfer of the Collateral and the Company shall remain at all times in possession of the Collateral owned by it. Without limiting the generality of the foregoing, the Company agrees that it shall not permit any Inventory to be in the possession or control of any warehouseman, bailee, agent or processor at any time unless such warehouseman, bailee, agent or processor shall have been notified of the Security Interest and shall have agreed in writing to hold the Inventory subject to the Security Interest and the instructions of the Administrative Agent and to waive and release any Lien held by it with respect to such Inventory, whether arising by operation of law or otherwise.

SECTION 4.10. Limitation on Modification of Accounts. The Company shall not, without the Administrative Agent's prior written consent, grant any extension of the time of payment of any of the Accounts included in the Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which the Company is engaged.

SECTION 4.11. Insurance. The Company, at its own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Collateral. The Company irrevocably makes, constitutes and appoints the Administrative Agent (and all officers, employees or agents designated by the Administrative Agent) as the Company's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of the Company on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that the Company at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Administrative Agent may, without waiving or releasing any obligation or liability of the Company hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Administrative Agent deems advisable. All sums disbursed by the Administrative Agent in connection with this Section 4.11, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Company to the Administrative Agent and shall be additional Obligations secured hereby.

SECTION 4.12. Legend. The Company shall legend, in form and manner satisfactory to the Administrative Agent, its Chattel Paper and its books, records and documents evidencing or pertaining thereto with an appropriate reference to the fact that such Chattel Paper have been assigned to the Administrative Agent for the benefit of the Secured Parties and that the Administrative Agent has a security interest therein.

SECTION 4.13. Covenants Regarding Patent, Trademark and Copyright Collateral.

(a) The Company agrees that it will not, nor will it permit any of its licensees to, do any act, or omit to do any act, whereby any Patent may become invalidated or dedicated to the public, and agrees that it shall continue to mark any products covered by a Patent with the relevant patent number as necessary and sufficient to establish and preserve its maximum rights under applicable laws.

(b) The Company (either itself or through its licensees or its sublicensees) will, for each Trademark, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for non-use, (ii) maintain the quality of products and services offered under such Trademark, (iii) display such Trademark with notice of Federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law and (iv) not knowingly use, or knowingly permit the use of, such Trademark in violation of any third party rights.

(c) The Company (either itself or through licensees) will, for each work covered by a Copyright, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice as necessary and sufficient to establish and preserve its maximum rights under applicable laws.

(d) The Company shall notify the Administrative Agent immediately if it knows, or has reason to know, that any Patent, Trademark or Copyright may become abandoned, lost or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, United States Copyright Office or any court or similar office of any country) regarding the Company's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.

(e) In no event shall the Company, either itself or through any agent, employee, licensee or designee, file an application for any Patent, Trademark or Copyright (or for the registration of any Trademark or Copyright) with the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, unless it promptly informs the Administrative Agent, and, upon request of the Administrative Agent, executes and delivers any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent's security interest in such Patent, Trademark or Copyright, and the Company hereby appoints the Administrative Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable.

(f) The Company will take all necessary steps that are consistent with the practice in any proceeding before the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, to maintain and pursue each application relating to the Patents, Trademarks and/or Copyrights (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registration of the Trademarks and Copyrights, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with good business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(g) In the event that the Company has reason to believe that any Collateral consisting of a Patent, Trademark or Copyright has been or is about to be infringed, misappropriated or diluted by a third party, the Company promptly shall notify the Administrative Agent and shall, if consistent with good business judgment, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as are appropriate under the circumstances to protect such Collateral.

(h) Upon and during the continuance of an Event of Default, the Company shall use its reasonable best efforts to obtain all requisite consents or approvals by the licensor of each Copyright License, Patent License or Trademark License to effect the assignment of all of the Company's right, title and interest thereunder to the Administrative Agent or its designee.

(i) The Company shall ensure that fully executed security agreements in the form hereof and containing a description of all Collateral consisting of Intellectual Property shall have been received and recorded within three months after the execution of this Agreement with respect to United States Patents, United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights have been delivered to the Administrative Agent for recording by the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. Section 261, 15 U.S.C. Section 1060 or 17 U.S.C. Section 205 and the regulations thereunder, as applicable, and otherwise as may be required pursuant to the laws of any other necessary jurisdiction, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral consisting of Patents, Trademarks and registered Copyrights in which a security interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, or in any other necessary jurisdiction, and no further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary (other than such actions as are necessary to perfect the Security Interest with respect to any Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed after the date of this amendment and restatement).

SECTION 4.14. Other Actions. In order to further insure the attachment, perfection and priority of, and the ability of the Administrative Agent to enforce, the Administrative Agent's security interest in the Collateral, the Company agrees, in each case at the Company's own expense, to take the following actions with respect to the following Collateral:

(a) Instruments and Tangible Chattel Paper. If the Company shall at any time hold or acquire any Instruments or Tangible Chattel Paper, the Company shall forthwith endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify.

(b) Investment Property. If the Company shall at any time hold or acquire any certificated securities, the Company shall forthwith endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify. If any securities now or hereafter acquired by the Company are uncertificated and are issued to the Company or its nominee directly by the issuer thereof, the Company shall promptly notify the Administrative Agent thereof and, at the Administrative Agent's request and option, pursuant to an agreement in form and substance satisfactory to the Administrative Agent, either (i) cause the issuer to agree to comply with instructions from the Administrative Agent as to such securities, without further consent of the Company or such nominee or (ii) arrange for the Administrative Agent to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by the Company are held by the Company or its nominee through a securities intermediary or commodity intermediary, the Company shall promptly notify the Administrative Agent thereof and, at the Administrative Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (A) cause such securities intermediary or commodity intermediary (as the case may be) to agree to comply with entitlement orders or other instructions from the Administrative Agent to such securities intermediary as to such securities or other investment property or to apply any value distributed on account of any commodity contract as directed by the Administrative Agent to such commodity intermediary, in each case without further consent of the Company or such nominee or (B) in the case of Financial Assets or other Investment Property held through a securities intermediary, arrange for the Administrative Agent to become the entitlement holder with respect to such Investment Property, with the Company being permitted, only with the consent of the Administrative Agent, to exercise rights to withdraw or otherwise deal with such Investment Property. The Administrative Agent agrees with the Company that the Administrative Agent shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by the Company, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights would occur.

(c) Electronic Chattel Paper and Transferable Records. If the Company at any time holds or acquires an interest in any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Company shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent control under the UCC of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with the Company that the Administrative Agent will arrange, pursuant to procedures satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent's loss of control, for the Company to make alterations to the electronic chattel paper or transferable record permitted under the UCC or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Company with respect to such Electronic Chattel Paper or transferable record.

(d) Letter-of-Credit Rights. If the Company is at any time a beneficiary under a letter of credit now or hereafter issued in favor of the Company, the Company shall promptly notify the Administrative Agent thereof and, at the request and option of the Administrative Agent, the Company shall, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (i) arrange for the issuer and any confirmed of such letter of credit to consent to an assignment to the Administrative Agent of the proceeds of any drawing under the letter of credit or (ii) arrange for the Administrative Agent to become the transferee beneficiary of the letter of credit.

(e) Commercial Tort Claims. If the Company shall at any time hold or acquire a Commercial Tort Claim, the Company shall promptly notify the Administrative Agent in a writing signed by the Company of the brief details thereof and grant to the Administrative Agent in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Administrative Agent.

ARTICLE V

Collections

SECTION 5.01. Collections. Upon the occurrence of and during the continuance of an Event of Default, the Administrative Agent shall have the right, at any time and from time to time, (a) to notify the Account Debtors and other third parties holding or otherwise concerned with the Collateral that the Accounts have been assigned to the Administrative Agent and that the Administrative Agent has a security interest therein; (b) to direct all such Persons to make payments to the Administrative Agent of all or any part of the sums owing to the Company by such Persons; (c) to enforce collection of any of the Accounts by suit or otherwise; (d) to surrender, release or exchange all or any part of such Accounts; or (e) to compromise, settle, extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby.

SECTION 5.02. Power of Attorney. The Company irrevocably makes, constitutes and appoints the Administrative Agent (and all officers, employees or agents designated by the Administrative Agent) as the Company's true and lawful agent and attorney-in-fact, and in such capacity the Administrative Agent shall have the right, with full power of substitution for the Company and in the Company's name or otherwise, for the use and benefit of the Administrative Agent and the Secured Parties, upon the occurrence and during the continuance of an Event of Default (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of the Company on any invoice or bill of lading relating to any of the Collateral; (d) to send verifications of Accounts included in the Collateral to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (g) to notify, or to require the Company to notify, Account Debtors to make payment directly to the Administrative Agent; and (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Administrative Agent were the absolute owner of the Collateral for all purposes; provided, however, that nothing herein contained shall be construed as requiring or obligating the Administrative Agent or any Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Administrative Agent or any Secured Party, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken or omitted to be taken by the Administrative Agent or any Secured Party with respect to the Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of the Company or to any claim or action against the Administrative Agent or any Secured Party. It is understood and agreed that the appointment of the Administrative Agent as the agent and attorney-in-fact of the Company for the purposes set forth above is coupled with an interest and is irrevocable. The provisions of this Section shall in no event relieve the Company of any of its obligations hereunder or under any other Loan Agreement with respect to the Collateral or any part thereof or impose any obligation on the Administrative Agent or any Secured Party to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Administrative Agent or any Secured Party of any other or further right which it may have on the date of this Agreement or hereafter, whether hereunder, under any other Loan Agreement, by law or otherwise.

ARTICLE VI

Remedies

SECTION 6.01. Remedies upon Default. Upon the occurrence and during the continuance of an Event of Default, the Company agrees to deliver each item of Collateral to the Administrative Agent on demand, and it is agreed that the Administrative Agent shall have the right to take any of, or all, the following actions at the same or different times: (a) with respect to any Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Collateral by the Company to the Administrative Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Administrative Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained) and (b) with or without legal process and with or without prior notice or demand for performance, to take possession of the Collateral and without liability for trespass to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral and, generally, to exercise any and all rights afforded to a secured party under the UCC or other applicable law. Without limiting the generality of the foregoing, the Company agrees that the Administrative Agent may sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Administrative Agent shall deem appropriate. The Administrative Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Administrative Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of the Company, and the Company hereby waives all rights of redemption, stay, valuation and appraisal which the Company now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Administrative Agent shall give the Company 10 days' written notice (which the Company agrees is reasonable notice within the meaning of the UCC or its equivalent in other jurisdictions) of the Administrative Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and state in the notice of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section, any Secured Party may bid for or purchase, free from any right of redemption, stay, valuation or appraisal on the part of the Company (all said rights being also hereby waived and released), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from the Company as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to the Company therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Administrative Agent shall be free to carry out such sale pursuant to such agreement; and the Company shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Administrative Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose upon the Collateral and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 6.01 shall be deemed to conform to the commercially reasonable standards as provided in the UCC or its equivalent in other jurisdictions.

SECTION 6.02. Application of Proceeds. The Administrative Agent shall apply the proceeds of any collection or sale of Collateral, as well as any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Administrative Agent (in its capacity as such hereunder or under any other Loan Agreement) in connection with such collection or sale or otherwise in connection with this Agreement, any other Loan Agreement or any of the Obligations, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Agreement on behalf of the Company and any other costs or expenses incurred by the Administrative Agent in connection with the exercise of any right or remedy hereunder or under any other Loan Agreement;

SECOND, to the payment in full of the Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution);

THIRD, to the payment in full of the obligations arising under the Existing Note Documents (the amounts so applied to be distributed among the secured parties thereunder pro rata in accordance with the amounts of the obligations owed to them on the date of any such distribution); and

FOURTH, to the Company, its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Administrative Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of the Collateral by the Administrative Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Administrative Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Administrative Agent or such officer or be answerable in any way for the misapplication thereof.

SECTION 6.03. Grant of License to Use Intellectual Property. For the purpose of enabling the Administrative Agent to exercise rights and remedies under this Article at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, the Company hereby grants to the Administrative Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Company) to use, license or sub-license any of the Collateral consisting of Intellectual Property now owned or hereafter acquired by the Company, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The use of such license by the Administrative Agent shall be exercised, at the option of the Administrative Agent, upon the occurrence and during the continuation of an Event of Default; provided that any license, sub-license or other transaction entered into by the Administrative Agent in accordance herewith shall be binding upon the Company notwithstanding any subsequent cure of an Event of Default.

ARTICLE VII

Miscellaneous

SECTION 7.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in the Purchase Agreement.

SECTION 7.02. Security Interest Absolute. All rights of the Administrative Agent hereunder, the Security Interest and all obligations of the Company hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Purchase Agreement, any other Loan Agreement, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Purchase Agreement, any other Loan Agreement or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company in respect of the Obligations or in respect of this Agreement.

SECTION 7.03. Survival of Agreement. All covenants, agreements, representations and warranties made by the Company herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Agreement shall be considered to have been relied upon by the Secured Parties and shall survive the Closing, regardless of any investigation made by the Investors or on their behalf.

SECTION 7.04. Binding Effect; Several Agreement. This Agreement shall become effective as to the Company when a counterpart hereof executed on behalf of the Company shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon the Company and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of the Company, the Administrative Agent and the other Secured Parties and their respective successors and assigns, except that the Company shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement and the other Loan Agreements.

SECTION 7.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all covenants, promises and agreements by or on behalf of the Company that are contained in this Agreement shall bind and inure to the benefit of its successors and permitted assigns.

SECTION 7.06. Administrative Agent's Fees and Expenses; Indemnification. (a) The Company agrees to pay upon demand to the Administrative Agent the amount of any and all reasonable expenses, including the reasonable fees, other charges and disbursements of its counsel and of any experts or agents, which the Administrative Agent may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise, enforcement or protection of any of the rights of the Administrative Agent hereunder or (iv) the failure of the Company to perform or observe any of the provisions hereof.

(b) Without limitation of its indemnification obligations under the other Loan Agreements, the Company agrees to indemnify the Administrative Agent and the other Secured Parties against, and hold each Secured Party harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, other charges and disbursements, incurred by or asserted against any Secured Party arising out of, in any way connected with, or as a result of, the execution, delivery or performance of this Agreement or any other Loan Agreement or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the transactions contemplated hereby and thereby and the other transactions contemplated thereby or any claim, litigation, investigation or proceeding relating to any of the foregoing or to the Collateral, whether or not any Secured Party is a party thereto.

(c) Any amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Loan Agreements. The provisions of this Section 7.06 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Agreement, or any investigation made by or on behalf of the Administrative Agent or any other Secured Party. All amounts due under this Section 7.06 shall be payable on written demand therefor.

SECTION 7.07. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 7.08. Waivers; Amendment. (a) No failure or delay of the Administrative Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent hereunder and of the other Secured Parties under the other Loan Agreements are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provisions of this Agreement or any other Loan Agreement or consent to any departure by the Company therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Administrative Agent and the Company.

SECTION 7.09. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN AGREEMENTS.

SECTION 7.10. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction).

SECTION 7.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute a single contract and shall become effective as provided in Section 7.04. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or PDF transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

SECTION 7.12. Headings. Article and Section headings used herein are for the purpose of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 7.13. Termination or Release. This Agreement and the Security Interest shall terminate at the earliest of (i) the date when all of the Obligations have been indefeasibly paid in full and (ii) the date that holders of a majority of the aggregate principal amount of Notes issued have converted their Notes in accordance with the terms of such Notes, at which time the Administrative Agent shall execute and deliver to the Company, at the Company's expense, all Uniform Commercial Code termination statements and similar documents which the Company shall reasonably request to evidence such termination. Any execution and delivery of termination statements or documents pursuant to this Section 7.13 shall be without recourse to or warranty by the Administrative Agent.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first written above.

CNS RESPONSE, INC.

By: /s/ Paul Buck
Name: Paul Buck
Title: CFO

ADMINISTRATIVE AGENT

/s/ John Pappajohn
