

**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): **February 23, 2011**

**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 1.01 Entry into a Material Definitive Agreement.**

The description of the Purchase Agreement (as defined below) is incorporated by reference to Item 2.03 hereof. The description of the Engagement Agreement (as defined below) is incorporated by reference to Item 2.03 hereof.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

As previously disclosed, on January 20, February 3 and February 7, 2011, CNS Response, Inc. (“we” or “the Company”) issued subordinated convertible promissory notes (the “Unsecured Notes”) in an aggregate principal amount of \$350,000 and warrants to purchase 583,332 shares of common stock to three accredited investors, two of which were previously unrelated to us, in connection with a new private placement pursuant to a note and warrant purchase agreement (the “2011 Purchase Agreement”), under which we can issue up to \$5 million in aggregate principal amount of Unsecured Notes and related warrants.

We received aggregate net proceeds of \$332,000 in the January 20, February 3 and February 7, 2011 closings, after paying \$18,000 to the placement agent as described below.

On February 15, February 23 and February 28, 2011, we issued additional Unsecured Notes and related warrants pursuant to the 2011 Purchase Agreement. The Unsecured Notes in the aggregate principal amount of \$1,150,000 and related warrants to purchase 1,916,664 shares of common stock were issued to six accredited investors as follows: 1) an Unsecured Note in the principal amount of \$50,000, and a warrant to purchase 83,333 shares, were issued to our Chief Financial Officer, Paul Buck, 2) an Unsecured Note in the principal amount of \$187,500, and a warrant to purchase 312,500 shares, were issued to SAIL Venture Partners, LP, of which David Jones, a director of the Company, is a managing partner, 3) an Unsecured Note in the principal amount of \$62,500, and a warrant to purchase 104,166 shares, were issued to SAIL 2010 Co-Investment Partners, LP, an entity likewise affiliated with Mr. Jones, 4) two Unsecured Notes in the principal amount of \$400,000 each (for an aggregate of \$800,000) and two warrants to purchase 666,666 shares each (for an aggregate of 1,333,332 shares), were issued to two investors who had first invested in the Company in October 2010, and 5) an Unsecured Note in the principal amount of \$50,000 and a warrant to purchase 83,333 shares, was issued to a trust, the trustee of which is the father-in-law of our Chief Executive Officer, George Carpenter. We received aggregate net proceeds of approximately \$1.1 million in the February 15, February 23 and February 28, 2011 closings, after paying \$48,000 to the placement agent as described below.

The 2011 Purchase Agreement provides for the issuance and sale of Unsecured Notes in the aggregate principal amount of up to \$5,000,000, and warrants to purchase a number of shares corresponding to 50% of the number of shares issuable on conversion of the Unsecured Notes, in one or multiple closings to occur no later than July 31, 2011. The 2011 Purchase Agreement also provides that the Company and the holders of the Unsecured Notes will enter into a registration rights agreement covering the registration of the resale of the shares underlying the Unsecured Notes and the related warrants.

The Unsecured Notes mature one year from the date of issuance (subject to earlier conversion or prepayment), earn interest equal to 9% per year with interest payable at maturity, are convertible into shares of common stock of the Company at a conversion price of \$0.30, are not secured by any of the Company’s assets and are subordinated in all respects to the Company’s obligations under its secured convertible notes issued in October and November 2011 and the related guaranties issued to certain investors by SAIL Venture Partners, L.P. 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 Unsecured Notes are furthermore convertible, at the option of the holder, into securities to be issued in subsequent financings at the lower of the then-applicable conversion price or price per share payable by purchasers of such securities. The Unsecured Notes can be declared due and payable upon an event of default, defined in the Unsecured 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 Unsecured Note.

The warrants related to the Unsecured Notes expire seven years from the date of issuance 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. Any provision of the Unsecured Notes or related warrants can be amended, waived or modified upon the written consent of the Company and holders of a majority of the aggregate principal amount of such notes outstanding. Any such consent will affect all Unsecured Notes or warrants, as the case may be, and will be binding on all holders thereof.

Monarch Capital Group LLC (“Monarch”) has acted as non-exclusive placement agent with respect to the placement of Unsecured Notes in the aggregate principal amount of \$550,000 and related warrants, pursuant to an engagement agreement, dated January 19, 2011, between us and Monarch (the “Engagement Agreement”). Under the Engagement Agreement, in return for its services as non-exclusive placement agent, Monarch is entitled to receive (a) a cash fee equal to 10% of the gross proceeds raised from the sale of Unsecured Notes to investors introduced to the Company by Monarch; (b) a cash expense allowance equal to 2% of the gross proceeds raised from the sale of Unsecured Notes to such investors; and (c) five-year warrants (the “Placement Agent Warrants”) to purchase common stock of the Company equal to 10% of the gross amount of securities sold to such investors. The Placement Agent Warrants have an exercise price equal to 110% of the conversion price of the Unsecured Notes and an exercise period of five years. The terms of the Placement Agent Warrants, except for the exercise price and period, are identical to the terms of the warrants related to the Unsecured Notes. In connection with acting as non-exclusive placement agent with respect to Unsecured Notes in the aggregate principal amount of \$550,000 and related warrants, Monarch received aggregate cash fees of \$55,000 and an aggregate cash expense allowance of \$11,000, and is receiving Placement Agent Warrants to purchase an aggregate of up to 183,332 shares of our common stock at an exercise price of \$0.33 per share.

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The description of the Unsecured Notes, related warrants, Placement Agent Warrants, 2011 Purchase Agreement and Engagement Agreement is qualified in its entirety by reference to the text of the Form of Note, Form of Warrant, Form of Placement Agent Warrant, 2011 Purchase Agreement and Engagement Agreement, which are filed as exhibits to this Form 8-K and incorporated by reference herein.

**Item 3.02 Unregistered Sales of Equity Securities.**

The description of the Unsecured Notes and the related warrants is incorporated herein by reference to Item 2.03 hereof.

The Unsecured Notes and related 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 4.3	Form of Placement Agent Warrant.
Exhibit 10.1	Note and Warrant Purchase Agreement, dated as of January 20, 2011.
Exhibit 10.2	Engagement Agreement, dated January 19, 2011, between the Company and Monarch Capital Group, LLC.

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**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*

March 1, 2011

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THIS SUBORDINATED NOTE AND ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SUBORDINATED 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 SUBORDINATED 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 SUBORDINATED CONVERTIBLE PROMISSORY NOTE

\$ \_\_\_\_\_

Date of Issuance: \_\_\_\_\_, 2011  
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 \_\_\_\_\_ and 00/100 (\$ \_\_\_\_\_), 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 Subordinated Convertible Promissory Note (this "**Subordinated Note**") shall be due and payable, unless converted in accordance with Section 6 hereof, on the earliest of (i) the maturity date of twelve months from the date of issuance, (ii) prepayment of this Subordinated 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 Subordinated Note is one of a series of Subordinated Notes (the "**Subordinated Notes**") issued pursuant to that certain Note and Warrant Purchase Agreement, dated as of January 20, 2011, by and among the Company and each of the entities set forth on Schedule A thereto (the "**Agreement**"). The Subordinated Notes are subordinated in all respects to the Company's obligations under the Secured Convertible Promissory Notes issued pursuant to the Note and Warrant Purchase Agreement, dated as of October 1, 2010, by and between the Company and the Investors listed on Schedule A thereto, and the related guaranties issued in favor of certain holders of such notes by SAIL Venture Partners, L.P.

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

1. **Definitions.** As used in this Subordinated 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.

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(c) “**Company**” includes the corporation initially executing this Subordinated Note and any Person which shall succeed to or assume the obligations of the Company under this Subordinated 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 Subordinated Note or any other Person who is the registered holder of this Subordinated Note.

(f) “**Majority Holders**” means the holders of Subordinated Notes representing at least a majority of the aggregate principal amount outstanding under all of the Subordinated 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 Subordinated 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) “**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).

(m) “**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 Subordinated Note is repaid as described in the first paragraph hereof.

3. **Prepayment.** This Subordinated 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 Subordinated Note (or a notice to the effect that the original Subordinated 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 Subordinated 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 Subordinated Note when due.

(ii) Failure of the Company to perform or observe any covenant or agreement as required by this Subordinated 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) Any representation or warranty of the Company made in this Subordinated Note or the Agreement is proven not to have been true and correct in any material respect as of the date of this Subordinated 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 Subordinated Note and the Interest Payment be immediately due and payable, and upon such declaration, the Subordinated 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 Subordinated 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 Subordinated Note remains outstanding prior to the next sale by the Company, subsequent to the financing pursuant to which this Subordinated 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 Subordinated 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 Subordinated 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 Subordinated Note is converted into Financing Securities in such financing, this Subordinated 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 Subordinated 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 Subordinated Note may be converted as provided herein and all references in this Subordinated Note to conversion of this Subordinated 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 Subordinated 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 (1<sup>st</sup>) 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 (3<sup>rd</sup>) 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 Subordinated Note is physically surrendered for conversion as required by Section 6(c)(ii) and the outstanding principal of the Subordinated 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 Subordinated Note and at its own expense, issue and deliver to the Holder a new Subordinated 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 Subordinated 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 Subordinated Note in accordance with the terms hereof, the Holder shall not be required to physically surrender the Subordinated Note to the Company unless (A) the full Conversion Amount represented by the Subordinated 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 Subordinated 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 Subordinated 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 Subordinated 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 Subordinated 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 Subordinated Notes and be binding on all holders thereof regardless of whether any particular holder executed such consent.

10. **Transfer of this Subordinated Note**. With respect to any offer, sale or other disposition of this Subordinated 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 Subordinated Note, all in accordance with the terms of the notice delivered to the Company. This Subordinated 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 Subordinated Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Subordinated Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Subordinated Note for the purpose of receiving all payments of principal and the Premium Payment and for all other purposes whatsoever, whether or not this Subordinated Note shall be overdue and the Company shall not be affected by notice to the contrary. Notwithstanding the foregoing, Holder may assign this Subordinated 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 Subordinated 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 Subordinated 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 Subordinated Note.

16. **Governing Law.** This Subordinated Note and all actions arising out of or in connection with this Subordinated 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 Subordinated Note shall become effective upon the execution by the Company and Holder.

[Signatures Appear on Following Page]

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

**CNS RESPONSE, INC.**

By: /s/

\_\_\_\_\_  
Name  
Title

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 Subordinated Convertible Promissory Note (the "**Subordinated Note**") issued to the undersigned by CNS Response, Inc. (the "**Company**"). In accordance with and pursuant to the Subordinated Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Subordinated Note) of the Subordinated 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 Subordinated 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  
\_\_\_\_\_, 2018

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:

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

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 \_\_\_, 2011.

**CNS RESPONSE, INC.**

By: /s/ \_\_\_\_\_  
Name  
Title

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

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.

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

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

**FORM OF TRANSFER**

(To be signed only upon transfer of Warrant)

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

Dated: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed in the presence of:

\_\_\_\_\_

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  
February 27, 2016

WARRANT TO PURCHASE SHARES

This Warrant is issued to Monarch Capital Group, LLC. ("**Holder**") by CNS Response, Inc., a Delaware corporation (the "**Company**"), in connection with its services under the placement agent agreement dated January 19, 2011 by and between the Company and the Holder in connection with the Company's private placement of unsecured convertible notes in the aggregate principal amount of \$\_\_\_\_\_, convertible into \_\_\_\_\_ shares of the Company's common stock, par value \$0.001 per share ("**Note**"), to \_\_\_\_\_ accredited investors introduced to the Company by the Holder.

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 **\$0.33** per share (such price, as adjusted from time to time, is herein referred to as the "**Exercise Price**").

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

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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:

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

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.

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( 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:

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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.

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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]*

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Issued this 28th day of February, 2011.

**CNS RESPONSE, INC.**

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

Name: Paul Buck

Title: Chief Financial Officer

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

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)

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

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

\_\_\_\_\_

**FORM OF TRANSFER**

(To be signed only upon transfer of Warrant)

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

Dated: \_\_\_\_\_

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed in the presence of:  
\_\_\_\_\_  
\_\_\_\_\_

## NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this “**Agreement**”) is made as of January 20, 2011 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 Subordinated Notes and Warrants.** The Company has authorized the issuance and sale, in accordance with the terms hereof, of Subordinated Convertible Promissory Notes in the original aggregate principal amount of up to \$5,000,000 (the “**Note Cap Amount**”), substantially in the form attached as Exhibit A hereto (individually, a “**Subordinated Note**” and, collectively, the “**Subordinated 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, (i) Subordinated 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 Subordinated Notes and the Warrants to be purchased 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**”. The Subordinated Notes are subordinated in all respects to the Company’s obligations under the Secured Convertible Promissory Notes (the “**Secured Notes**”) issued pursuant to the Note and Warrant Purchase Agreement, dated as of October 1, 2010, by and between the Company and the Investors listed on Schedule A thereto, and the related guaranties issued in favor of certain holders of such notes by SAIL Venture Partners, L.P.

#### 1.2 Closings.

( a ) **Initial Closing.** The initial purchase and sale of the Securities 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 Subordinated 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 Subordinated 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.

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(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 Subordinated Notes and Warrants to additional Investors or existing Investors (provided that no Additional Closings shall take place later than July 31, 2011). At each Additional Closing, the Company shall deliver to each Investor purchasing Subordinated Notes for cash at such closing a Subordinated Note in the face amount of the purchase price paid by such Investor for such Subordinated 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 Subordinated 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. 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 Subordinated 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 Subordinated 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 Subordinated 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 Subordinated Notes and the Warrants to be issued pursuant to the terms of this Agreement, and (iii) 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, (ii) the issuance of the Subordinated Notes and Warrants contemplated by this Agreement, or (iii) the issuance of any shares of stock upon conversion of the Subordinated Notes or exercise of the Warrants.

2.4 Valid Issuance. The shares of stock to be issued upon conversion of the Subordinated Notes and exercise of the Warrants contemplated by this Agreement will be, upon conversion and exercise in accordance with the terms of the Subordinated 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 Subordinated 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 Subordinated Notes and Warrants and the shares of stock to be issued upon conversion of such Subordinated Notes and exercise of such Warrants will be issued in compliance with all applicable federal and state securities laws. The issuance of such Subordinated Notes, Warrants and shares will not trigger any anti-dilution protections, except as may be the case with respect to the Secured Notes 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 Subordinated Notes and Warrants issued pursuant to this Agreement and the shares of stock to be issued upon conversion of such Subordinated 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 and prospects 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 Subordinated 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 Subordinated 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 Subordinated Notes representing at least a majority of the aggregate principal amount outstanding under all of the Subordinated 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;

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

## 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. 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 Subordinated 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.

*[Remainder of Page Intentionally Left Blank]*

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  
CNS Response, Inc.

**INVESTOR:**

By: /s/ \_\_\_\_\_  
Name  
Title

# MONARCH CAPITAL GROUP LLC



January 19, 2011

CNS Response, Inc.  
Attn: George Carpenter, CEO  
85 Enterprise, Suite 410  
Aliso Viejo, CA 92656

Dear Mr. Carpenter:

This letter agreement (the "Agreement") confirms the engagement of Monarch Capital Group LLC ("MONARCH") by CNS Response, Inc. a Delaware company ("CNS" or the "Company"), to act as a non-exclusive placement agent to the Company in connection with a proposed Private Placement (as defined herein) of the Company's convertible notes and/or other securities or rights to purchase securities of the Company (the "Securities"). The term "Private Placement" means the proposed offering and sale by private placement of up to \$5.0 million of Securities to be made in accordance with the exemption from the registration requirements of the Securities Act of 1933, as amended, and the rules and regulations promulgated there under (collectively, the "Act") provided by Regulation D under the Act ("Regulation D") and the qualification and registration requirements of applicable state and foreign securities or blue sky laws and regulations pursuant to a private placement memorandum and/or other disclosure materials consisting of transaction documentation (as amended and supplemented, the "Disclosure Materials"). Investors in the Private Placement will be persons who qualify as "accredited investors" under Regulation D. The exact price, type and amount of Securities will be determined through negotiations between the Company and MONARCH, on the one hand, and the investors, on the other hand.

1. Engagement. CNS hereby engages MONARCH during the Term (as hereinafter defined) as its non-exclusive placement agent with respect to the Private Placement. In its capacity as placement agent, MONARCH will provide the Company with assistance in connection with the Private Placement, which may include working with the Company in identifying potential investors and using MONARCH's reasonable efforts to assist in arranging sales of the Securities to investors. CNS reserves the right to retain other properly licensed and registered broker-dealers to act as agents on its behalf. The Company will be responsible for updating, amending and supplementing the Disclosure Materials prior to the closing of the Private Placement as required by applicable laws. MONARCH shall have no authority to bind CNS to any specific terms of a Private Placement or any other obligation and CNS shall have the right to reject any proposed terms for a Private Placement or refuse to consummate the Private Placement without incurring any obligation to MONARCH except as provided in this Agreement. The purchase price payable by investors will be deposited in an escrow account with a bank mutually agreeable to the Company and MONARCH.

500 Fifth Avenue, Suite 2240, New York, NY 10110 ▲ Tel. 212.808.4333 ▲ Fax 212.599.4289

MEMBER NASD SIPC



2. **Success Fee.** The Company agrees to pay MONARCH as compensation for its services under this engagement, the following fees on all sales of Securities made in the Private Placement upon each closing:

(a) A cash fee equal to 10% of the gross proceeds raised from the sale of Securities in the Private Placement to purchasers introduced to CNS by MONARCH.

(b) 5- year warrants (the "Placement Agent Warrants") to purchase Securities equal to 10% of the gross amount of Securities sold to purchasers introduced to CNS by MONARCH at the applicable closing of the Private Placement. The Placement Agent Warrants related to shares of common stock issued in the Private Placement shall have an exercise price equal to 110% of the per share price of the common stock sold in the Private Placement or (110%) of conversion or exercise price if the Private Placement is for convertible notes or other rights to purchase common stock. To the extent warrant coverage is included with the Securities, the Placement Agent warrants issued to the Placement Agent shall contain the same provisions (including anti-dilution protections and registration rights) afforded to the investors in the Private Placement. MONARCH may designate any of its employees, officers or agents to receive any part of its Placement Agent Warrants.

3. **Expenses.** CNS shall bear all of its expenses in connection with the Private Placement. In addition, if the Private Placement is consummated, the Company will pay to MONARCH a non-accountable expense allowance equal to two percent (2%) percent of the gross proceeds from each closing received from purchasers introduced to CNS by MONARCH. The provisions of this paragraph shall survive the closing and any termination of the Private Placement.

4. **Term.** The term of this Agreement ("Term") shall commence on the date hereof and shall continue for a six (6) month period thereafter; provided, however that either party shall have the right to terminate this Agreement at any time prior to the expiration of the Term, with or without cause, upon ten (10) days' prior written notice thereof to the other party. Notwithstanding anything to the contrary herein, if, during the term of the Private Placement hereunder, an investor is informed of the Private Placement by the MONARCH and if (i) the Private Placement hereunder does not close and such investor purchases from the Company any privately placed securities of the Company within 12 months after the termination of the Private Placement or (ii) the Private Placement hereunder closes and such investor makes an investment in the Private Placement and subsequently purchases from the Company within 12 months after the closing of the Private Placement any privately placed securities of the Company, MONARCH shall be entitled to Cash Compensation and Warrant Compensation as set forth in Section 2 and 3 of this Agreement with respect to purchases by such investor. The provisions of this paragraph shall survive the Closing, expiration and any termination of the Private Placement or this Agreement

5. **Further Representations and Covenants of CNS.**

(a) The Company represents and agrees that (i) it has the corporate power and authority to enter into and perform this Agreement and all corporate action necessary for the authorization, execution, delivery and performance of this Agreement has been taken, (ii) this Agreement constitutes a legal, valid and binding obligation of CNS enforceable in accordance with its terms, (iii) the execution and performance of this Agreement by the Company and the offer and sale of the Securities in the Private Placement will not violate any provision of the Company's charter or bylaws or conflict with any agreement or other instrument to which the Company is a party or by which it is bound and (iv) any necessary approvals, governmental and private, will be obtained by the Company before the closing of the Private Placement.

(b) The Company represents and warrants that the Disclosure Materials will not as of the date of the offer or sale of the Securities or the closing date of any such sale, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein or previously made, in light of the circumstances under which they were made not misleading. The Company will advise MONARCH immediately of the occurrence of any event or any other change known to the Company which results in the Disclosure Materials containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein or previously made, in light of the circumstance under which they were made, not misleading. MONARCH agrees to cease providing the Disclosure Materials to prospective purchasers of the Securities promptly upon receiving any notice of an inaccuracy or omission in the Disclosure Materials, until such time as the Company provides it with the supplement or amendment correcting such.

(c) The Company acknowledges and agrees that MONARCH's obligations to commence the Private Placement may be subject to execution of a Placement Agency Agreement on customary terms and incorporating the principal terms hereof. In the absence of such Placement Agency Agreement, the Company agrees that MONARCH may rely upon, and will be named as a third party beneficiary of, the representations and warranties, and applicable covenants, set forth in any stock purchase agreement or subscription agreement that the Company executes with investors in the Private Placement. The Company will, at the closing of the Private Placement, furnish MONARCH with a favorable opinion of its outside counsel. Such opinion will be in customary form and will include customary items contained in legal opinions rendered in connection with private financing transactions, including, among other things, opinions on matters relating to organization and good standing, capitalization, corporate power and authority, non-contravention and exemption of the Financing. In addition, at the closing of the Private Placement, the Company will provide MONARCH with such other certification, opinions and documents as MONARCH or its counsel are customarily provided in connection with private financing transactions, all in customary form and substance.

(d) The Company agrees to provide MONARCH with due diligence materials upon request and will provide copies of due diligence materials which may be provided to investors in the Private Placement.

(e) The Company will file appropriate notices on Form D with the SEC, as well as all filings required to be made with respect to state and foreign securities or blue sky laws and regulations.

6. Indemnification. CNS agrees to indemnify and hold harmless MONARCH in accordance with the agreement set forth on Exhibit A attached hereto, the terms of which are specifically incorporated herein by reference.

7. Miscellaneous.

(a) Governing Law; Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of New York, without giving effect to principles of conflict of laws.

(b) Notices. Whenever notice is required to be given pursuant to this Agreement, such notice shall be in writing and shall either be mailed by certified first class mail, postage prepaid, delivered personally, delivered by fax (with answerback confirmed), or sent by recognized overnight courier, addressed to the parties at the respective addresses set forth above. Notice shall be deemed given, if sent by mail, on the third day after deposit in a United States post office receptacle, or if delivered personally, by fax or by courier, upon receipt. Any party may change such address by like notice.

(c) Entire Agreement; Binding Effect. This Agreement constitutes the entire agreement between CNS and MONARCH with respect to the subject matter hereof and supersedes and cancels any other agreements, oral or written, with respect thereto. This Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement shall be binding on the parties and their respective successors and permitted assigns.

(d) No Commitment. The execution of this Agreement does not constitute a commitment by MONARCH or the Company to consummate any transaction contemplated hereunder and does not ensure the successful placement of securities of the Company or the success of MONARCH with respect to securing any financing on behalf of the Company. No promises or representations have been made except as expressly set forth in this Agreement and the parties have not relied on any promises or representations except as expressly set forth in this Agreement.

(e) Confidentiality. All material non-public information identified as such and that has been or is given to MONARCH concerning the Company will be used by MONARCH solely in the course of the performance of its services hereunder and will be treated as strictly confidential by MONARCH except (a) for disclosure of such information to its officers, employees and retained professionals as necessary in order to perform its services hereunder, (b) as such information becomes publicly available through no fault of MONARCH in violation of the terms hereof or (c) as otherwise required by law or judicial or regulatory process (provided that MONARCH will give the Company prior written notice of any such required disclosure). Except for any Private Placement documents (including all schedules and exhibits thereto), any document the Company authorizes MONARCH to deliver to potential investors, and any other information the Company deems necessary for MONARCH's use in introducing the Company to potential investors, MONARCH shall not distribute or use non-public information without the Company's written consent or such third party's agreement to maintain the confidentiality of the non-public information. MONARCH's confidentiality and non-use obligations under this Agreement shall survive the termination of this Agreement for a period of two (2) years.

(f) Other Services. In the event that other services are required and/or transactions which are the result of MONARCH's efforts that are not as contemplated herein, the parties hereto shall negotiate in good faith to determine a mutually acceptable level of compensation in such an eventuality.

(g) Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, then such determination will not affect such provision in any other respect or any other provision of this Agreement, which will remain in full force and effect. No material provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent excusing the breach shall be in writing and signed by the party to be charged with such waiver or consent.

(h) Independent Contractor. In carrying out its responsibilities under this letter, the parties agree that MONARCH shall be an independent contractor with complete supervision and control over its own activities, and shall have no right or authority to assume or create any obligation on behalf of the Company and MONARCH's engagement by the Company shall not create any partnership, joint venture or similar business relationship between the Company and MONARCH. MONARCH shall have no restrictions on its ability to provide services to companies other than the Company, except as stated herein. MONARCH shall be under no obligation hereunder to make an independent appraisal of assets or investigation or inquiry as to any information regarding, or any representations of, the Company and shall have no liability hereunder in regard thereto.

(i) Advice Given; Public Announcements. The Company agrees that all advice given by MONARCH in connection with its engagement hereunder is for the benefit and use of the Company in considering the Private Placement to which such advice relates, and the Company agrees that

no such advice shall be used for any other purpose or be disclosed, reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor shall any public references to MONARCH be made by or on behalf of the Company, in each case without MONARCH's prior written consent, which consent shall not be unreasonably withheld.


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

(k) Investor Contact. Before MONARCH contacts potential investors, the Company must first determine that the potential investor has not been contacted by any other party to which the Company has an agreement similar to this Agreement.

Please confirm your agreement to the foregoing below whereupon this letter shall constitute a binding agreement between us.

Very truly yours,

Monarch Capital Group LLC

By: 

Name: Michael Potter  
Title: Chairman/CEO

Confirmed and agreed to  
as of the date set forth above:

CNS Response, Inc.

By:   
Name: George Carpenter  
Title: CEO

EXHIBIT A

September 30, 2010

Monarch Capital Group LLC  
500 5<sup>th</sup> Avenue, Suite 2240  
New York, NY 10110

Gentlemen:

In connection with our engagement of Monarch Capital ("MONARCH") as our non-exclusive placement agent, we hereby agree to indemnify and hold harmless MONARCH and its affiliates, and the respective controlling persons, directors, officers, shareholders, agents (including sub-agents) and employees of any of the foregoing (collectively the "Indemnified Persons"), from and against any and all claims, actions, suits, proceedings, damages, liabilities and expenses (including the reasonable fees and expenses of counsel) incurred by any of them (collectively a "Claim"), which relate to or arise in any manner out of any transaction, financing, or any other matter (collectively, the "Matters") contemplated by the engagement letter of which this Exhibit A forms a part and the performance by MONARCH of the services contemplated thereby, and will promptly reimburse each Indemnified Person for all reasonable expenses (including reasonable fees and expenses of legal counsel) as incurred in connection with the investigation of, preparation for or defense of any pending or threatened claim or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party. We will not, however, be responsible to any Indemnified Person for any Claim which is finally judicially determined to have resulted primarily from the gross negligence or willful misconduct of any Indemnified Person.

We also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to us related to, arising out of, or in connection with, any Matters, the engagement of MONARCH pursuant to, or the performance by MONARCH of the services contemplated by, our engagement letter, except to the extent any loss, claim, damage or liability is found in a final judgment by a court of competent jurisdiction to have resulted primarily from MONARCH's gross negligence or willful misconduct.

We further agree that we will not, without the prior written consent of MONARCH, settle, compromise or consent to the entry of any judgment in any pending or threatened Claim in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such Claim), unless such settlement, compromise or consent includes an unconditional, irrevocable release of each Indemnified Person hereunder from any and all liability arising out of such Claim.

Promptly upon receipt by an Indemnified Person of notice of any complaint or the assertion or institution of any Claim with respect to which indemnification is being sought hereunder, such Indemnified Person shall notify us in writing of such complaint or of such assertion or institution but failure to so notify us shall not relieve us from any obligation we may have hereunder, unless and only to the extent such failure results in the actual material harm to us or materially prejudices our ability to defend such Claim on behalf of such Indemnified Person. If we so elect or are requested by such Indemnified Person, we will assume the defense of such Claim, including the employment of counsel reasonably satisfactory to such Indemnified Person and the payment of the fees and expenses of such counsel. In the event, however, that legal counsel to such Indemnified Person reasonably concludes (based upon advice of counsel to the Indemnified Person) and provides written correspondence to us, that having common counsel would present such counsel with a conflict of interest or if the defendant in, or



target of, any such Claim, includes an Indemnified Person and us, and legal counsel to such Indemnified Person reasonably concludes that there may be legal defenses available to it or other Indemnified Persons different from or in addition to those available to us, then such Indemnified Person may employ its own separate counsel to represent or defend it in any such Claim and we shall pay the reasonable fees and expenses of such counsel; provided, however, that in no event shall we be required to pay fees, disbursements and other charges of separate counsel for more than one firm of attorneys representing all Indemnified Persons unless the defense of one Indemnified Person is unique or separate from that of another Indemnified Person subject to the same claim or action and such Indemnified Person provides written notice to us of such circumstance (based upon advice of the counsel to the Indemnified Person). Notwithstanding anything herein to the contrary, if we fail timely or diligently to defend, contest, or otherwise protect against any Claim, the Indemnified Party shall have the right, but not the obligation, to defend, contest, compromise, settle, assert crossclaims or counterclaims or otherwise protect against the same, and shall be fully indemnified by us therefor, including without limitation, for the reasonable fees and expenses of its counsel and all amounts paid as a result of such Claim or the compromise or settlement thereof. In any Claim in which we assume the defense, the Indemnified Person shall have the right to participate in such Claim and to retain its own counsel at its own expense.

We agree that if any indemnity sought by an Indemnified Person hereunder is unavailable for any reason then (whether or not MONARCH is the Indemnified Person), we and MONARCH shall contribute to the Claim for which such indemnity is held unavailable in such proportion as is appropriate to reflect the relative benefits to us, on the one hand, and MONARCH on the other, in connection with MONARCH's engagement referred to above, subject to the limitation that in no event shall the amount of MONARCH's contribution to such Claim exceed the amount of fees actually received by MONARCH from us pursuant to MONARCH's engagement. We hereby agree that the relative benefits to us, on the one hand, and MONARCH on the other, with respect to MONARCH's engagement shall be deemed to be in the same proportion as (a) the total value paid or proposed to be paid or received by us pursuant to the Private Placement for which MONARCH is engaged to render services bears to (b) the fee paid or proposed to be paid to MONARCH in connection with such engagement.

Our indemnity, reimbursement and contribution obligations under this Agreement shall be in addition to, and shall in no way limit or otherwise adversely affect any rights that any Indemnified Party may have at law or at equity.

The provisions of this Agreement shall remain in full force and effect following the completion or termination of MONARCH's engagement.

Very truly yours,

CNS Response, Inc.

By: 

Name: George Carpenter

Title: CEO

Monarch Capital Group LLC

By: 

Name: Michael Potter

Title: Chairman/CEO

