SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-Q

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

For the quarterly period ended SEPTEMBER 30, 2001

or

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

For the transition period from ____________________ to ____________________

Commission file number: 0-30141

LIVEPERSON, INC.

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE (State or Other Jurisdiction of Incorporation or Organization)	**13-3861628** (IRS Employer Identification No.)
330 WEST 34TH STREET, 10TH FLOOR **NEW YORK, NEW YORK 10001** (Address of Principal Executive Offices)	**10001** (Zip Code)

(212) 918-2100
(Registrant's Telephone Number, Including Area Code)

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

Yes ☒ No o

As of November 9, 2001, there were 33,983,381 shares of the issuer's common stock outstanding.

LIVEPERSON, INC.
SEPTEMBER 30, 2001
FORM 10-Q
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PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

LIVEPERSON, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	September 30, 2001 (Unaudited)	December 31, 2000 (Note 1(B))
ASSETS		
Current assets:		
Cash and cash equivalents	$ 12,263	$ 20,449
Marketable securities	--	1,000
Accounts receivable, net of allowances of $1,437 and $577 as of September 30, 2001 and December 31, 2000, respectively	469	1,271
Prepaid expenses and other current assets	396	747
Total current assets	13,128	23,467
Property and equipment, net	1,046	12,883
Goodwill and other intangibles, net	6,083	8,291
Restricted cash related to lease	--	2,000
Security deposits	7	68
Deferred costs, net	--	291
Total assets	$ 20,264	$ 47,000
LIABILITIES AND STOCKHOLDERS’ EQUITY		
Current liabilities:		
Accounts payable	$ 1,381	$ 1,126
Accrued expenses	3,121	1,446
Deferred revenue	432	615
Total current liabilities	4,934	3,187
Long-term deferred revenue	--	277
Deferred rent	--	304
Deferred gain on sale-leaseback	--	457
Commitments and contingencies		
Stockholders’ equity:		
Preferred stock, $.001 par value per share; 5,000,000 shares authorized, 0 shares issued and outstanding at September 30, 2001 and December 31, 2000	--	--
Common stock, $.001 par value per share; 100,000,000 shares authorized, 33,983,381 shares issued and outstanding at September 30, 2001; 33,914,613 shares issued and outstanding at December 31, 2000	34	34
Additional paid-in capital	113,096	119,780
Deferred compensation	(532)	(5,872)
Accumulated deficit	(97,261)	(71,167)
Accumulated other comprehensive loss	(7)	--
Total stockholders’ equity	15,330	42,775
Total liabilities and stockholders’ equity	$ 20,264	$ 47,000

SEE ACCOMPANYING NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS.

LIVEPERSON, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)
UNAUDITED

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2001	2000	2001	2000
Revenue	$ 1,734	$ 1,849	$ 6,017	$ 3,949
Operating expenses:				

Cost of revenue, exclusive of $2 and $0 for the three months ended September 30, 2001 and 2000, respectively, and $(195) and $0 for the nine months ended September 30, 2001 and 2000, respectively, reported below as non-cash compensation expense (credit)	1,586	2,216	6,412	5,445
Product development expense, exclusive of $(1) and $0 for the three months ended September 30, 2001 and 2000, respectively, and $(181) and $0 for the nine months ended September 30, 2001 and 2000, respectively, reported below as non-cash compensation expense (credit)	865	2,212	3,000	6,130
Sales and marketing expense, exclusive of $26 and $179 for the three months ended September 30, 2001 and 2000, respectively, and $350 and $1,113 for the nine months ended September 30, 2001 and 2000, respectively, reported below as non-cash compensation expense	1,133	3,223	4,427	10,440
General and administrative expense, exclusive of $499 and $1,852 for the three months ended September 30, 2001 and 2000, respectively, and $595 and $11,876 for the nine months ended September 30, 2001 and 2000, respectively, reported below as non-cash compensation expense	1,464	2,034	5,032	5,324
Amortization of goodwill and other intangibles	745	--	2,230	--
Non-cash compensation expense, net	526	2,031	569	12,989
Non-cash compensation credit related to restructuring, net	--	--	(1,720)	--
Restructuring and impairment charges	9,232	--	12,740	--
Total operating expenses	15,551	11,716	32,690	40,328
Loss from operations	(13,817)	(9,867)	(26,673)	(36,379)
Other income (expense):				
Other, net	43	--	109	--
Interest income	118	551	477	1,425
Interest expense	--	(13)	(7)	(13)
Total other income, net	161	538	579	1,412
Net loss	(13,656)	(9,329)	(26,094)	(34,967)
Non-cash preferred stock dividend	--	--	--	18,000
Net loss attributable to common stockholders	$ (13,656)	$ (9,329)	$ (26,094)	$ (52,967)
Basic and diluted net loss per common share	$ (0.40)	$ (0.32)	$ (0.77)	$ (2.44)
Weighted average shares outstanding used in basic and diluted net loss per common share calculation	34,003,501	29,476,985	33,982,599	21,722,748

SEE ACCOMPANYING NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS.

LIVEPERSON, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
UNAUDITED

	Nine Months Ended September 30,	
	2001	2000
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (26,094)	$ (34,967)
Adjustments to reconcile net loss to net cash used in operating activities:		
Non-cash compensation expense, net	569	13,028
Depreciation	2,259	1,515
Non-cash compensation credit related to restructuring, net	(1,720)	--
Non-cash portions of restructuring charges	9,459	--
Amortization of goodwill and other intangibles	2,230	--
Amortization of gain on sale-leaseback	(175)	--
Provision for doubtful accounts, net	860	195
CHANGES IN OPERATING ASSETS AND LIABILITIES:		
Accounts receivable	(80)	(675)
Prepaid expenses and other current assets	274	(83)
Security deposits	61	212
Accounts payable	255	1,086
Accrued expenses	1,675	1,098
Deferred revenue	(383)	744
Deferred rent	66	279
Net cash used in operating activities	(10,744)	(17,568)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment, including capitalized software	(505)	(14,965)
Proceeds from sale of property and equipment	52	--
Purchase of investment securities available-for-sale	--	(40,802)
Sale of investment securities available-for-sale	1,000	15,000
Purchase of restricted cash related to lease	(2,225)	--
Proceeds from release of restricted cash	4,225	--
Additional cash paid for HumanClick acquisition	(22)	--
Net cash used in investing activities	2,525	(40,767)
CASH FLOWS FROM FINANCING ACTIVITIES:		

Net proceeds from issuance of common stock related to initial public offering	--	28,104
Net proceeds from issuance of Series A, B, C and D preferred stock and warrants to acquire common stock	--	17,918
Proceeds from issuance of common stock in connection with the exercise of warrants and options	38	735
Proceeds from issuance of common stock in connection with Employee Stock Purchase Plan	2	--
Deferred offering costs	--	140
Net cash provided by financing activities	40	46,897
Effect of foreign exchange rate changes on cash and cash equivalents	(7)	(1)
Net decrease in cash and cash equivalents	(8,186)	(11,439)
Cash and cash equivalents at the beginning of the period	20,449	14,944
Cash and cash equivalents at the end of the period	$ 12,263	$ 3,505
SUPPLEMENTAL SCHEDULE OF NON-CASH INVESTING ACTIVITIES:		
Common stock issued for non-cash consideration	$ 5	$ --

SEE ACCOMPANYING NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS.

LIVEPERSON, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

(A) SUMMARY OF OPERATIONS

LivePerson, Inc. (the “Company” or “LivePerson”) was incorporated in the State of Delaware in 1995 under the name of Sybarite Interactive Inc. The Company, which commenced operations in 1996, changed its name to Live Person, Inc. in January 1999 and to LivePerson, Inc. in March 2000. The Company is a leading application service provider of technology that facilitates real-time sales and customer service for companies doing business on the Internet.

The Company’s primary revenue source is from the sale of the LivePerson services, which is conducted within one operating segment. Prior to November 1998, when the LivePerson services were introduced, the Company provided services primarily related to Web-based community programming and media design.

(B) UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL INFORMATION

The accompanying interim condensed consolidated financial statements as of September 30, 2001 and for the three and nine months ended September 30, 2001 and 2000 are unaudited. In the opinion of management, the unaudited interim condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the consolidated financial position of LivePerson as of September 30, 2001, and the consolidated results of operations and cash flows for the interim periods ended September 30, 2001 and 2000. The financial data and other information disclosed in these notes to the condensed consolidated financial statements related to these periods are unaudited. The results of operations for any interim period are not necessarily indicative of the results of operations for any other future interim period or for a full fiscal year. The condensed consolidated balance sheet at December 31, 2000 has been derived from audited consolidated financial statements at that date.

Certain information and note disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto for the year ended December 31, 2000, included in the Company’s Form 10-K filed with the SEC on March 30, 2001.

(C) RESTRICTED CASH AND LETTERS OF CREDIT

The Company was contingently liable under standby letters of credit totaling $4,225 at June 30, 2001. These letters of credit related to the Company’s office space lease in New York City which were fully secured by certificates of deposits held by the Company. These deposits were presented as long-term restricted cash as of June 30, 2001.

In September 2001, as part of the Company’s restructuring initiatives, the Company determined that its office space exceeded its current requirements. (See Note (4).) Accordingly, and in connection with the Company’s decision to relocate its principal executive offices in New York City, the Company entered into an agreement to terminate the lease relating to its former principal executive offices. Under the terms of this agreement, the landlord released the standby letters of credit held as security. As such, the Company has presented $4,225 of the certificates of deposit that secured them as cash and cash equivalents on the Company’s balance sheet at September 30, 2001.

(D) REVENUE RECOGNITION

Prior to November 1998, when the LivePerson services were introduced, the Company generated revenue from services primarily related to Web-based community programming and media design. Revenue from such services was recognized upon completion of the project, provided that no significant Company obligations remained and collection of the resulting receivable was probable. As of December 31, 1999, the Company no longer generated any revenue from these services.

During 1998, the Company began offering the LivePerson services. The LivePerson services facilitate real-time sales and customer service for companies doing business on the Internet. The Company charges an initial non-refundable set-up fee, as well as a monthly fee for each operator access account ("seat") using the LivePerson services.

The initial set-up fee principally represents customer service, training and other administrative costs related to the deployment of the LivePerson services. Such fees are initially recorded as deferred revenue and recognized ratably over a period of 24 months, representing the Company's current estimate of the expected term of a client relationship. This estimate may change in the future. The Company does not charge an additional set-up fee if an existing client adds more seats. Unamortized deferred fees, if any, are recognized upon termination of the agreement with the customer.

In the first half of 2001, the Company began selling the LivePerson services directly via Internet download. Sales executed via Internet download may occur with or without the assistance of an online sales representative, rather than through face-to-face or telephone contact that is typically required for traditional direct sales. Sales of the LivePerson services via Internet download typically have no set-up fee, because the Company does not provide the customer with training and administrative costs are minimal.

The Company records revenue for its traditional direct sales and Internet download sales based upon a monthly fee charged for each seat using the LivePerson services, provided that no significant Company obligations remain and collection of the resulting receivable is probable. The Company recognizes monthly service revenue fees as services are provided. The Company's service agreements typically have no termination date and are terminable by either party upon 30 to 90 days' notice without penalty.

The Company also generates revenue from commissions paid to the Company by web hosting and call center companies for revenue generated by them as a result of referrals by the Company. The Company recognizes commissions based on revenue generated from these referrals upon notification from the other party of sales attributable to LivePerson. To date, revenue from such commissions has not been material. Professional services revenue consists of training provided to customers. Revenue is recognized when services are provided and collection of the resulting receivable is probable. To date, revenue from professional services has not been material.

(E) BASIC AND DILUTED NET LOSS PER SHARE

The Company calculates earnings per share in accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings Per Share ("EPS")," and SEC Staff Accounting Bulletin No. 98. Under SFAS No. 128, basic EPS excludes dilution for common stock equivalents and is computed by dividing net income or loss attributable to common shareholders by the weighted average number of common shares outstanding for the period. All options, warrants or other potentially dilutive instruments issued for nominal consideration are required to be included in the calculation of basic and diluted net loss attributable to common stockholders. The Company has included 20,229 shares of common stock in the calculation of basic and diluted net loss attributable to common stockholders for the three and nine months ended September 30, 2001 which relate to certain options that were originally issued by HumanClick Ltd., a private company organized under the laws of the State of Israel ("HumanClick") for nominal consideration and subsequently assumed by the Company in connection with its acquisition of HumanClick in October 2000 (see Note 3). Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock and resulted in the issuance of common stock. Diluted net loss per share presented is equal to basic net loss per share since all common stock equivalents are anti-dilutive for each of the periods presented.

Diluted net loss per common share for the three and nine month periods ending September 30, 2001 and 2000 does not include the effects of options to purchase 5,999,133 and 5,873,233 shares of common stock, respectively, and warrants to purchase 457,030 and 457,030 shares of common stock, respectively, as the effect of their inclusion is anti-dilutive during each period.

(F) RECENT ACCOUNTING PRONOUNCEMENTS

In June 1998, Statement of Financial Accounting Standards ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities," was issued and, as amended by SFAS No. 137, was adopted by the Company in the fourth quarter of 2000. SFAS No. 133 establishes accounting and reporting standards for derivative instruments, including derivative instruments embedded in other contracts, and for hedging activities. The adoption of this statement has not impacted the Company's financial statements as it does not use derivative instruments.

In March 2000, the Emerging Issues Task Force reached a consensus on Issue 00-2, "Accounting for Web Site Development Costs," which provided guidance on when to capitalize versus expense costs incurred to develop a Web site. The consensus is effective for Web site development costs in quarters beginning after June 30, 2000. The Company initially adopted the guidance as described by Issue 00-2 in 2000, which has not materially impacted the Company's results of operations.

In July 2001, the Financial Accounting Standards Board issued SFAS No. 141, "Business Combinations," and SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 141 requires that the purchase method of accounting be used for all business combinations initiated after June 30, 2001, as well as all purchase method business combinations completed after June 30, 2001. SFAS No. 141 also specifies criteria intangible assets acquired in a purchase method business combination must meet to be recognized and reported apart from goodwill, noting that any purchase price allocable to an assembled workforce may not be accounted for separately. SFAS No. 142 will require that goodwill and intangible assets with indefinite useful lives no longer be amortized, but instead tested for impairment at least annually in accordance with the provisions of SFAS No. 142. SFAS No. 142 will also require that intangible assets with definite useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of."

The Company is required to adopt the provisions of SFAS No. 141 immediately and SFAS No. 142 effective January 1, 2002. Furthermore, any goodwill and any intangible asset determined to have an indefinite useful life that are acquired in a purchase business combination completed after June 30, 2001 will not be amortized, but will continue to be evaluated for impairment in accordance with the appropriate pre-SFAS No. 142 accounting literature. Goodwill and intangible assets acquired in business combinations completed before July 1, 2001 will continue to be amortized prior to the adoption of SFAS No. 142.

SFAS No. 141 will require upon adoption of SFAS No. 142, that the Company evaluate its existing intangible assets and goodwill that were acquired in a prior purchase business combination, and to make any necessary reclassifications in order to conform with the new criteria in SFAS No. 141 for recognition apart from goodwill. Upon adoption of SFAS No. 142, the Company will be required to reassess the useful lives and residual values of all intangible assets acquired in purchase business combinations, and make any necessary amortization period adjustments by the end of the first interim period after adoption. In addition, to the extent an intangible asset is identified as having an indefinite useful life, the Company will be required to test the intangible asset for impairment in accordance with the provisions of SFAS No. 142 within the first interim period. Any impairment loss will be measured as of the date of adoption and recognized as the cumulative effect of a change in accounting principle in the first interim period.

In connection with the transitional goodwill impairment evaluation, SFAS No. 142 will require the Company to perform an assessment of whether there is an indication that goodwill is impaired as of the date of adoption. To accomplish this, the Company must identify its reporting units and determine the carrying value of each reporting unit by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units as of the date of adoption. The Company will then have up to six months from the date of adoption to determine the fair value of each reporting unit and compare it to the reporting unit's carrying amount. To the extent a reporting unit's carrying amount exceeds its fair value, an indication exists that the reporting unit's goodwill may be impaired and the Company must perform the second step of the transitional impairment test. In the second step, the Company must compare the implied fair value of the reporting unit's goodwill, determined by allocating the reporting unit's fair value to all of it assets (recognized and unrecognized) and liabilities in a manner similar to a purchase price allocation in accordance with SFAS No. 141, to its carrying amount, both of which would be measured as of the date of adoption. This second step is required to be completed as soon as possible, but no later than the end of the year of adoption. Any transitional impairment loss will be recognized as the cumulative effect of a change in accounting principle in the Company's statement of operations.

As of the date of adoption, the Company expects to have unamortized goodwill in the amount of $5,338, all of which will be subject to the transition provisions of SFAS Nos. 141 and 142. Amortization expense related to goodwill was $619 and $2,230 for the year ended December 31, 2000 and the nine months ended September 30, 2001, respectively. Because of the extensive effort needed to comply with adopting SFAS Nos. 141 and 142, it is not practicable to reasonably estimate the impact of adopting these Statements on the Company's financial statements at the date of this report, including whether any transitional impairment losses will be required to be recognized as the cumulative effect of a change in accounting principle.

In August 2001, the Financial Accounting Standards Board issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which supersedes both SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of," and the accounting and reporting provisions of APB Opinion No. 30, "Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions," for the disposal of a segment of a business (as previously defined in that Opinion). SFAS No. 144 retains the fundamental provisions in SFAS No. 121 for recognizing and measuring impairment losses on long-lived assets held for use and long-lived assets to be disposed of by sale, while also resolving significant implementation issues associated with SFAS No. 121. For example, SFAS No. 144 provides guidance on how a long-lived asset that is used as part of a group should be evaluated for impairment, establishes criteria for when a long-lived asset is held for sale, and prescribes the accounting for a long-lived asset that will be disposed of other than by sale. SFAS No. 144 retains the basic provisions of APB Opinion No. 30 on how to present discontinued operations in the income statement but broadens that presentation to include a component of an entity (rather than a segment of a business). Unlike SFAS No. 121, an impairment assessment under SFAS No. 144 will never result in a write-down of goodwill. Rather, goodwill is evaluated for impairment under SFAS No. 142, "Goodwill and Other Intangible Assets."

The Company is required to adopt SFAS No. 144 no later than the year beginning after December 15, 2001, and plans to adopt its provisions for the quarter ending March 31, 2002. Management does not expect the adoption of SFAS No. 144 for long-lived assets held for use to have a material impact on the Company's financial statements because the impairment assessment under SFAS No. 144 is largely unchanged from SFAS No. 121. The provisions of the Statement for assets held for sale or other disposal generally are required to be applied prospectively after the adoption date to newly initiated disposal activities. Therefore, management cannot determine the potential effects that adoption of SFAS No. 144 will have on the Company's financial statements.

(2) BALANCE SHEET COMPONENTS

Property and equipment is stated at cost and is summarized as follows:

	September 30, 2001 (Unaudited)	December 31, 2000
Computer equipment and software	$ 1,406	$ 11,528
Furniture, equipment and building improvements	68	3,509
	1,474	15,037
Less accumulated depreciation	428	2,154
Total	$ 1,046	$ 12,883

Accrued expenses consist of the following:

	September 30, 2001 (Unaudited)	December 31, 2000
Professional services and consulting fees	$ 411	$ 244
Payroll and related costs	523	126
Employee stock purchase plan payable	3	43
Sales commissions	62	426
Equipment lease payments	142	557
Restructuring charges (see Note 4)	1,856	--
Other	124	50
Total	$ 3,121	$ 1,446

(3) ACQUISITIONS

On October 12, 2000, the Company acquired HumanClick. The functional currency for HumanClick is the U.S. dollar. This transaction was accounted for under the purchase method of accounting and, accordingly, the operating results of HumanClick were included in the Company's consolidated results of operations from the date of acquisition. In connection with the transaction, LivePerson assumed HumanClick's outstanding stock options which remain outstanding as options to purchase shares of LivePerson's common stock.

The purchase price was $9,678, which included the issuance of 4,238,405 shares of the Company's common stock valued at $9,143 and acquisition costs of $263. Of the 4,238,405 shares issued, 1,564,298 are subject to a repurchase option by the Company if two of the former shareholders of HumanClick are no longer employed by HumanClick under certain circumstances prior to October 12, 2003. The price pursuant to which the Company may repurchase such shares is equal to the lesser of the 30-day average price per share of the Company's common stock prior to the termination of employment, and $7 per share. One-third of the stock subject to the repurchase option shall be released from the Company's repurchase option on each of October 12, 2001, 2002 and 2003. In addition, options to purchase shares of HumanClick's common stock were exchanged for options to purchase approximately 262,000 shares of the Company's common stock. The fair value of the options, amounting to $265, was included in the purchase price. This amount excludes the intrinsic value of the unvested options at the date of acquisition, amounting to $272, which was also included in the purchase price; however, such amount was allocated to deferred compensation in accordance with FIN No. 44, and is being amortized over the remaining vesting periods.

Of the purchase price, $474 was allocated to net tangible assets. The historical carrying amounts of such net tangible assets approximated their fair values. The purchase price in excess of the fair value of the net tangible liabilities assumed, in the amount of $8,932, was allocated to goodwill and intangible assets and is being amortized on a straight-line basis over an expected period of benefit of three years.

The allocation of the purchase price in connection with the HumanClick acquisition is as follows:

Current assets, primarily receivables	$	627
Property and equipment		95
Goodwill and other intangible assets		8,932
Liabilities assumed, net		(248)
Deferred compensation		272
	$	9,678

The following unaudited pro forma consolidated financial information gives effect to the acquisition of HumanClick, as if the acquisition occurred at the beginning of each of the periods presented, by consolidating the results of operations of HumanClick with the results of the Company for the three and nine months ended September 30, 2001 and 2000. The unaudited pro forma consolidated financial information is not necessarily indicative of the consolidated results that would have occurred, nor is it necessarily indicative of results that may occur in the future.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2001	2000	2001	2000
Revenue	$ 1,734	$ 1,849	$ 6,017	$ 3,949
Net loss attributable to common stockholders	$ (13,656)	$ (10,512)	$ (26,094)	$ (56,516)
Net loss per share-basic and diluted	$ (0.40)	$ (0.31)	$ (0.77)	$ (2.18)
Weighted average basic and diluted shares outstanding	34,003,501	33,735,619	33,982,599	25,981,382

(4) RESTRUCTURING AND IMPAIRMENT

In the first quarter of 2001, following a review of the Company's business in connection with its acquisition of HumanClick, the Company commenced restructuring initiatives to streamline its operations, including the consolidation of its two San Francisco Bay area offices. The restructuring resulted in a reduction of the Company's workforce by approximately 90 people as of the end of the first quarter of 2001.

In the third quarter of 2001, in a continued effort to streamline its operations, the Company initiated additional restructuring initiatives. These initiatives resulted in the elimination of redundant staff positions, the consolidation of all clients onto a single application platform and the decision to relocate its principal executive offices, which included the termination of an office space lease (See Note 1(C).) These initiatives resulted in a reduction of the Company's workforce by approximately 20 people, the write-off of impaired computer equipment and software and the write-off of certain furniture, equipment and building improvements.

As a result of the various restructuring initiatives, for the three and nine months ended September 30, 2001, the Company recorded charges of approximately $9,232 and $12,740, respectively, for expenses related to the restructuring. In addition, for the three and nine months ended September 30, 2001, the Company also recognized a net non-cash compensation credit in the amount of approximately $0 and $1,720, respectively, associated with LivePerson employees who were terminated as part of the Company's restructuring initiatives in the first quarter of 2001. The net non-cash compensation credit of $1,720 for the nine months ended September 30, 2001 represents the reversal of $3,228 of previously recognized amortization of deferred compensation related to options of employees which did not vest due to their termination of employment in connection with the Company's restructuring initiatives, offset by the acceleration of vesting of certain other employee options of $1,508 also in connection with the restructuring initiatives. Approximately $446 of the $1,508 represents additional compensation related to the intrinsic value of options at the date of modification during the first quarter of 2001. The allocation of the restructuring charges as of September 30, 2001 is as follows:

	Balance as of January 1, 2001	Provision for the nine months ended September 30, 2001	Net (utilization) reversals during the nine months ended September 30, 2001	Balance as of September 30, 2001
Severance	$ --	$ 1,843	$ (1,637)	$ 206
Contract terminations (a)	--	654	959	1,613
Write-off of fixed assets	--	10,030	(10,030)	--
Other	--	213	(176)	37
Total	--	12,740	(10,884)	1,856
Non-cash compensation credit, net	--	(1,720)	1,720	--
Net restructuring charges	$ --	$ 11,020	$ (9,164)	$ 1,856

(a) For the nine months ended September 30, 2001, the Company recorded a net provision of $654. This amount is comprised of contract termination provisions of $2,504 offset by the reversal of $369 and $283 of deferred rent and deferred gain on sale-leaseback, respectively, associated with certain terminated lease obligations, and a $1,198 benefit related to favorable settlements associated with certain contract terminations provided for in the first quarter of 2001.

(5) STOCK OPTIONS

During 1998, the Company established the Stock Option and Restricted Stock Purchase Plan (the “1998 Plan”). Under the 1998 Plan, the Board of Directors could issue incentive stock options or nonqualified stock options to purchase up to 5,850,000 shares of common stock.

The Company established a successor to the 1998 Plan, the 2000 Stock Incentive Plan (the “2000 Plan”). Under the 2000 Plan, the options which had been outstanding under the 1998 Plan were incorporated into the 2000 Plan and the Company increased the number of shares available for issuance under the plan by approximately 4,150,000, thereby reserving for issuance 10,000,000 shares of common stock in the aggregate. Options to acquire common stock granted thereunder have ten-year terms. Pursuant to the provisions of the 2000 Plan, the amount of shares reserved for issuance thereunder was automatically increased on the first trading day in January 2001 by approximately 1,020,000 shares (three percent of the total number of shares of common stock outstanding on the last trading day in December 2000). As of September 30, 2001, approximately 11,020,000 shares of common stock were reserved for issuance under the 2000 Plan.

In March 2000, the Company adopted the 2000 Employee Stock Purchase Plan with 450,000 shares of common stock initially reserved for issuance.

During May 1999, the Company issued an option to purchase 94,500 shares of common stock at an exercise price of $1.60 per share to a client in connection with an agreement by the Company to provide services to the client for a two-year period. The Company is receiving subscription revenue from the client over the two-year period based on the number of seats the client is using. There is no minimum guarantee. This option originally provided that it would vest in or before May 2001 if the client met certain defined revenue targets and was exercisable for a period of 3 years from the date of grant. The Company accounted for this option in accordance with EITF Abstract No. 96-18, “Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.” Pursuant to EITF 96-18, the Company valued the option at each balance sheet date using a Black-Scholes pricing model using a volatility factor of 50%, a $1.60 per share exercise price and the then fair value of the Company’s common stock as of each balance sheet date. The $566 value ascribed to the option reflected the market value at December 31, 1999, less amortization expense of $86 for the period from May 1999 through December 1999, which was recorded as net deferred cost on the Company’s December 31, 1999 balance sheet. The unamortized value ascribed to this option was adjusted at each balance sheet date to bring the total ascribed value of the option up to the then current unamortized fair value. This cost was ratably amortized over the two-year service agreement, as the Company believed that the achievement of the revenue targets was probable. As a result, the Company amortized $86 of the deferred costs as of December 31, 1999, of which $24 was offset against the $27 of revenue recognized from the client in 1999, and the remaining $62 of sales and marketing expense was reflected as a non-cash compensation expense, all of which was recorded in the fourth quarter of 1999.

In February 2000, the Company amended the option agreement with the client whereby the option became fully vested and immediately exercisable. The client exercised the option in May 2000. However, the client was precluded from selling the underlying common stock until the earlier of five years or, if certain revenue targets were met, May 19, 2001. The value ascribed to the option at the time the option agreement was amended, using a Black-Scholes pricing model, was $1,014, which was ratably amortized over the remaining service period of approximately fifteen months because the vesting of the option did not affect the Company’s obligation under the service agreement. In addition, the ratable amortization of the remaining deferred cost of $1,014 was recorded as a reduction of the revenue recognized from the client, with any excess amortization recorded as sales and marketing expense which was reflected as a non-cash compensation expense in the Company’s statement of operations. The Company amortized $723 of the deferred costs during the year ended December 31, 2000, of which $59 was offset against the $59 of revenue recognized from the client. The remaining $664 of sales and marketing expense was included in non-cash compensation expense in the Company’s 2000 statement of operations.

As of March 31, 2001, the Company determined that it was unlikely that the client would meet the remaining revenue requirements under the agreement. Accordingly, the Company has amortized the remaining deferred cost of $291 during the three months ended March 31, 2001, of which $54 was offset against the $54 of revenue recognized from the client. The remaining $237 of sales and marketing expense was included in non-cash compensation expense in the Company’s statement of operations for the quarter ended March 31, 2001.

During 2000 and 1999, the Company granted or assumed stock options to purchase 5,730,727 and 3,496,245 shares of common stock at a weighted average exercise price of $3.62 and $1.37, per share, respectively, certain of which were granted at less than the deemed fair value of the common stock at the date of grant. For the years ended December 31, 2000 and 1999, the Company recorded deferred compensation of $18,241 and $6,233, respectively, in connection with these options. The aggregate amount of unamortized deferred compensation related to the grant of options which was subsequently reversed against paid-in capital in connection with the forfeiture of those options associated with employees who left the Company during the year ended December 31, 2000, approximated $5,370. In 2000, the Company also recorded $272 of deferred compensation relating to the intrinsic value of unvested options assumed by the Company in connection with the HumanClick acquisition. These amounts are presented as deferred compensation within the consolidated financial statements and are being amortized over the vesting period, typically three to four years, of the applicable options. The Company amortized $11,915 and $1,589 for the years ended December 31, 2000 and 1999, respectively, net of forfeitures or cancellations of $2,023 in connection with employees who left the Company in 2000.

The net non-cash compensation amounts for the three and nine months ended September 30, 2001 consist of:

	Three months ending September 30, 2001	Nine months ending September 30, 2001
May 1999 option granted to a client (discussed above)	$ 0	$ 237
Amortization	117	725
Acceleration of deferred compensation charges related to certain employee terminations	410	616
Reversal of previously amortized deferred compensation charges due to forfeitures of employee stock options	(1)	(1,009)
	$ 526	$ 569

The net non-cash compensation amounts for the three and nine months ended September 30, 2001 exclude the net non-cash compensation credit of $0 and $1,720, respectively, related to the Company's restructuring initiatives in the first quarter of 2001, discussed in Note 4 above.

The aggregate amount of unamortized deferred compensation reversed against additional paid-in capital for the nine months ended September 30, 2001 was approximately $2,938. This amount represents the forfeiture of options associated with the Company's employees whose employment was terminated as part of the Company's restructuring initiatives.

The net non-cash compensation expense of $2,031 and $12,989 for the three and nine months ending September 30, 2000 includes $178 and $486, respectively, related to the May 1999 option granted to a client (discussed above), $1,806 and $11,837, respectively, of amortization expense, and $47 and $666, respectively, of charges related to acceleration of vesting of certain employee options in connection with the termination of the employment of those employees.

(6) COMMITMENTS AND CONTINGENCIES

The Company leases facilities and certain equipment under agreements accounted for as operating leases. These leases generally require the Company to pay all executory costs such as maintenance and insurance. Rental expense for operating leases for the three and nine months ended September 30, 2001 was approximately $601 and $2,669, respectively, and for the three and nine months ended September 30, 2000 was $358 and $1,074, respectively.

In March 2000, the Company entered into a lease for two floors at a location in New York City. In September 2001, the Company entered into an agreement to terminate the lease in connection with the move of its principal executive offices. Under the terms of this agreement, the Company cancelled all its future rental commitments related to the lease. (See Notes 1(C) and 4.)

(7) SUBSEQUENT EVENTS

In October 2001, following a decision to relocate its principal executive offices, the Company entered into a lease for office space at a location in New York City. The three-year lease term commenced in November 2001, with rent of approximately $195 in the first year, $201 in the second year and $207 in the final year. Also in October 2001, the Company's Board of Directors determined that it would not effect the one-for-fifteen reverse split of the Company's common stock approved by the Company's stockholders at the Special Meeting of Stockholders held on September 11, 2001.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

YOU SHOULD READ THE FOLLOWING DISCUSSION AND ANALYSIS OF OUR FINANCIAL CONDITION AND RESULTS OF OPERATIONS IN CONJUNCTION WITH OUR UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND RELATED NOTES INCLUDED ELSEWHERE IN THIS REPORT. STATEMENTS IN THE FOLLOWING DISCUSSION ABOUT LIVEPERSON THAT ARE NOT HISTORICAL FACTS ARE FORWARD-LOOKING STATEMENTS BASED ON OUR CURRENT EXPECTATIONS, ASSUMPTIONS, ESTIMATES AND PROJECTIONS ABOUT LIVEPERSON AND OUR INDUSTRY. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL FUTURE EVENTS OR RESULTS TO DIFFER MATERIALLY FROM SUCH STATEMENTS. ANY SUCH FORWARD-LOOKING STATEMENTS ARE MADE PURSUANT TO THE SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. IT IS ROUTINE FOR OUR INTERNAL PROJECTIONS AND EXPECTATIONS TO CHANGE AS THE YEAR OR EACH QUARTER IN THE YEAR PROGRESS, AND THEREFORE IT SHOULD BE CLEARLY UNDERSTOOD THAT THE INTERNAL PROJECTIONS AND BELIEFS UPON WHICH WE BASE OUR EXPECTATIONS MAY CHANGE PRIOR TO THE END OF EACH QUARTER OR THE YEAR. ALTHOUGH THESE EXPECTATIONS MAY CHANGE, WE ARE UNDER NO OBLIGATION TO INFORM YOU IF THEY DO. OUR COMPANY POLICY IS GENERALLY TO PROVIDE OUR EXPECTATIONS ONLY ONCE PER QUARTER, AND NOT TO UPDATE THAT INFORMATION UNTIL THE NEXT QUARTER. ACTUAL EVENTS OR RESULTS MAY DIFFER MATERIALLY FROM THOSE CONTAINED IN THE PROJECTIONS OR FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE OR CONTRIBUTE TO SUCH DIFFERENCES INCLUDE THOSE DISCUSSED BELOW AND ELSEWHERE IN THIS REPORT, PARTICULARLY IN THE SECTION ENTITLED "--RISK FACTORS THAT MAY AFFECT FUTURE RESULTS."

SUBSEQUENT EVENTS

In October 2001, our Board of Directors determined that it would not effect the one-for-fifteen reverse split of our common stock approved by our stockholders at the Special Meeting of Stockholders held on September 11, 2001. Additionally, in October 2001, following a decision to relocate our principal executive offices in New York City, we entered into a new lease, the three-year term of which commenced in November 2001.

OVERVIEW

LivePerson is a leading application service provider of technology that facilitates real-time sales and customer service for companies doing business on the Internet. We offer our proprietary real-time interaction technology as outsourced services. We currently generate revenue from the sale of our LivePerson services, which enable our clients to communicate directly with Internet users via text-based chat, and to a lesser extent from related professional services. With the LivePerson chat service, our clients can respond to Internet user inquiries in real-time, and can thereby enhance their Internet users' online shopping experience.

Our business was incorporated in the State of Delaware in November 1995 under the name Sybarite Interactive Inc.; however, we did not commence operations until January 1996. We had no significant revenue until 1997, when we began to generate revenue from services primarily related to Web-based community programming and media design.

In 1998, we shifted our core business focus to the development of the LivePerson services and phased out our prior programming efforts, which last generated revenue in December 1999. We introduced the LivePerson services in November 1998.

In January 2000, we completed a private placement of 3,157,895 shares of our series D redeemable convertible preferred stock with an affiliate of, and other entities associated with, Dell Computer Corporation and with NBC Interactive Media, Inc. (a division of NBC) at a purchase price of $5.70 per share. We received net proceeds of approximately $17.9 million from this private placement. Our series D redeemable convertible preferred stock converted, at a two-for-three ratio, into 4,736,842 shares of common stock upon the closing of our initial public offering on April 12, 2000, together with our other outstanding convertible preferred stock. In connection with the issuance of our series D redeemable convertible preferred stock, we recorded a non-cash preferred stock dividend of $18.0 million, which relates to the beneficial conversion feature associated with such preferred stock. The amount of this dividend is limited to the gross proceeds received by us in connection with the sale of our series D convertible preferred stock and was recorded in the first quarter of 2000 because the series D convertible preferred stock was, at the time it was issued, immediately convertible at the option of the holder.

On April 12, 2000, we consummated our initial public offering, which resulted in the issuance of 4,000,000 shares of our common stock at $8.00 per share, from which we received net proceeds of approximately $28.1 million.

On October 12, 2000, we acquired HumanClick Ltd., a private company organized under the laws of Israel. The purchase price was $9.7 million, which included the issuance of 4,238,405 shares of our common stock valued at $9.1 million and acquisition costs of $263,000.

In the first quarter of 2001, following a review of our business in connection with our acquisition of HumanClick, we commenced restructuring initiatives to streamline our operations, including the consolidation of our two San Francisco Bay area offices. The restructuring resulted in a reduction of our workforce by approximately 90 people as of the end of the first quarter of 2001.

In the third quarter of 2001, in a continued effort to streamline our operations, we initiated additional restructuring initiatives. These initiatives resulted in the elimination of redundant staff positions, the consolidation of all clients onto a single application platform and the decision to relocate our principal executive offices, which included the termination of an office space lease. The restructuring resulted in a reduction of our workforce by approximately 20 people, the write-off of impaired computer equipment and software and the write-off of certain furniture, equipment and building improvements. For the three and nine months ended September 30, 2001, we recorded net charges of approximately $9.2 million and $11.0 million, respectively, for our various restructuring initiatives.

In the third quarter of 2001, we upgraded our clients to a new software application platform. We expect this new platform to provide our customers with a more dependable product while reducing our cost of providing these services.

On September 11, 2001, we held a Special Meeting of Stockolders, pursuant to which our stockholders approved a proposal to amend our Fourth Amended and Restated Certificate of Incorporation to effect a one-for-fifteen reverse split of our issued and outstanding shares of common stock.

On September 27, 2001, we received a letter from The Nasdaq Stock Market, Inc., informing us that on such date Nasdaq implemented a moratorium on the minimum bid price and market value of public float requirements for continued listing on The Nasdaq Stock Market. Under the moratorium, those requirements will be suspended until January 2, 2002, at which time the 30- and 90-day periods provided by Nasdaq Marketplace Rule 4310(c)(8)(B) would start anew. Based on the foregoing, the hearing we had requested before a Nasdaq Listing Qualifications Panel to appeal the Nasdaq Staff Determination that our common stock failed to comply with the minimum bid price requirement was rendered moot and our hearing file has been closed. There can be no assurance that we will not be subject to delisting from the Nasdaq National Market in the future as a result of our failure to satisfy the minimum bid price or market value of public float requirements, or otherwise.

REVENUE

With respect to the LivePerson services, our clients pay us an initial non-refundable set-up fee, as well as a monthly fee for each operator access account, which we refer to as a “seat.” Our set-up fee is intended to recover certain costs incurred by us (principally customer service, training and other administrative costs) prior to deployment of our services. Such fees are recorded as deferred revenue and recognized over a period of 24 months, representing the estimated expected term of a client relationship. As a result of recognizing set-up fees in this manner, combined with the fact that we have more seats on an aggregate basis than clients, in the three and nine months ended September 30, 2001, revenue attributable to our monthly service fee accounted for 91% and 89%, respectively, of total LivePerson services revenue of approximately $1.6 million and $5.4 million, respectively. In addition, because we expect the aggregate number of seats to continue to grow, and because we typically do not charge a set-up fee for sales generated via Internet download, we expect the set-up fee to represent a decreasing percentage of total revenue over time. In instances where we do charge set-up fees, we do not charge an additional set-up fee if an existing client adds more seats. Our service agreements typically have no termination date and are terminable by either party upon 30 to 90 days’ notice without penalty. We recognize monthly service revenue fees and professional service fees as services are provided. Professional service fees consist of training provided to customers. Given the time required to schedule training for our clients’ operators and our clients’ resource constraints, we have historically experienced a lag between signing a client contract and generating revenue from that client. This lag has generally ranged from one day to 30 days.

In the first half of 2001, we began selling the LivePerson services directly via Internet download. Sales executed via Internet download may occur with or without the assistance of an online sales representative, rather than through face-to-face or telephone contact that is typically required for traditional direct sales. Sales of the LivePerson services via Internet download typically have no set-up fee, because we do not provide the customer with training, and administrative costs are minimal. We recognize monthly service revenue fees from Internet downloads as services are provided.

As sales via Internet download increase, our average revenue per client tends to decline because services sold in this manner have a lower unit cost. Overall, our average revenue per client and per seat has declined, while the total number of our clients has increased. We expect this trend to continue as we generate an increasing portion of revenue via Internet downloads.

We also have contractual arrangements that complement our direct sales force and our online sales efforts. These are primarily with web hosting and call center service companies, pursuant to which LivePerson is paid a commission based on revenue generated by these service companies from our referrals. To date, revenue from such commissions has not been material.

Prior to November 1998, when the LivePerson services were introduced, we generated revenue from services primarily related to Web-based community programming and media design. As of January 2000, we no longer generated any revenue from these services. Revenue generated from Web-based community programming and media design services was recognized upon completion of the project, provided that no significant obligations remained outstanding and collection of the resulting receivable was probable.

OPERATING EXPENSES

Our cost of revenue associated with programming activity consisted primarily of the personnel expenses associated with outsourced programming and design. We no longer incurred these costs as of December 1998. We began developing the LivePerson services in the third quarter of 1998. We did not allocate development costs of the LivePerson services separately. Accordingly, since November 1998, our cost of revenue has principally been associated with the LivePerson services and has consisted of:

- compensation costs relating to employees who provide customer service to our clients;
- compensation costs relating to our network support staff;
- allocated occupancy costs and related overhead; and
- the cost of supporting our infrastructure, including expenses related to leasing space and connectivity for our services, third-party network monitoring and depreciation of certain hardware and software.

Our product development expenses consist primarily of compensation and related expenses for product development personnel, allocated occupancy costs and related overhead, outsourced labor and expenses for testing new versions of our software. Product development expenses are charged to operations as incurred.

Our sales and marketing expenses consist of compensation and related expenses for sales personnel and marketing personnel, allocated occupancy costs and related overhead, advertising, sales commissions, marketing programs, public relations, promotional materials, travel expenses and trade show exhibit expenses.

Our general and administrative expenses consist primarily of compensation and related expenses for executive, accounting and human resources personnel, allocated occupancy costs and related overhead, professional fees, provision for doubtful accounts and other general corporate expenses.

In the nine months ended September 30, 2001, we increased our allowance for doubtful accounts to $1,437,000 from $577,000 at December 31, 2000, principally due to an increase in accounts receivable and deteriorating aging due to slower collections. A significant portion of this increase was due to overdue accounts receivable balances for our Internet-related clients with limited operating histories, many of which began to face difficult market conditions in the past year, and, in particular, during the last six months. We base our allowance for doubtful accounts on specifically identified known doubtful accounts plus a general reserve for potential future doubtful accounts. We adjust our allowance for doubtful accounts when accounts previously reserved have been collected.

NON-CASH COMPENSATION EXPENSE, NET

During May 1999, we issued an option to purchase 94,500 shares of common stock at an exercise price of $1.60 per share to ShopNow.com Inc. (now known as Network Commerce Inc.), a client, in connection with an agreement to provide the LivePerson services to Network Commerce for two years. As discussed below, the option was amended in February 2000. The original terms of the option provided that it would vest in or before May 2001, if revenue generated by Network Commerce met certain targets. We granted the option as an incentive for entering into a two-year service agreement with us, at a point in time when the LivePerson services were new and their viability was unknown. The option had no minimum revenue guarantee. At December 31, 1999, the total value ascribed to this option, using a Black-Scholes pricing model, was $566,000. In 1999, we amortized $86,000 of this deferred cost, of which $24,000 was offset against the $27,000 of revenue recognized from Network Commerce. The remaining $62,000 constituted sales and marketing expense, all of which was recorded in the fourth quarter of 1999, and was included in non-cash compensation expense in our 1999 statement of operations.

In February 2000, we amended the option agreement. Under the amendment, the option became fully vested and immediately exercisable, and Network Commerce exercised the option in May 2000. Network Commerce agreed, however, that it could not sell the underlying common stock until the earlier of five years or, if certain revenue criteria were met, May 19, 2001. The value ascribed to the option at the time the option agreement was amended, using a Black-Scholes pricing model, was $1,014,000, which was ratably amortized over the remaining service period of approximately fifteen months because the vesting of the option did not affect our obligation under the service agreement. In addition, the ratable amortization of the remaining deferred cost of $1,014,000 was recorded as a reduction of the revenue recognized from Network Commerce with any excess amortization recorded on a quarterly basis as sales and marketing expense, which was reflected as a non-cash compensation expense in our statement of operations. We amortized $723,000 of the deferred costs during the year ended December 31, 2000, of which $59,000 was offset against the $59,000 of revenue recognized from Network Commerce. The remaining $664,000 of sales and marketing expense was included in non-cash compensation expense in our 2000 statement of operations.

As of March 31, 2001, we determined that it was unlikely that Network Commerce would meet the remaining revenue requirements under the agreement. Accordingly, we amortized the remaining deferred cost of $291,000 during the three months ended March 31, 2001, of which $54,000 was offset against the $54,000 of revenue recognized from Network Commerce. The remaining $237,000 of sales and marketing expense was included in non-cash compensation expense in our statement of operations for the quarter ended March 31, 2001.

During 2000 and 1999, we granted or assumed stock options to purchase 5,730,727 and 3,496,245 shares of common stock at a weighted average exercise price of $3.62 and $1.37, per share, respectively, certain of which were granted at less than the deemed fair value of the common stock at the date of grant. For the years ended December 31, 2000 and 1999, we recorded deferred compensation of approximately $18.2 million and $6.2 million, respectively, in connection with these options. The aggregate amount of unamortized deferred compensation related to the grant of options which was subsequently reversed against additional paid-in capital in connection with the forfeiture of those options associated with employees who left LivePerson during the year ended December 31, 2000, approximated $5.4 million. In 2000, we also recorded $272,000 of deferred compensation relating to the intrinsic value of unvested options assumed by us in connection with the HumanClick acquisition. These amounts are presented as deferred compensation within our consolidated financial statements and are being amortized over the vesting period, typically three to four years, of the applicable options. We amortized approximately $11.9 million and $1.6 million for the years ended December 31, 2000 and 1999, respectively, net of forfeitures or cancellations of approximately $2.0 million in connection with employees who left LivePerson in 2000.

Excluding the net non-cash compensation credit of approximately $1.7 million related to our restructuring initiatives in the first quarter of 2001, net non-cash compensation charge of $526,000 and $569,000 for the three and nine months ended September 30, 2001, respectively, includes $0 and $237,000, respectively, related to the May 1999 option granted to Network Commerce (discussed above), $117,000 and $725,000, respectively, of amortization expense, $410,000 and $616,000, respectively, of charges related to acceleration of vesting of options in connection with the termination of the employment of certain employees, and $1,000 and $1,009,000, respectively, of credits due to forfeiture in connection with the termination of the employment of certain employees. The aggregate amount of unamortized deferred compensation reversed against additional paid-in capital in the nine months ended September 30, 2001 in connection with the forfeiture of options associated with LivePerson employees who were terminated as part of our restructuring initiatives was approximately $2.9 million.

The net non-cash compensation expense of $2.0 million and $13.0 million for the three and nine months ending September 30, 2000 includes $178,000 and $486,000, respectively, related to the May 1999 option granted to a client (discussed above), $1.8 million and $11.8 million, respectively, of amortization expense, and $47,000 and $666,000, respectively, of charges related to acceleration of vesting of certain employee options in connection with the termination of the employment of those employees.

RESULTS OF OPERATIONS

Due to our limited operating history and our acquisition of HumanClick in October 2000, we believe that comparisons of our operating results for the three and nine month periods ended September 30, 2001 and 2000 with each other or those of prior periods are not meaningful and that our historical operating results should not be relied upon as indicative of future performance.

COMPARISON OF THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2001 AND 2000

Revenue. Total revenue decreased slightly to $1.7 million in the three months ended September 30, 2001 from $1.8 million in the comparable period in 2000. Total revenue increased to $6.0 million in the nine months ended September 30, 2001 from $3.9 million in the comparable period period in 2000. This increase was due to the introduction of a new range of services, and to increased online marketing efforts of the LivePerson services, increased market acceptance of our services and increased sales generated by LivePerson’s sales force, and to a lesser extent, client attrition, which accelerates the recognition of client set-up fees which had been recorded as deferred revenue of approximately $47,000 and $263,000 in the three and nine months ended September 30, 2001. We cannot assure that we will achieve similar growth, if any, in future periods.

Cost of Revenue. Cost of revenue consists of compensation costs relating to employees who provide customer service to our clients, compensation costs relating to our network support staff, the cost of supporting our infrastructure, including expenses related to leasing space and connectivity for our services, third-party monitoring services, as well as depreciation of certain hardware and software, and allocated occupancy costs and related overhead. Cost of revenue decreased to $1.6 million in the three months ended September 30, 2001 from $2.2 million in the comparable period in 2000. This decrease is primarily attributable to reduced spending requirements associated with supporting our infrastructure as a result of our restructuring initiatives. Cost of revenue increased to $6.4 million in the nine months ended September 30, 2001 from $5.4 million in the comparable period in 2000. This increase was attributable to costs associated with supporting our infrastructure, including certain equipment leases in effect prior to our restructuring initiatives.

Product Development. Our product development expenses consist primarily of compensation and related expenses for product development personnel. Product development costs decreased to $865,000 and $3.0 million, respectively, for the three and nine months ended September 30, 2001 from $2.2 million and $6.1 million in the respective comparable periods in 2000. This decrease was primarily attributable to a decrease in outsourced labor costs and to our restructuring initiatives, which resulted in fewer employees, streamlined operations and reduced spending requirements.

Sales and Marketing. Our sales and marketing expenses consist of compensation and related expenses for sales and marketing personnel, as well as advertising, public relations and, to a lesser extent, trade show exhibit expenses. Sales and marketing expenses decreased to $1.1 million and $4.4 million, respectively, in the three and nine months ended September 30, 2001 from $3.2 million and $10.4 million in the respective comparable periods in 2000. This decrease was primarily attributable to reduced print advertising expense and to our restructuring initiatives, which resulted in fewer employees, streamlined operations and reduced spending requirements.

General and Administrative. Our general and administrative expenses consist primarily of compensation and related expenses for executive, accounting, human resources and administrative personnel. General and administrative expenses decreased to $1.5 million and $5.0 million, respectively, in the three and nine months ended Septmeber 30, 2001 from $2.0 million and $5.3 million in the respective comparable periods in 2000. This decrease was primarily attributable to our restructuring initiatives, which resulted in fewer employees, streamlined operations and reduced spending requirements.

Amortization of Goodwill and Other Intangibles. Amortization expense of $745,000 and $2.2 million in the three and nine months ended September 30, 2001, respectively, relates to goodwill and other intangibles recorded as a result of our acquisition of HumanClick in October 2000.

Non-cash Compensation Expense, Net. Non-cash compensation primarily consists of amortization of deferred stock-based compensation. Deferred stock-based compensation represents the difference between the exercise price and the deemed fair value of certain stock options granted to employees. Deferred compensation is being amortized over the vesting period of the individual options. We recorded a non-cash compensation expense of $526,000 and $569,000, respectively, in the three and nine months ended September 30, 2001, a decrease from expenses of $2.0 million and $13.0 million in the respective comparable periods in 2000. This decrease is due primarily to the reversal of previously recognized amortization of deferred compensation due to the forfeitures of employee stock options associated with employees who voluntarily left LivePerson in the second quarter of 2001 as well as employees whose employment was terminated as part of our restructuring initiatives in the first quarter of 2001.

Other Income. Interest income was $118,000 and $477,000 for the three and nine months ended September 30, 2001, respectively, and consists of interest earned on cash and cash equivalents generated by the receipt of proceeds from our initial public offering and preferred stock issuances. Interest expense was $0 and $7,000 in the three and nine months ended September 30, 2001, respectively. Other income for the three and nine months ended September 30, 2000 was $538,000 and $1.4 million, respectively.

Net Loss. Our net loss increased to $13.7 million for the three months ended September 30, 2001, from $9.3 million in the comparable period in 2000. Net loss decreased to $26.1 million for the nine months ended September 30, 2001 from $35.0 million for the comparable period in 2000

LIQUIDITY AND CAPITAL RESOURCES

Since our inception, we have financed our operations principally through cash generated by private placements of convertible preferred stock and the initial public offering of our common stock. Through September 30, 2001, we have raised a total of $69.5 million in aggregate net proceeds. We regularly invest excess funds in short-term money market funds, commercial paper, government securities, and short-term notes. As a result of the decision to relocate our principal executive offices and the termination of an office space lease, we were released from the standby letters of credit entered into with our landlord, totaling $4,225 at June 30, 2001, and the certificates of deposit held by us securing such letters of credit, which amount is reflected on our balance sheet as cash and cash equivalents at September 30, 2001. As of September 30, 2001, we had approximately $12.3 million in cash and cash equivalents and marketable securities, a decrease of $9.2 million from December 31, 2000.

Net cash used in operating activities was $10.7 million for the nine months ended September 30, 2001 and consisted primarily of net operating losses, non-cash items related to our restructuring initiatives and an increase in accounts receivable and a decrease in accounts payable and deferred revenue, partially offset by an increase in accrued expenses, depreciation and amortization expenses. Net cash used in operating activities was $17.6 million for the nine months ended September 30, 2000 and consisted primarily of net operating losses, partially offset by an increase in non-cash compensation expense, accounts payable and accrued expenses.

Net cash provided by investing activities was $2.5 million in the nine months ended September 30, 2001 and was due primarily to the reduction of $4.2 million of restricted cash as a result of the release of the certificates of deposit securing the standby letters of credit pursuant to the lease of our principal executive offices, which were terminated in September 2001. Net cash used in investing activities was $40.8 million for the nine months ended September 30, 2000 and was due to the purchase of fixed assets and capitalized software and the purchase of short-term "available-for-sale" investments, in part offset by the sale of short-term "available-for-sale" investments.

Net cash provided by financing activities was $40,000 for the nine months ended September 30, 2001 and was primarily attributable to proceeds from the issuance of common stock in connection with the exercise of options. Net cash provided by financing activities was $46.9 million for the nine months ended September 30, 2000 and was primarily attributable to proceeds from our initial public offering and the sale of our series D convertible preferred stock.

We lease facilities and certain equipment under agreements accounted for as operating leases. These leases generally require us to pay all executory costs such as maintenance and insurance. Rental expense for operating leases for the nine months ended September 30, 2001 and 2000 was approximately $2.6 million and $1.1 million, respectively.

In October 2001, pursuant to our decision to relocate our principal executive offices, we entered into a lease for office space at a location in New York City. The three-year lease term commenced in November 2001, with rent of approximately $195 in the first year, $201 in the second year and $207 in the final year.

As of September 30, 2001, our principal commitments were approximately $603,000 under various operating leases, of which $33,000 is due in 2001. We do not currently expect that our principal commitments for the year ended December 31, 2001 will exceed $300,000 in the aggregate.

We have incurred significant costs to develop our technology and services, to hire employees in our customer service, sales, marketing and administration departments, and for the amortization of goodwill and other intangible assets, as well as non-cash compensation costs. As a result, we have incurred significant net losses and negative cash flows from operations since inception, and as of September 30, 2001, had an accumulated deficit of $97.3 million. These losses have been funded primarily through the issuance of common stock in our initial public offering and, prior to the initial public offering, the issuance of convertible preferred stock.

In the first quarter of 2001, following a review of our business in connection with our acquisition of HumanClick, we commenced restructuring initiatives to streamline our operations, including the consolidation of our two San Francisco Bay area offices. The restructuring resulted in a reduction of our workforce by approximately 90 people as of the end of the first quarter of 2001.

In the third quarter of 2001, in a continued effort to streamline our operations, we initiated additional restructuring initiatives. These initiatives resulted in the elimination of redundant staff positions, the consolidation of all clients onto a single application platform and the move of our principal executive offices, which included the termination of an office space lease. These initiatives resulted in a reduction of our workforce by approximately 20 people, the write-off of impaired computer equipment and software and the write-off of certain furniture, equipment and building improvements.

As a result of the various restructuring initiatives, for the three and nine months ended September 30, 2001, we recorded charges of approximately $9.2 million and $12.7 million, respectively, for expenses related to the restructuring, all of which are expected to be paid or directly charged against the assets by the end of 2001. In addition, for the three and nine months ended September 30, 2001, we also recognized a net non-cash compensation credit in the amount of approximately $0 and $1.7 million, respectively, associated with LivePerson employees who were terminated as part of our restructuring initiatives in first quarter of 2001. The net non-cash compensation credit of $1.7 million for the nine months ended September 30, 2001 represents the reversal of $3.2 million of previously recognized amortization of deferred compensation related to options of employees which did not vest due to their termination of employment in connection with our restructuring initiatives, offset by the acceleration of vesting of certain other employee options of $1.5 million also in connection with the restructuring initiatives. Approximately $446,000 of the $1.5 million represents additional compensation related to the intrinsic value of options at the date of modification during the first quarter of 2001.

We anticipate that our current cash and cash equivalents will be sufficient to satisfy our working capital and capital requirements through the end of the second quarter of 2002. However, we cannot assure you that we will not require additional funds prior to such time, and we would then seek to sell additional equity or debt securities through public financings, or seek alternative sources of financing. We cannot assure you that additional funding will be available on favorable terms, when needed, if at all. If we are unable to obtain any necessary additional financing, we may be required to reduce the scope of our planned sales and marketing and product development efforts, which could materially adversely affect our business, financial condition and operating results. In addition, we may require additional funds in order to fund more rapid expansion, to develop new or enhanced services or products or to invest in complementary businesses, technologies, services or products.

RECENTLY ISSUED ACCOUNTING STANDARDS

In June 1998, Statement of Financial Accounting Standards ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities" was issued and, as amended by SFAS No. 137, was adopted by us in the fourth quarter of 2000. SFAS No. 133 establishes accounting and reporting standards for derivative instruments, including derivative instruments embedded in other contracts, and for hedging activities. The adoption of this statement has not impacted our financial statements as we do not use derivative instruments.

In March 2000, the Emerging Issues Task Force reached a consensus on Issue 00-2, "Accounting for Web Site Development Costs," which provided guidance on when to capitalize versus expense costs incurred to develop a Web site. The consensus is effective for Web site development costs in quarters beginning after June 30, 2000. We initially adopted the guidance as described by Issue 00-2 in 2000, which has not materially impacted our results of operations.

In July 2001, the Financial Accounting Standards Board issued SFAS No. 141, “Business Combinations,” and SFAS No. 142, “Goodwill and Other Intangible Assets.” SFAS No. 141 requires that the purchase method of accounting be used for all business combinations initiated after June 30, 2001 as well as all purchase method business combinations completed after June 30, 2001. SFAS No. 141 also specifies criteria intangible assets acquired in a purchase method business combination must meet to be recognized and reported apart from goodwill, noting that any purchase price allocable to an assembled workforce may not be accounted for separately. SFAS No. 142 will require that goodwill and intangible assets with indefinite useful lives no longer be amortized, but instead tested for impairment at least annually in accordance with the provisions of SFAS No. 142. SFAS No. 142 will also require that intangible assets with definite useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 121, “Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of.”

We are required to adopt the provisions of SFAS No. 141 immediately and SFAS No. 142 effective January 1, 2002. Furthermore, any goodwill and any intangible asset determined to have an indefinite useful life that are acquired in a purchase business combination completed after June 30, 2001 will not be amortized, but will continue to be evaluated for impairment in accordance with the appropriate pre-SFAS No. 142 accounting literature. Goodwill and intangible assets acquired in business combinations completed before July 1, 2001 will continue to be amortized prior to the adoption of SFAS No. 142.

SFAS No. 141 will require upon adoption of SFAS No. 142, that we evaluate our existing intangible assets and goodwill that were acquired in a prior purchase business combination, and to make any necessary reclassifications in order to conform with the new criteria in SFAS No. 141 for recognition apart from goodwill. Upon adoption of SFAS No. 142, we will be required to reassess the useful lives and residual values of all intangible assets acquired in purchase business combinations, and make any necessary amortization period adjustments by the end of the first interim period after adoption. In addition, to the extent an intangible asset is identified as having an indefinite useful life, we will be required to test the intangible asset for impairment in accordance with the provisions of SFAS No. 142 within the first interim period. Any impairment loss will be measured as of the date of adoption and recognized as the cumulative effect of a change in accounting principle in the first interim period.

In connection with the transitional goodwill impairment evaluation, SFAS No. 142 will require us to perform an assessment of whether there is an indication that goodwill is impaired as of the date of adoption. To accomplish this we must identify our reporting units and determine the carrying value of each reporting unit by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units as of the date of adoption. We will then have up to six months from the date of adoption to determine the fair value of each reporting unit and compare it to the reporting unit’s carrying amount. To the extent a reporting unit’s carrying amount exceeds its fair value, an indication exists that the reporting unit’s goodwill may be impaired and we must perform the second step of the transitional impairment test. In the second step, we must compare the implied fair value of the reporting unit’s goodwill, determined by allocating the reporting unit’s fair value to all of it assets (recognized and unrecognized) and liabilities in a manner similar to a purchase price allocation in accordance with SFAS No. 141, to its carrying amount, both of which would be measured as of the date of adoption. This second step is required to be completed as soon as possible, but no later than the end of the year of adoption. Any transitional impairment loss will be recognized as the cumulative effect of a change in accounting principle in our statement of earnings.

As of the date of adoption, we expect to have unamortized goodwill in the amount of $5.3 million, all of which will be subject to the transition provisions of SFAS Nos. 141 and 142. Amortization expense related to goodwill was $619,000 and $2.2 million for the year ended December 31, 2000 and the nine months ended September 30, 2001, respectively. Because of the extensive effort needed to comply with adopting SFAS Nos. 141 and 142, it is not practicable to reasonably estimate the impact of adopting these Statements on our financial statements at the date of this report, including whether any transitional impairment losses will be required to be recognized as the cumulative effect of a change in accounting principle.

In August 2001, the Financial Accounting Standards Board issued SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets,” which supersedes both SFAS No. 121, “Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of,” and the accounting and reporting provisions of APB Opinion No. 30, “Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions,” for the disposal of a segment of a business (as previously defined in that Opinion). SFAS No. 144 retains the fundamental provisions in SFAS No. 121 for recognizing and measuring impairment losses on long-lived assets held for use and long-lived assets to be disposed of by sale, while also resolving significant implementation issues associated with SFAS No. 121. For example, SFAS No. 144 provides guidance on how a long-lived asset that is used as part of a group should be evaluated for impairment, establishes criteria for when a long-lived asset is held for sale, and prescribes the accounting for a long-lived asset that will be disposed of other than by sale. SFAS No. 144 retains the basic provisions of APB Opinion No. 30 on how to present discontinued operations in the income statement but broadens that presentation to include a component of an entity (rather than a segment of a business). Unlike SFAS No. 121, an impairment assessment under SFAS No. 144 will never result in a write-down of goodwill. Rather, goodwill is evaluated for impairment under SFAS No. 142, “Goodwill and Other Intangible Assets.”

We are required to adopt SFAS No. 144 no later than the year beginning after December 15, 2001, and plan to adopt its provisions for the quarter ending March 31, 2002. Management does not expect the adoption of SFAS No. 144 for long-lived assets held for use to have a material impact on our financial statements because the impairment assessment under SFAS No. 144 is largely unchanged from SFAS No. 121. The provisions of the Statement for assets held for sale or other disposal generally are required to be applied prospectively after the adoption date to newly initiated disposal activities. Therefore, management cannot determine the potential effects that adoption of SFAS No. 144 will have on our financial statements.

RISK FACTORS THAT MAY AFFECT FUTURE RESULTS

RISKS RELATED TO OUR POSSIBLE DELISTING FROM NASDAQ

WE FACE POSSIBLE NASDAQ DELISTING WHICH WOULD RESULT IN A LIMITED PUBLIC MARKET FOR OUR COMMON STOCK AND MAKE OBTAINING FUTURE EQUITY FINANCING MORE DIFFICULT FOR US.

We must satisfy a number of requirements to maintain our listing on the Nasdaq National Market, including maintaining a minimum bid price for our common stock of $1.00 per share and maintaining a market value for our publicly-held shares of at least $5 million. A company fails to satisfy these requirements if its closing bid price remains below $1.00 per share or if the market value for the publicly-held shares remains below $5 million, in each case, for 30 consecutive business days.

On July 31, 2001, we received a letter from The Nasdaq Stock Market, Inc., containing a Nasdaq Staff Determination that we failed to comply with Nasdaq’s minimum bid price requirement for continued listing set forth in Nasdaq Marketplace Rule 4450(a)(5), and that our common stock is, therefore, subject to delisting from the Nasdaq National Market.

In addition, we received a letter from Nasdaq, dated September 4, 2001, notifying us of our failure to maintain a minimum market value of public float of $5 million over the preceding 30 consecutive trading days as required by the Nasdaq National Market under Nasdaq Marketplace Rule 4450(a)(2). The letter stated that we were to be provided 90 calendar days, or until December 3, 2001, to regain compliance with Rule 4450(a)(2) and that, if we were unable to demonstrate compliance with Rule 4450(a)(2) on or before that date, Nasdaq would notify us that we did not regain compliance.

On September 27, 2001, we received a letter from Nasdaq informing us that, on such date, Nasdaq implemented a moratorium on the minimum bid price and market value of public float requirements for continued listing on The Nasdaq Stock Market. Under the moratorium, those requirements will be suspended until January 2, 2002, at which time the 30- and 90-day periods provided by Nasdaq Marketplace Rule 4310(c)(8)(B) would start anew. Based on the foregoing, the hearing we had requested before a Nasdaq Listing Qualifications Panel to appeal the Nasdaq Staff Determination that our common stock failed to comply with the minimum bid price requirement was rendered moot and our hearing file has been closed. There can be no assurance that we will not be subject to delisting from the Nasdaq National Market in the future as a result of our failure to satisfy the minimum bid price or market value of public float requirements, or otherwise.

If a delisting from the Nasdaq National Market were to occur, shares of our common stock would likely trade on the Nasdaq SmallCap Market, or in the over-the-counter market in the so-called “pink sheets” maintained by Pink Sheets LLC or on the National Association of Securities Dealers’ OTC Bulletin Board, which was established for securities that do not meet the Nasdaq listing requirements. Such alternative trading markets are generally considered less efficient than the Nasdaq National Market. Consequently, selling our common stock would be more difficult because smaller quantities of shares would likely be bought and sold, transactions could be delayed, and securities analysts’ and news media coverage of us may be reduced. These factors could result in lower prices and larger spreads in the bid and ask prices for shares of common stock.

Such delisting from the Nasdaq National Market or further declines in our stock price could also greatly impair our ability to raise additional necessary capital through equity or debt financing, and significantly increase the ownership dilution to stockholders caused by our issuing equity in financing or other transactions. The price at which we issue shares in such transactions is generally based on the market price of our common stock and a decline in our stock price could result in the need for us to issue a greater number of shares to raise a given amount of funding or acquire a given dollar value of goods or services.

In addition, if our common stock is not listed on the Nasdaq National Market, we may become subject to Rule 15g-9 under the Securities and Exchange Act of 1934, as amended. That rule imposes additional sales practice requirements on broker-dealers that sell low-priced securities to persons other than established customers and institutional accredited investors. For transactions covered by this rule, a broker-dealer must make a special suitability determination for the purchaser and have received the purchaser’s written consent to the transaction prior to sale. Consequently, the rule may affect the ability of broker-dealers to sell the common stock and affect the ability of holders to sell their shares of our common stock in the secondary market. Moreover, investors may be less interested in purchasing low-priced securities because the brokerage commissions, as a percentage of the total transaction value, tend to be higher for such securities, and some investment funds will not invest in low-priced securities (other than those which focus on small-capitalization companies or low-priced securities).

RISKS RELATED TO OUR BUSINESS

WE HAVE A LIMITED OPERATING HISTORY AND EXPECT TO ENCOUNTER DIFFICULTIES FACED BY EARLY STAGE COMPANIES IN NEW AND RAPIDLY EVOLVING MARKETS.

We have only a limited operating history providing the LivePerson services upon which to base an evaluation of our current business and future prospects. We began offering our services in November 1998 and we commenced offering the HumanClick service in October 2000; accordingly, the revenue and income potential of our business and the related market are unproven. As a result of our limited operating history as a leading application service provider of real-time sales and customer service technology for companies doing business on the Internet, we have only three years of historical financial data relating to the LivePerson services upon which to forecast revenue and results of operations.

In addition, because this market is relatively new and rapidly evolving, we have limited insight into trends that may emerge and affect our business. Before investing in us, you should evaluate the risks, expenses and problems frequently encountered by companies such as ours that are in the early stages of development and that are entering new and rapidly changing markets. These risks include our ability to:

- attract more clients and retain existing clients;
- sell additional seats for LivePerson Chat, which generate monthly fees, and other services to our existing clients;
- increase or maintain current pricing levels for our services;
- effectively market and maintain our brand name;
- respond effectively to competitive pressures;
- continue to develop and upgrade our technology; and
- attract, integrate, retain and motivate qualified personnel.

If we are unsuccessful in addressing some or all of these risks, our business, financial condition and results of operations would be materially and adversely affected.

WE HAVE A HISTORY OF LOSSES, WE HAD AN ACCUMULATED DEFICIT OF $97.3 MILLION AS OF SEPTEMBER 30, 2001 AND WE EXPECT TO INCUR SIGNIFICANT LOSSES FOR THE FORESEEABLE FUTURE.

We have not achieved profitability and, as we expect to continue to incur significant operating expenses and to make capital expenditures, we expect to continue to experience significant losses and negative cash flow for the foreseeable future. We recorded a net loss of $20,000 for the year ended December 31, 1998 (the year in which we commenced offering the LivePerson services), $9.8 million for the year ended December 31, 1999, $43.3 million for the year ended December 31, 2000 and $26.1 million for the nine months ended September 30, 2001. We had total revenue of less than $6.1 million for the nine months ended September 30, 2001, and less than $6.3 million and $620,000 in the years ended December 31, 2000 and 1999, respectively. Our net loss for the year ended December 31, 2000 included a non-cash dividend of $18.0 million. As of September 30, 2001, our accumulated deficit was approximately $97.3 million. Even if we do achieve profitability, we cannot assure you that we can sustain or increase profitability on a quarterly or annual basis in the future. Failure to achieve or maintain profitability may materially and adversely affect the market price of our common stock.

WE CANNOT PREDICT OUR FUTURE CAPITAL NEEDS TO EXECUTE OUR BUSINESS STRATEGY AND WE MAY NOT BE ABLE TO SECURE ADDITIONAL FINANCING.

We believe that our current cash and cash equivalents and cash generated from operations, if any, will be sufficient to fund our working capital and capital expenditure requirements through the end of the second quarter of 2002. To the extent that we require additional funds to support our operations or the expansion of our business, or to pay for acquisitions, we may need to sell additional equity, issue debt or convertible securities or obtain credit facilities through financial institutions. In the past, we have obtained financing principally through the sale of preferred stock, common stock and warrants. If additional funds are raised through the issuance of debt or preferred equity securities, these securities could have rights, preferences and privileges senior to holders of common stock. The terms of any debt securities could impose restrictions on our operations. If additional funds are raised through the issuance of additional equity or convertible securities, our stockholders could suffer dilution. We cannot assure you that additional funding, if required, will be available to us in amounts or on terms acceptable to us. If sufficient funds are not available or are not available on acceptable terms, our ability to fund any potential expansion, take advantage of acquisition opportunities, develop or enhance our services or products, or otherwise respond to competitive pressures would be significantly limited. Those limitations would materially and adversely affect our business, results of operations and financial condition.

WE HAVE AN UNPROVEN BUSINESS MODEL AND MAY NOT GENERATE SUFFICIENT REVENUE FOR OUR BUSINESS TO SURVIVE.

Our business model is based on the delivery of real-time sales and customer service technology and related services to companies doing business on the Internet, a largely untested business. Sales and customer service historically have been provided primarily in person or by telephone. Our business model assumes that companies doing business on the Internet will choose to provide sales and customer service via the Internet. Our business model also assumes that many companies will recognize the benefits of an outsourced application, that Internet users will choose to engage a customer service representative in a live text-based interaction, that this interaction will maximize sales opportunities and enhance the online shopping experience and that companies will seek to have their online sales and customer service technology provided by us. If any of these assumptions is incorrect, our business may be harmed. In addition, we recently began offering the LivePerson services via Internet download, which is an unproven model for the delivery of our services.

WE EXPECT THAT A SUBSTANTIAL MAJORITY OF OUR REVENUE WILL COME FROM THE LIVEPERSON CHAT SERVICE FOR THE FORESEEABLE FUTURE AND IF WE ARE NOT SUCCESSFUL IN SELLING THIS SERVICE, OUR REVENUE WILL NOT INCREASE AND MAY DECLINE.

The success of our business currently substantially depends, and for the foreseeable future will continue to substantially depend, on the sale of only one service, LivePerson Chat. We cannot be certain that there will be client demand for our services or that we will be successful in penetrating the market for real-time sales and customer service technology. Our revenue has declined in each quarter of 2001, and we cannot assure you that we will experience any future revenue growth. A decline in the price of, or fluctuation in the demand (by existing or potential clients) for, our services, is likely to cause our revenue to decline.

THE SUCCESS OF OUR BUSINESS REQUIRES THAT CLIENTS CONTINUE TO USE THE LIVEPERSON SERVICES AND PURCHASE ADDITIONAL SEATS.

Our LivePerson services agreements typically have no termination date and are terminable upon 30 to 90 days’ notice without penalty. If a significant number of our clients, or any one client with a significant number of seats, were to terminate these services agreements, reduce the number of seats purchased or fail to purchase additional seats, our results of operations may be negatively and materially affected. Our client retention rates have recently declined as a result of a number of factors, including competition, consolidation in the Internet industry and termination of operations by certain of our clients. Dissatisfaction with the nature or quality of our services, including our new software application platform introduced in the third quarter of 2001, could also lead clients to terminate our service. We depend on monthly fees from the LivePerson services for substantially all our revenue. If our retention rate declines further, our revenue could decline unless we are able to obtain additional clients or alternate revenue sources. Further, because of the historically small number of seats sold in initial orders, we depend on sales to new clients and sales of additional seats to our existing clients.

OUR QUARTERLY REVENUE AND OPERATING RESULTS ARE SUBJECT TO SIGNIFICANT FLUCTUATIONS WHICH MAY ADVERSELY AFFECT THE TRADING PRICE OF OUR COMMON STOCK.

We expect our quarterly revenue and operating results to fluctuate significantly in the future due to a variety of factors, including the following factors which are in part within our control, and in part outside of our control:

- market acceptance by companies doing business on the Internet of real-time sales and customer service technology;
- our clients’ business success;
- our clients’ demand for seats and our other services;
- our ability to attract and retain clients;
- the amount and timing of capital expenditures and other costs relating to the expansion of our operations, including those related to acquisitions;

- the introduction of new services by us or our competitors; and
- changes in our pricing policies or the pricing policies of our competitors.

Our revenue and results may also fluctuate significantly in the future due to the following factors that are entirely outside of our control:

- seasonal factors affecting our clients' businesses;
- economic conditions specific to the Internet, electronic commerce and online media; and
- general economic conditions.

Many of our clients' businesses are seasonal. Our clients' demand for real-time sales and customer service technology in general and their demand for seats and our other services, in particular, may be seasonal as well. As a result, our future revenue and profits may vary from quarter to quarter.

We do not believe that period-to-period comparisons of our operating results are meaningful. You should not rely upon these comparisons as indicators of our future performance.

Due to the foregoing factors, it is possible that our results of operations in one or more future quarters may fall below the expectations of securities analysts and investors. If this occurs, the trading price of our common stock could decline.

OUR CLIENTS MAY EXPERIENCE ADVERSE BUSINESS CONDITIONS THAT COULD ADVERSELY AFFECT OUR BUSINESS.

Some of our clients may experience difficulty in supporting their current operations and implementing their business plans. These clients may reduce their spending on our services, or may not be able to discharge their payment and other obligations to us. These circumstances are influenced by general economic and industry-specific conditions, and could have a material adverse impact on our business, financial condition and results of operations. In addition, as a result of these conditions, our clients, in particular our Internet-related clients that may experience (or that anticipate experiencing) difficulty raising capital, may elect to scale back the resources they devote to customer service technology, including services such as ours. If the current environment for our clients, including, in particular, our Internet-related clients, does not improve, our business, results of operations and financial condition could be materially adversely affected. In addition, the non-payment or late payment of amounts due to us from a significant number of clients would negatively impact our financial condition. In the nine months ended September 30, 2001, we increased our allowance for doubtful accounts to $1.4 million from $577,000 at December 31, 2000. A significant portion of this increase was due to overdue accounts receivable balances for our Internet-related clients with limited operating histories, many of which began to face difficult market conditions in the past year, and, in particular, during the last six months.

WE MAY NOT BE ABLE TO EFFECTIVELY MANAGE OUR EXPANDING OPERATIONS.

Since the launch of our services in November 1998, we have grown rapidly, even in light of our recent restructuring initiatives. This growth has placed a significant strain on our managerial, operational, technical and financial resources. In 2000, we replaced our existing accounting and other back-office systems at a cost of approximately $1.2 million. The new systems are being integrated with our operations, controls and procedures. If we are not able to successfully integrate these new systems with our existing systems, or if we incur significant additional costs in order to achieve such integration, our business could be harmed. In order to manage our growth, we must also continue to implement new or upgraded operating and financial systems, procedures and controls. Our failure to expand our operations in an efficient manner could cause our expenses to grow, our revenue to decline or grow more slowly than expected and could otherwise have a material adverse effect on our business, results of operations and financial condition.

STAFF ATTRITION COULD STRAIN OUR MANAGERIAL, OPERATIONAL, FINANCIAL AND OTHER RESOURCES.

We had 73 employees at December 31, 1999; 181 employees at December 31, 2000; and 67 employees at September 30, 2001. In the area of technology, we had 19 employees at December 31, 1999; 40 employees at December 31, 2000; and 19 employees at September 30, 2001. Any staff attrition we experience, whether initiated by the departing employees or by us, could place a significant strain on our managerial, operational, financial and other resources. To the extent that we do not initiate or seek any staff attrition that occurs, there can be no assurance that we will be able to identify and hire adequate replacement staff promptly, if at all, and even that if such staff is replaced, we will be successful in integrating these employees. In both the first and third quarters of 2001, in addition to conducting performance-related terminations, we commenced restructuring plans pursuant to which we eliminated a large number of positions in response to changes in our business needs, such as redundancies in our research and development and client support functions and the transition of a portion of our sales efforts from direct sales to more automated Internet-based sales processes. We expect to evaluate our needs and the performance of our staff on a periodic basis, and may choose to make further adjustments in the future. If the size of our staff is significantly further reduced, either by our choice or otherwise, we could face significant management, operational, financial and other constraints. For example, it may become more difficult for us to manage existing, or establish new, relationships with clients and other counterparties, or to expand and improve our service offerings. It may also become more difficult for us to implement changes to our business plan or to respond promptly to opportunities in the marketplace. Further, it may become more difficult for us to devote personnel resources necessary to maintain or improve existing systems, including our financial and managerial controls, billing systems, reporting systems and procedures. Thus, any significant amount of staff attrition could cause our business and financial results to suffer.

OUR BUSINESS IS DEPENDENT ON A FEW KEY EMPLOYEES, INCLUDING OUR CHIEF EXECUTIVE OFFICER, ROBERT P. LOCASCIO.

Our future success depends to a significant extent on the continued services of our senior management team, including Robert P. LoCascio, our founder and Chief Executive Officer. The loss of the services of any member of our senior management team, in particular Mr. LoCascio, could have a material and adverse effect on our business, results of operations and financial condition. In addition, in the past year, four of the members of our senior management team (our Chief Technology Officer, Chief Operating Officer, Executive Vice President for Worldwide Sales and Strategic Alliances, and our President/Chief Operating Officer) left LivePerson. Timothy E. Bixby, our Chief Financial Officer, has assumed the additional position of President. Although we do not believe that changes in our senior management team have materially harmed our business, they have distracted us from other important tasks, and we cannot assure you that we will be able to successfully integrate newly-hired senior managers who will work together successfully with our existing management team.

IF WE DO NOT SUCCESSFULLY INTEGRATE POTENTIAL FUTURE ACQUISITIONS, OUR BUSINESS COULD BE HARMED.

In the future, we may acquire or invest in complementary companies, products or technologies. Acquisitions and investments involve numerous risks to us, including:

- difficulties in integrating operations, technologies, products and personnel with LivePerson;
- diversion of financial and management resources from efforts related to the LivePerson services or other then-existing operations; risks of entering new markets beyond providing real-time sales and customer service technology for companies doing business on the Internet;
- potential loss of either our existing key employees or key employees of any companies we acquire; and
- our inability to generate sufficient revenue to offset acquisition or investment costs.

These difficulties could disrupt our ongoing business, distract our management and employees, increase our expenses and adversely affect our results of operations. Furthermore, we may incur debt or issue equity securities to pay for any future acquisitions. The issuance of equity securities could be dilutive to our existing stockholders.

WE COULD FACE ADDITIONAL REGULATORY REQUIREMENTS, TAX LIABILITIES AND OTHER RISKS AS WE EXPAND INTERNATIONALLY.

In July 2000, we commenced operations in the United Kingdom. In addition, in October 2000, we acquired HumanClick, an Israeli-based provider of real-time online customer service applications with more than 100,000 customers around the world and 27 employees at the date of acquisition. There are risks related to doing business in international markets, such as changes in regulatory requirements, tariffs and other trade barriers, fluctuations in currency exchange rates, more stringent rules relating to the privacy of Internet users and adverse tax consequences. In addition, there are likely to be different consumer preferences and requirements in specific international markets. Furthermore, we may face difficulties in staffing and managing any foreign operations. One or more of these factors could harm any future international operations.

IF WE DO NOT SUCCEED IN ATTRACTING NEW PERSONNEL OR RETAINING AND MOTIVATING OUR CURRENT PERSONNEL, OR IF WE ARE UNABLE TO OUTSOURCE CERTAIN FUNCTIONS, OUR BUSINESS, RESULTS OF OPERATIONS AND FINANCIAL CONDITION WILL BE MATERIALLY AND ADVERSELY AFFECTED.

We may be unable to retain our key employees or attract, integrate or retain other highly qualified employees in the future. We have experienced, and expect to continue to experience, difficulty in hiring and retaining highly-skilled senior managers and other employees with appropriate qualifications, such as employees combining customer service backgrounds with technical aptitude, and employees with experience developing scalable computer networks. Also, our workforce reductions announced in the first and third quarters of 2001 may adversely affect the morale of, and our ability to retain, those employees who were not terminated. Because our stock price has suffered a significant decline, the stock options held by our employees and other equity-based compensation may have diminished effectiveness as employee retention devices. If our retention efforts are ineffective, employee turnover could increase and our ability to provide services to our clients would be materially and adversely affected.

OUR REPUTATION DEPENDS, IN PART, ON FACTORS WHICH ARE ENTIRELY OUTSIDE OF OUR CONTROL.

Our services appear as a LivePerson-branded, a HumanClick-branded or a custom-created icon on our clients' Web sites. The customer service operators who respond to the inquiries of our clients' Internet users are employees or agents of our clients; they are not our employees. As a result, we have no way of controlling the actions of these operators. In addition, an Internet user may not know that the operator is an employee or agent of our client, rather than a LivePerson employee. If an Internet user were to have a negative experience in a LivePerson-powered or HumanClick-powered real-time dialogue, it is possible that this experience could be attributed to us, which could diminish our brand and harm our business. Finally, we believe the success of our services depend on the prominent placement of the icon on the client's Web site, over which we also have no control.

WE MAY BE UNABLE TO CONTINUE TO BUILD AWARENESS OF THE LIVEPERSON BRAND NAME.

Building recognition of our brand is critical to establishing the advantage of being among the first application service providers to provide real-time sales and customer service and to attracting new clients. If we fail to successfully promote and maintain our brand or incur significant expenses in promoting our brand without an associated increase in our revenue, our business, results of operations and financial condition may be materially and adversely affected.

WE ARE DEPENDENT ON TECHNOLOGY SYSTEMS THAT ARE BEYOND OUR CONTROL.

The success of the LivePerson services depends in part on our clients' online services as well as the Internet connections of visitors to their Web sites, both of which are outside of our control. As a result, it may be difficult to identify the source of problems if they occur. In the past, we have experienced problems related to connectivity which have resulted in slower than normal response times to Internet user chat requests and messages and interruptions in service. The LivePerson services rely both on the Internet and on our connectivity vendors for data transmission. Therefore, even when connectivity problems are not caused by the LivePerson services, our clients or Internet users may attribute the problem to us. This could diminish our brand and harm our business, divert the attention of our technical personnel from our product development efforts or cause significant client relations problems.

In addition, we rely on two Web hosting service providers for Internet connectivity to deliver our services, power, security and technical assistance. Such providers have, in the past, experienced problems that have resulted in slower than normal response times and interruptions in service. If we are unable to continue utilizing the services of our existing Web hosting providers or if our Web hosting services experience interruptions or delays, it is possible that our business could be harmed.

Our service also depends on many third parties for hardware and software, which products could contain defects. Problems arising from our use of such hardware or software could require us to incur significant costs or divert the attention of our technical personnel from our product development efforts. To the extent any such problems require us to replace such hardware or software, we may not be able to do so on acceptable terms, if at all.

TECHNOLOGICAL DEFECTS COULD DISRUPT OUR SERVICES, WHICH COULD HARM OUR BUSINESS AND REPUTATION.

We face risks related to the technological capabilities of the LivePerson services. We expect the number of simultaneous chats between our clients' operators and Internet users over our system to increase significantly as we expand our client base. Our network hardware and software may not be able to accommodate this additional volume. Additionally, we must continually upgrade our software to improve the features and functionality of the LivePerson services in order to be competitive in our market. If future versions of our software contain undetected errors, our business could be harmed. As a result of major software upgrades at LivePerson, our client sites have, from time to time, experienced slower than normal response times and interruptions in service. If we experience system failures or degraded response times, our reputation and brand could be harmed. We may also experience technical problems in the process of installing and initiating the LivePerson services on new Web hosting services. These problems, if unremedied, could harm our business.

The LivePerson services also depend on complex software which may contain defects, particularly when we introduce new versions onto our servers. We may not discover software defects that affect our new or current services or enhancements until after they are deployed. It is possible that, despite testing by us, defects may occur in the software. These defects could result in:

- damage to our reputation;
- lost sales;
- delays in or loss of market acceptance of our products; and
- unexpected expenses and diversion of resources to remedy errors.

WE MAY BE UNABLE TO RESPOND TO THE RAPID TECHNOLOGICAL CHANGE AND CHANGING CLIENT PREFERENCES IN THE ONLINE SALES AND CUSTOMER SERVICE INDUSTRY AND THIS MAY HARM OUR BUSINESS.

If we are unable, for technological, legal, financial or other reasons, to adapt in a timely manner to changing market conditions in the online sales and customer service industry or our clients' or Internet users' requirements, our business, results of operations and financial condition would be materially and adversely affected. Business on the Internet is characterized by rapid technological change. In addition, the market for online sales and customer service technology is relatively new. Sudden changes in client and Internet user requirements and preferences, frequent new product and service introductions embodying new technologies, such as broadband communications, and the emergence of new industry standards and practices could render the LivePerson services and our proprietary technology and systems obsolete. The rapid evolution of these products and services will require that we continually improve the performance, features and reliability of our services. Our success will depend, in part, on our ability to:

- enhance the features and performance of the LivePerson services;
- develop and offer new services that are valuable to companies doing business on the Internet and Internet users; and
- respond to technological advances and emerging industry standards and practices in a cost-effective and timely manner.

If any of our new services, including upgrades to our current services, do not meet our clients' or Internet users' expectations, our business may be harmed. Updating our technology may require significant additional capital expenditures and could materially and adversely affect our business, results of operations and financial condition.

IF WE ARE NOT COMPETITIVE IN THE MARKET FOR REAL-TIME SALES AND CUSTOMER SERVICE TECHNOLOGY, OUR BUSINESS COULD BE HARMED.

There are no substantial barriers to entry in the real-time sales and customer service technology market, other than the ability to design and build scalable software and, with respect to outsourced solution providers, the ability to design and build scalable network architecture. Established or new entities may enter this market in the near future, including those that provide real-time interaction online, with or without the user's request.

We compete directly with companies focused on technology that facilitates real-time sales and customer service interaction. Our competitors include customer service enterprise software providers such as eGain Communications Corp., eShare Technologies, Inc., Kana Communications, Inc., RightNow Technologies, Inc. and WebLine Communications (a part of Cisco Systems' applications technology group), some of which offer hosted solutions. Furthermore, many of our competitors offer a broader range of customer relationship management products and services than we currently offer. We may be disadvantaged and our business may be harmed if companies doing business on the Internet choose sales and customer service technology from such providers.

We also face potential competition from larger enterprise software companies such as Oracle Corporation and Siebel Systems. In addition, established technology companies, including IBM, Hewlett-Packard and Microsoft, may also leverage their existing relationships and capabilities to offer real-time sales and customer service applications.

Finally, we face competition from clients and potential clients that choose to provide a real-time sales and customer service solution in-house as well as, to a lesser extent, traditional offline customer service solutions, such as telephone call centers.

We believe that competition will increase as our current competitors increase the sophistication of their offerings and as new participants enter the market. Many of our current and potential competitors have:

- longer operating histories;
- larger client bases;
- greater brand recognition;
- more diversified lines of products and services; and

- significantly greater financial, marketing and other resources.

These competitors may enter into strategic or commercial relationships with larger, more established and better-financed companies. These competitors may be able to:

- undertake more extensive marketing campaigns;
- adopt more aggressive pricing policies; and
- make more attractive offers to businesses to induce them to use their products or services.

Any delay in the general market acceptance of the real-time sales and customer service solution business model would likely harm our competitive position. Delays would allow our competitors additional time to improve their service or product offerings, and would also provide time for new competitors to develop real-time sales and customer service applications and solicit prospective clients within our target markets. Increased competition could result in pricing pressures, reduced operating margins and loss of market share.

OUR BUSINESS AND PROSPECTS WOULD SUFFER IF WE ARE UNABLE TO PROTECT AND ENFORCE OUR INTELLECTUAL PROPERTY RIGHTS.

Our success and ability to compete depend, in part, upon the protection of our intellectual property rights relating to the technology underlying the LivePerson services. We currently have a U.S. patent application pending relating to such technology and have not filed applications outside the U.S. The U.S. Patent and Trademark Office has issued a non-final office action rejecting our patent application. We have not yet responded to the office action; however, it is possible that:

- our pending patent application may not result in the issuance of a patent;
- any patent issued may not be broad enough to protect our intellectual property rights;
- any patent issued could be successfully challenged by one or more third parties, which could result in our loss of the right to prevent others from exploiting the invention claimed in the patent;
- current and future competitors may independently develop similar technology, duplicate our service or design around any patent we may have; and
- effective patent protection may not be available in every country in which we do business.

Further, to the extent that the invention described in our U.S. patent application was made public prior to the filing of the application, we may not be able to obtain patent protection in certain foreign countries. We also rely upon copyright, trade secret and trademark law, written agreements and common law to protect our proprietary technology, processes and other intellectual property, to the extent that protection is sought or secured at all. We currently have a common law trademark, “LivePerson”, one registered U.S. trademark, and one pending U.S. trademark application. Our trademark “LivePerson Give Your Site A Pulse” is registered on the principal register. Our pending trademark application is for the use of the “LivePerson” trademark in the category of services. This application has been allowed on the supplemental register. We do not have any trademarks registered outside the U.S., nor do we have any trademark applications pending outside the U.S. We cannot assure you that any steps we might take will be adequate to protect against infringement and misappropriation of our intellectual property by third parties. Similarly, we cannot assure you that third parties will not be able to independently develop similar or superior technology, processes or other intellectual property. The unauthorized reproduction or other misappropriation of our intellectual property rights could enable third parties to benefit from our technology without paying us for it. If this occurs, our business, results of operations and financial condition would be materially and adversely affected. In addition, disputes concerning the ownership or rights to use intellectual property could be costly and time-consuming to litigate, may distract management from operating our business and may result in our loss of significant rights.

OUR PRODUCTS AND SERVICES MAY INFRINGE UPON INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES AND ANY INFRINGEMENT COULD REQUIRE US TO INCUR SUBSTANTIAL COSTS AND MAY DISTRACT OUR MANAGEMENT.

Although we attempt to avoid infringing known proprietary rights of third parties, we are subject to the risk of claims alleging infringement of third-party proprietary rights. If we infringe upon the rights of third parties, we may not be able to obtain licenses to use those rights on commercially reasonable terms. In that event, we would need to undertake substantial reengineering to continue offering our services. Any effort to undertake such reengineering might not be successful. In addition, any claim of infringement could cause us to incur substantial costs defending against the claim, even if the claim is invalid, and could distract our management from our business. Furthermore, a party making such a claim could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from selling our products. If any of these events occurred, our business, results of operations and financial condition would be materially and adversely affected.

WE MAY BE LIABLE IF THIRD PARTIES MISAPPROPRIATE PERSONAL INFORMATION BELONGING TO OUR CLIENTS’ INTERNET USERS.

We maintain dialogue transcripts of the text-based chats between our clients and Internet users and store on our servers information supplied voluntarily by these Internet users in exit surveys which follow the chats. We provide this information to our clients to allow them to perform Internet user analyses and monitor the effectiveness of our services. Some of the information we collect in text-based chats and exit surveys may include personal information, such as contact and demographic information. If third parties were able to penetrate our network security or otherwise misappropriate personal information relating to our clients’ Internet users or the text of customer service inquiries, we could be subject to liability. We could be subject to negligence claims or claims for misuse of personal information. These claims could result in litigation which could have a material adverse effect on our business, results of operations and financial condition. We may incur significant costs to protect against the threat of security breaches or to alleviate problems caused by such breaches.

RISKS RELATED TO OUR RECENT ACQUISITION OF HUMANCLICK AND ITS BUSINESS

POLITICAL, ECONOMIC AND MILITARY CONDITIONS IN ISRAEL COULD NEGATIVELY IMPACT OUR HUMANCLICK BUSINESS.

Our HumanClick facilities are located in Israel. Although substantially all of our sales are being made to customers outside Israel, we are directly influenced by the political, economic and military conditions affecting Israel. Since the establishment of the State of Israel in 1948, a number of armed conflicts have taken place between Israel and its Arab neighbors and a state of hostility, which varies in degree and intensity, has caused security and economic problems in Israel. Any major hostilities involving Israel or the interruption or curtailment of trade between Israel and its present trading partners could adversely affect our operations. We cannot assure you that ongoing or revived hostilities related to Israel will not have a material adverse effect on our business. Several Arab countries still restrict business with Israeli companies. We could be adversely affected by restrictive laws or policies directed towards Israel and Israeli businesses.

IF WE DO NOT SUCCESSFULLY INTEGRATE HUMANCLICK OR THE MERGER'S BENEFITS DO NOT MEET THE EXPECTATIONS OF FINANCIAL OR INDUSTRY ANALYSTS, THE MARKET PRICE FOR OUR COMMON STOCK MAY DECLINE.

On October 12, 2000, we acquired HumanClick with the expectation that this merger will result in significant benefits. We have no experience in managing a customer base as large as HumanClick's and very little direct experience in offering real-time, online customer service applications to small and mid-sized businesses. Furthermore, HumanClick's principal offices are located in Israel while our principal offices are located in New York; managing the business in a coordinated fashion may therefore require additional management resources. We will need to overcome these significant issues, among others, in order to realize any benefits or synergies from the mergers. Our successful execution of these post-merger events will involve considerable risk and may not be successful.

The market price of our common stock may decline, and we may lose key personnel and customers as a result of this merger if:

- we do not successfully integrate operations and personnel of HumanClick;
- we do not achieve the perceived benefits of the merger as rapidly or to the extent anticipated by financial or industry analysts; or
- the effect of the merger on our financial results is not consistent with the expectations of financial or industry analysts.

IF THE COSTS ASSOCIATED WITH THE HUMANCLICK ACQUISITION EXCEED THE BENEFITS REALIZED, WE MAY EXPERIENCE INCREASED LOSSES.

We cannot assure you that we will ever generate sufficient revenue from the sale of HumanClick's services, which have only recently begun to generate revenue, to offset expenses associated with the acquisition. Accordingly, if the benefits of this acquisition do not exceed the costs associated with it, including dilution to our stockholders resulting from the issuance of up to approximately 4.5 million shares of our common stock in the acquisition, our financial results could be adversely affected.

RISKS RELATED TO OUR INDUSTRY

WE ARE DEPENDENT ON CONTINUED GROWTH IN THE USE OF THE INTERNET AS A MEDIUM FOR COMMERCE.

We cannot be sure that a sufficiently broad base of consumers will adopt, and continue to use, the Internet as a medium for commerce. Our long-term viability depends substantially upon the widespread acceptance and development of the Internet as an effective medium for consumer commerce. Use of the Internet to effect retail transactions is at an early stage of development. Convincing our clients to offer real-time sales and customer service technology may be difficult.

Demand for recently introduced services and products over the Internet is subject to a high level of uncertainty. Few proven services and products exist. The development of the Internet into a viable commercial marketplace is subject to a number of factors, including:

- continued growth in the number of users;
- concerns about transaction security;
- continued development of the necessary technological infrastructure;
- development of enabling technologies;
- uncertain and increasing government regulation; and
- the development of complementary services and products.

WE DEPEND ON THE CONTINUED VIABILITY OF THE INFRASTRUCTURE OF THE INTERNET.

To the extent that the Internet continues to experience growth in the number of users and frequency of use by consumers resulting in increased bandwidth demands, we cannot assure you that the infrastructure for the Internet will be able to support the demands placed upon it. The Internet has experienced outages and delays as a result of damage to portions of its infrastructure. Outages or delays could adversely affect online sites, email and the level of traffic on the Internet. We also depend on Internet service providers that provide our clients and Internet users with access to the LivePerson services. In the past, users have experienced difficulties due to system failures unrelated to our service. In addition, the Internet could lose its viability due to delays in the adoption of new standards and protocols required to handle increased levels of Internet activity. Insufficient availability of telecommunications services to support the Internet also could result in slower response times and negatively impact use of the Internet generally, and our clients' sites (including the LivePerson or HumanClick pop-up dialogue windows) in particular. If the use of the Internet fails to grow or grows more slowly than expected, if the infrastructure for the Internet does not effectively support growth that may occur or if the Internet does not become a viable commercial marketplace, we may not achieve profitability and our business, results of operations and financial condition will suffer.

WE MAY BECOME SUBJECT TO BURDENSOME GOVERNMENT REGULATION AND LEGAL UNCERTAINTIES.

Laws and regulations directly applicable to Internet communications, commerce and advertising are becoming more prevalent. Recently, the United States Congress enacted Internet legislation relating to issues such as children's privacy, copyright and taxation. The children's privacy legislation imposes restrictions on the collection, use and distribution of personal identification information obtained online from children under the age of 13. The copyright legislation establishes rules governing the liability of Internet service providers and Web site publishers for the copyright infringement of Internet users. The tax legislation places a moratorium on certain forms of Internet taxes for three years; however, this moratorium does not apply to sales and use taxes. Additionally, the European Union has adopted a directive addressing data privacy which imposes restrictions on the collection, use and processing of personal data. Existing legislation and any new legislation could hinder the growth in use of the Internet generally and decrease the acceptance of the Internet as a medium for communication, commerce and advertising. The laws governing the Internet remain largely unsettled, even in areas where legislation has been enacted. It may take several years to determine whether and how existing laws such as those governing intellectual property, taxation and personal privacy apply to the Internet and Internet services. In addition, the growth and development of the market for Internet commerce may prompt calls for more stringent consumer protection laws, both in the U.S. and abroad, which may impose additional burdens on companies conducting business online. Our business, results of operations and financial condition could be materially and adversely affected if we do not comply with recent legislation or laws or regulations relating to the Internet that are adopted or modified in the future.

For example, the LivePerson services allow our clients to capture and save information about Internet users, possibly without their knowledge. Additionally, our service uses a tool, commonly referred to as a "cookie," to uniquely identify each of our clients' Internet users. To the extent that additional legislation regarding Internet user privacy is enacted, such as legislation governing the collection and use of information regarding Internet users through the use of cookies, the effectiveness of the LivePerson services could be impaired by restricting us from collecting information which may be valuable to our clients. The foregoing could harm our business, results of operations and financial condition.

SECURITY CONCERNS COULD HINDER COMMERCE ON THE INTERNET.

User concerns about the security of confidential information online has been a significant barrier to commerce on the Internet and online communications. Any well-publicized compromise of security could deter people from using the Internet or other online services or from using them to conduct transactions that involve the transmission of confidential information. If Internet commerce is inhibited as a result of such security concerns, our business would be harmed.

OTHER RISKS

OUR EXECUTIVE OFFICERS, DIRECTORS AND 5% OR GREATER STOCKHOLDERS WILL BE ABLE TO INFLUENCE MATTERS REQUIRING A STOCKHOLDER VOTE.

Our executive officers, directors and stockholders who each own greater than 5% of the outstanding common stock and their affiliates, in the aggregate, beneficially own approximately 35.8% of our outstanding common stock. As a result, these stockholders, if acting together, will be able to significantly influence all matters requiring approval by our stockholders, including the election of directors and approval of significant corporate transactions. This concentration of ownership could also have the effect of delaying or preventing a change in control.

THE FUTURE SALE OF SHARES OF OUR COMMON STOCK MAY NEGATIVELY AFFECT OUR STOCK PRICE.

If our stockholders sell substantial amounts of our common stock, including shares issuable upon the exercise of outstanding options and warrants in the public market, or if our stockholders are perceived by the market as intending to sell substantial amounts of our common stock, the market price of our common stock could fall. These sales also might make it more difficult for us to sell equity securities in the future at a time and price that we deem appropriate. "Affiliates" of LivePerson may not sell their shares of our common stock except pursuant to:

- an effective registration statement under the Securities Act covering the resale of those shares;
- an exemption under Rule 144 of the Securities Act; or
- another applicable exemption under the Securities Act.

Persons who may be deemed to be affiliates of LivePerson include those persons or entities who directly or indirectly control LivePerson, such as our directors, executive officers and significant stockholders.

OUR STOCK PRICE HAS BEEN HIGHLY VOLATILE AND MAY EXPERIENCE EXTREME PRICE AND VOLUME FLUCTUATIONS IN THE FUTURE WHICH COULD REDUCE THE VALUE OF YOUR INVESTMENT AND SUBJECT US TO LITIGATION.

Fluctuations in market price and volume are particularly common among securities of Internet and other technology companies. The market price of our common stock has fluctuated significantly in the past and may continue to be highly volatile, with extreme price and volume fluctuations, in response to the following factors, some of which are beyond our control:

- variations in our quarterly operating results;
- changes in market valuations of publicly-traded companies in general and Internet and other technology companies in particular;
- our announcements of significant client contracts, acquisitions and our ability to integrate these acquisitions, strategic partnerships, joint ventures or capital commitments;
- our failure to complete significant sales;
- additions or departures of key personnel;
- future sales of our common stock;

- changes in financial estimates by securities analysts; and
- terrorist attacks against the United States, the engagement in hostilities or an escalation of hostilities by or against the United States or the declaration of war or national emergency by the United States.

In the past, companies that have experienced volatility in the market price of their stock have been the subject of securities class action litigation. We may in the future be the target of similar litigation, which could result in substantial costs and distract management from other important aspects of operating our business.

ANTI-TAKEOVER PROVISIONS IN OUR CHARTER DOCUMENTS AND DELAWARE LAW MAY MAKE IT DIFFICULT FOR A THIRD PARTY TO ACQUIRE US.

Provisions of our amended and restated certificate of incorporation, such as our staggered board of directors, the manner in which director vacancies may be filled and provisions regarding the calling of stockholder meetings, could make it more difficult for a third party to acquire us, even if doing so might be beneficial to our stockholders. In addition, provisions of our amended and restated bylaws, such as advance notice requirements for stockholder proposals, and applicable provisions of Delaware law, such as the application of business combination limitations, could impose similar difficulties. Further, provisions of our amended and restated certificate of incorporation relating to directors, stockholder meetings, limitation of director liability, indemnification and amendment of the certificate of incorporation and bylaws may not be amended without the affirmative vote of not less than 66.67% of the outstanding shares of our capital stock entitled to vote generally in the election of directors (considered for this purpose as a single class) cast at a meeting of our stockholders called for that purpose. Our amended and restated bylaws may not be amended without the affirmative vote of at least 66.67% of our board of directors or without the affirmative vote of not less than 66.67% of the outstanding shares of our capital stock entitled to vote generally in the election of directors (considered for this purpose as a single class) cast at a meeting of our stockholders called for that purpose.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

CURRENCY RATE FLUCTUATIONS

Though September 30, 2001, our results of operations, financial position and cash flows have not been materially affected by changes in the relative values of non-U.S. currencies to the U.S. dollar. The functional currency for our operations in the United Kingdom is the U.K. pound (sterling) and the functional currency of our wholly-owned Israeli subsidiary, HumanClick Ltd., is the U.S. dollar. We do not use derivative financial instruments to limit our foreign currency risk exposure.

COLLECTION RISK

Our accounts receivable are subject, in the normal course of business, to collection risks. We regularly assess these risks and have established policies and business practices to protect against the adverse effects of collection risks. In the nine months ended September 30, 2001, we increased our allowance for doubtful accounts to $1,437,000 from $577,000 at December 31, 2000, principally due to an increase in accounts receivable and deteriorating aging due to slower collections. A significant portion of this increase was due to overdue accounts receivable balances for our Internet-related clients with limited operating histories, many of which began to face difficult market conditions in the past year, and, in particular, during the last six months. We do not anticipate any material losses in this area.

INTEREST RATE RISK

Our investments consist of cash and cash equivalents. Therefore, changes in the market's interest rates do not affect in any material respect the value of the investments as recorded by us.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None.

ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

(a) Not applicable.

(b) Not applicable.

(c) Recent Sales of Unregistered Securities

On May 10, 2001, we issued 10,000 shares of our common stock in a private transaction with a former employee in connection with a release of potential claims against us. The issuance was made pursuant to the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended.

(d) Use of Proceeds from Registered Securities

On April 12, 2000, we consummated our initial public offering of 4,000,000 shares of common stock, for which trading on the Nasdaq National Market commenced on April 7, 2000, pursuant to the Registration Statement on Form S-1, file number 333-95689, which was declared effective by the Securities and Exchange Commission on April 6, 2000. The managing underwriters of the offering were Chase Securities Inc., Thomas Weisel Partners LLC and PaineWebber Incorporated. The offering did not terminate until after the sale of all securities registered. The aggregate price of the offering shares was $32.0 million and our net proceeds were approximately $28.1 million after underwriters' discounts and commissions of approximately $2.2 million and other expenses of approximately $1.7 million. Except for salaries, and reimbursements for travel expenses and other out-of-pocket costs incurred in the ordinary course of business, none of the proceeds from the offering have been paid by us, directly or indirectly, to any of our directors or officers or any of their associates, or to any persons owning ten percent or more of our outstanding stock or to any of our affiliates. As of September 30, 2001, we have used approximately $15.8 million of the net proceeds from the offering for product development costs, sales and marketing activities and working capital and invested the remainder in cash and cash equivalents pending its use for other purposes.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

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

We held a Special Meeting of Stockholders on September 11, 2001. The stockholders approved a proposal to amend our Fourth Amended and Restated Certificate of Incorporation to effect a one-for-fifteen reverse split of our issued and outstanding shares of common stock. The vote was 26,848,619 shares in favor of the proposal, 190,763 shares against and 2,580 shares abstaining. Our Board of Directors, acting pursuant to authority granted by the proposal, determined not to effect the reverse stock split.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS AND REPORT ON FORM 8-K

(a) The following exhibit is filed as part of this Quarterly Report on Form 10-Q:

10.5.1 Surrender Agreement between Vornado 330 West 34th Street L.L.C. and LivePerson, Inc., dated as of September 20, 2001

(b) On September 7, 2001, we filed a current report on Form 8-K (Item 5), dated September 4, 2001, announcing our receipt of a letter from The Nasdaq Stock Market, Inc. relating to the failure to maintain a minimum market value of public float of our common stock of $5,000,000.

SIGNATURES

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

LIVEPERSON, INC.
(Registrant)

Date: November 14, 2001	By:	/s/ ROBERT P. LOCASCIO
	Name:	Robert P. LoCascio
	Title:	Chief Executive Officer (duly authorized officer)
Date: November 14, 2001	By:	/s/ TIMOTHY E. BIXBY
	Name:	Timothy E. Bixby
	Title:	President, Chief Financial Officer and Secretary (principal financial and accounting officer)

EXHIBIT INDEX

EXHIBIT

10.5.1 Surrender Agreement Between Vornado 330 West 34th Street L.L.C. and LivePerson, Inc., dated as of September 20, 2001.

EXHIBIT 10.5.1

SURRENDER AGREEMENT

THIS SURRENDER AGREEMENT (this "Agreement"), is made as of the 20th day of September, 2001, by and between **VORNADO 330 WEST 34TH STREET L.L.C.,** a Delaware limited liability company, having an office c/o Vornado Office Management LLC, 330 Madison Avenue, New York, New York 10017 ("Landlord"), and **LIVEPERSON INC.**, a Delaware corporation, having an office at 330 West 34th Street, New York, New York 10001 ("Tenant").

WITNESSETH:

WHEREAS, by Agreement of Lease, dated as of March 10, 2000 (the "Lease"), Landlord did demise and let unto Tenant, and Tenant did hire and take from Landlord, the Seventh Floor Space and the Tenth Floor Space (the Seventh Floor Space and the Tenth Floor Space are sometimes collectively referred to herein as the "Premises"), as more particularly identified in the Lease, of the building known as and by the street address of 330 West 34th Street, New York, New York; and

WHEREAS, Tenant desires to surrender to Landlord the Lease and the Premises and Landlord agrees to accept such surrender, all upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and of the sum of Ten Dollars ($10) paid by Tenant to Landlord, and for other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their legal representatives, successors and assigns, hereby agree as follows:

1. Definitions. All capitalized terms used herein shall have the meanings ascribed to them in the Lease, unless otherwise defined herein.

2. Surrender. (a) Effective as of the date hereof (the "Surrender Date"), Tenant shall vacate, quit and surrender possession of the Premises to Landlord, and to the intent and purpose that the remainder of the term of the Lease be wholly merged and extinguished effective as of the Surrender Date, Tenant hereby gives, grants and surrenders to Landlord all of Tenant's right, title and interest in, to and under the Lease. As of the Surrender Date, the Lease and the term thereof and all rights of Tenant thereunder shall expire and terminate with the same effect as if the Surrender Date was the Expiration Date as set forth in the Lease. The Tenth Floor Space shall be surrendered in “as is” condition, except for the requirements that Tenant leave the Tenth Floor Space in broom clean condition and that Tenant leave all of its furniture (excluding ten (10) six foot (6') high filing cabinets) in the Tenth Floor Space. The Seventh Floor Space shall be surrendered in its “as is” condition as of the Surrender Date.

(b) Tenant represents and warrants to Landlord that: (1) Tenant is the present tenant under the Lease and Tenant has not assigned, conveyed, encumbered, pledged, sublet or otherwise transferred, in whole or in part, its interest in the Lease, nor shall Tenant do any of the foregoing prior to the Surrender Date, (2) there are no persons or entities claiming under Tenant, or who or which may claim under Tenant, any rights of possession with respect to the Premises, and (3) Tenant has the right, power and authority to execute and deliver this Agreement and to perform Tenant's obligations hereunder, and this Agreement is a valid and binding obligation of Tenant enforceable against Tenant in accordance with the terms hereof. The foregoing representations and warranties shall survive the Surrender Date.

(c) Effective as of the Surrender Date, Tenant shall release Landlord and its successors and assigns from all claims, obligations and liabilities of every kind and nature whatsoever, arising out of, or in connection with, the Premises or the Lease. Notwithstanding the foregoing, Landlord shall not be released from any obligation, covenant, representation or warranty contained in this Agreement and the Lease, which by the terms of this Agreement or the Lease is specifically stated to survive the surrender of the Lease.

(d) Effective as of the Surrender Date, Landlord shall release Tenant and its successors and assigns from all claims, obligations and liabilities of every kind and nature whatsoever arising out of, or in connection with, the Premises or the Lease relating to the period from and after the Surrender Date. Notwithstanding the foregoing, Tenant shall not be released from any obligation, covenant, representation or warranty contained in this Agreement and the Lease, which by the terms of this Agreement or the Lease is specifically stated to survive the surrender of the Premises and the termination of the Lease.

(e) Tenant shall pay to Landlord on the Surrender Date (1) an amount equal to Fifteen Thousand Dollars ($15,000), in the form of a bank check or by wire, as consideration for Landlord’s execution of this Agreement and acceptance of the Premises, and (2) Tenant hereby waives and hereby disclaims any right, title and interest Tenant may have for any and all sums remaining in the Tenth Floor Space Tenant Fund, which the parties agree is approximately One Hundred Forty Thousand and 00/100 Dollars ($140,000.00). If, at any time after the Surrender Date, it shall be determined that any Fixed Rent, additional rent, all other items of rental or other sums and charges shall have been due and payable for any period prior to the Surrender Date, Tenant shall pay such amounts to Landlord within ten (10) days after rendition of a bill therefor. In addition, the obligation of Tenant under the Lease to pay escalations of any sort with respect to the Premises (including, but not limited to the Tax Payment, the Operating Expense Payment and payments on account of electricity, whether or not such payments are called additional rent), which shall have accrued prior to the Surrender Date, shall survive the Surrender Date. Tenant acknowledges that it has paid Rental through September 30, 2001, and that even though Tenant is surrendering the Premises as of the Surrender Date, there shall be no apportionment of Rental for the month of September 2001, nor shall any prepaid portion of Rental be refunded to Tenant. The terms and provisions of this Paragraph 2(e) shall survive the surrender of the Premises. Notwithstanding the foregoing, Landlord and Tenant acknowledge that if this Agreement is executed and delivered after September 30, 2001, then for any period commencing on October 1, 2001, and continuing through and until the date this Agreement is executed and delivered, Fixed Rent and additional rent shall be adjourned, and Tenant shall only be obligated for the payment of electricity and other similar charges for other utilities; provided however, if the Condition is not satisfied or waived by Landlord and this Agreement becomes null and void, Tenant agrees to pay to Landlord within two (2) days of the termination of this Agreement, any Fixed Rent and additional rent due for the period commencing October 1, 2001, through and including the date this Agreement terminates. In such event Tenant’s obligation to pay Fixed Rent, additional rent and other charges shall continue from and after the date this Agreement terminates, through and including the end of the Term.

(f) Tenant (1) shall pay all transfer taxes, if any, imposed by any governmental authority in connection with the surrender of the Premises, including, without limitation, any City Transfer Tax and State Transfer Tax (each as hereinafter defined), and (2) does hereby agree to indemnify and hold Landlord harmless of and from any transfer taxes imposed by any governmental authority by reason of the surrender of the Premises including, without limitation, the City Transfer Tax and State Transfer Tax, if any, and all expenses related thereto, including, without limitation, reasonable attorneys' fees and disbursements. Landlord and Tenant shall each complete, execute and deliver, within seven (7) days after request by either party of the other party, any questionnaire, affidavit or document with respect to the tax imposed by Title 11, Chapter 21 of the New York City Administrative Code (the "City Transfer Tax") and Article 31 of the Tax Law of the State of New York (the "State Transfer Tax"), required to be completed, executed and delivered by Landlord and Tenant with respect to the transactions contemplated by this Amendment, and the taxes, if any, shown thereby to be due shall be paid by Tenant when required by applicable law or regulation. The provisions of this Paragraph 2(f) shall survive the Surrender Date.

(g) If as of the Surrender Date Tenant has (i) fully satisfied its obligations under section 2(e) hereof, and (ii) delivered a Bill of Sale for all of the furniture located in the Premises to Bank of New York, then on the Surrender Date, Landlord shall deliver to Tenant the Letters of Credit securing the Seventh Floor Space Security Amount and the Tenth Floor Space Security Amount and a letter to the institution issuing the Letters of Credit stating that Landlord has no further right, title or interest in the Letters of Credit.

(h) Landlord and Tenant, each upon the request of the other, at any time and from time to time hereafter and without further consideration, shall execute, acknowledge and deliver to the other any instruments or documents, or take such further action, as shall be reasonably requested or as may be necessary to more effectively assure the surrender of the Premises, and the full benefits intended to be created by this Agreement.

3. Conditions. Landlord and Tenant hereby expressly acknowledge and agree that this Agreement is conditioned upon the unconditional execution and delivery by Landlord and Bank of New York (“BONY") of a license agreement between Landlord and BONY with respect to the Premises and the seventeenth (17th) and eighteenth (18th) floors of the Building on terms and conditions acceptable to Landlord in its sole discretion, (the aforesaid event being hereinafter referred to as the "Condition"), and shall be of no force and effect unless and until the Condition is satisfied; it being understood and agreed however, that if for any reason whatsoever, the Condition is not satisfied or waived by Landlord on or before the date which is seven (7) days after the date hereof, this Agreement shall be void ab initio, and be of no force and effect, and Landlord and Tenant shall have no obligations or liability to the other respective parties under this Agreement.

4. Broker. Tenant represents and warrants to Landlord that it has not dealt with any broker, finder or like agent in connection with this Agreement other than Cushman & Wakefield, Inc. (“Broker”). Tenant does hereby indemnify and hold Landlord harmless of and from any and all losses, costs, damages or expenses (including, without limitation, attorneys fees and disbursements) incurred by reason of any claim of or liability to any broker, finder or like agent (including Broker), who shall claim to have dealt with Tenant in connection herewith. Tenant shall pay Broker all commissions, fees and other compensation in connection with this Agreement (but not in connection with the license agreement more particularly described in Paragraph 3 hereof) pursuant to a separate agreement between Tenant and Broker. The provisions of this Paragraph 4 shall survive the surrender of the Premises and the termination of the Lease.

5. Authorization. Each party represents and warrants to the other party that its execution and delivery of this Agreement has been duly authorized and that the person executing this Agreement on behalf of such party has been duly authorized to do so, and that no other action or approval is required with respect to this transaction.

6. Prior Agreement. The parties agree that this Agreement supercedes the Partial Surrender and Amendment of Lease between Landlord and Tenant dated June 14, 2001.

7. Counterparts. This Surrender Agreement may be executed in two or more counterparts, each of which, when so executed and delivered shall be deemed to be an original, but in all such counterparts shall constitute one and the same agreement.

8. Binding Effect. This Surrender Agreement shall not be binding upon or enforceable against Landlord unless and until Landlord, it its sole discretion, shall have executed and unconditionally delivered to Tenant an executed counterpart of this Agreement.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

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

VORNADO 330 WEST 34TH STREET L.L.C., Landlord

By: Vornado Realty L.P., sole member

By: Vornado Realty Trust, general partner

By: /s/ JOSEPH MACNOW
Joseph Macnow
Executive Vice President - Finance and
Administration and Chief Financial Officer

LIVEPERSON, INC., Tenant

By: /s/ TIMOTHY E. BIXBY
Name: Timothy Bixby
Title: President and Chief Financial Officer

Fed. I.D. No.: 13-3861628