SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

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

FOR THE FISCAL YEAR ENDED	COMMISSION FILE NUMBER
DECEMBER 31, 1999	0-23490

VIVUS INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	94-3136179
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(IRS EMPLOYER IDENTIFICATION NUMBER)

1172 CASTRO STREET, MOUNTAIN VIEW, CALIFORNIA 94040
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES AND ZIP CODE)

(650) 934-5200
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT:

COMMON STOCK, $.001 PAR VALUE

PREFERRED SHARE PURCHASE RIGHTS

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 [X] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

As of March 3, 2000, the aggregate market value of the voting stock held by non-affiliates of the Registrant was $246,787,416 (based upon the closing sales price of such stock as reported by The Nasdaq Stock Market on such date). Shares of Common Stock held by each officer, director, and holder of 5 percent or more of the outstanding Common Stock on that date have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of March 3, 2000, the number of outstanding shares of the Registrant's Common Stock was 32,219,353.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Items 10, 11, 12 and 13 of Form 10-K is incorporated by reference from the Registrant's proxy statement for the 2000 Annual Stockholders' Meeting (the "Proxy Statement"), which will be filed with the Securities and Exchange Commission within 120 days after the close of the Registrant's fiscal year ended December 31, 1999.

VIVUS, INC.

FISCAL 1999 FORM 10-K

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This Form 10-K contains "forward-looking" statements about future financial results, future products and other events that have not yet occurred. For example, statements like we "expect," we "anticipate" or we "believe" are forward-looking statements. Investors should be aware that actual results may differ materially from our expressed expectations because of risks and uncertainties about the future. We will not necessarily update the information in this Form 10-K if any forward-looking statement later turns out to be inaccurate. Details about risks affecting various aspects of our business are discussed throughout this Form 10-K. Investors should read all of these risks carefully, and should pay particular attention to risks affecting the following areas: future capital needs and uncertainty of additional financing (page 12); history of losses and limited operating history (pages 12 and 13); limited sales and marketing experience (page 10); dependence on third parties (pages 11 and 12); intense competition (page 11); dependence on key personnel (page 12); and other risk factors as stated (pages 10 through 18).

PART I

ITEM 1. BUSINESS

COMPANY OVERVIEW

VIVUS, Inc. ("VIVUS" or the "Company") is the developer and manufacturer of MUSE(R) (alprostadil) and ACTIS(R), two advancements in the treatment of men with erectile dysfunction ("ED"), also known as impotence. The Company's objective is to become a global leader in the development and commercialization of innovative therapies for the treatment of sexual dysfunction and urologic disorders in men and women. VIVUS has on-going research and development ("R&D") programs in male ED, female sexual dysfunction ("FSD"), male premature ejaculation ("PE"), and intends to pursue targeted technology acquisitions to expand its R&D pipeline. The Company intends to market and sell its products through distribution, co-promotion or license agreements with corporate partners. In December 1999, the company filed a New Drug Application ("NDA") with the U.S. Food and Drug Administration ("FDA") for ALIBRA(R), its second-generation male ED treatment.

VIVUS STRATEGY

The Company's objective is to become a global leader in the development and commercialization of innovative therapies for the treatment of sexual dysfunction and other urologic disorders in men and women. The Company is pursuing this objective through the following strategies:

Targeted Research and Development (R&D) Efforts

The Company will exploit its expertise and patent portfolio by focusing its R&D activities on sexual dysfunction, premature ejaculation and other urologic disorders. In order to expand its R&D pipeline, the Company also intends to pursue targeted acquisitions of technologies that are well suited to its core expertise in drug development.

Focus on Development and Regulatory Review

The Company will continue to focus its R&D efforts on developing new patentable uses of known pharmacologic agents for which significant safety data already exists. The Company believes that such agents present a lower development risk profile and may progress more rapidly through the clinical development and regulatory process than agents without pre-existing data.

Maintain Proprietary Technology

The Company will continue to invest in building its patent portfolio. Currently, VIVUS has been awarded 13 patents and has 19 patent applications pending in the United States. The Company also has 44 patents granted and 22 patents pending internationally.

Partnering Strategy

VIVUS is seeking a marketing partner(s) for MUSE and ALIBRA in the United States, Europe, Japan and South America. The Company has entered into an international marketing agreement for its products with Janssen Pharmaceutica ("Janssen") that includes multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa.

1999 HIGHLIGHTS

First Quarter 1999

The Company achieved profitability for the second consecutive quarter after restructuring in the third quarter of 1998, earning $0.12 per share. Cash, cash equivalents and available-for-sale securities increased by $12 million from December 31, 1998, to $36 million.

The Company was granted a new patent for the "Treatment of Female Sexual Dysfunction" by the U.S. Patent Office, providing broad patent protection for the commercialization of topical formulations of vasodilating agents and steroid hormones for the treatment of sexual dysfunction affecting women.

The Company was granted a new patent for the "Method and Composition for Treating Erectile Dysfunction" by the U.S. Patent Office, providing broad patent protection for the commercialization of ALIBRA, its second-generation transurethral treatment for male ED.

The Company appointed Richard Walliser as its Chief Financial Officer, and named Mario Rosati, a partner at Wilson, Sonsini, Goodrich & Rosati, and Mark Logan, Chairman, President and Chief Executive Officer of VISX, Inc. to the Company's Board of Directors.

The Company announced that its abstract "Does Renewed Sexual Activity Increase Cardiac Morbidity? A Meta-Analysis of the Safety Profile with Transurethral Alprostadil (MUSE)" was selected by the XIVth Congress of the European Association of Urology for highlight during a press conference on April 10, 1999 in Stockholm, Sweden. The abstract was presented by co-author Gordon Williams, MD, Consultant Urologist at the Hammersmith Hospital, London.

The Company received $4 million in milestone payments for the approval of MUSE marketing licenses in France and Germany.

Second quarter 1999

The Company achieved profitability for the third consecutive quarter after restructuring in 1998, earning $0.01 per share.

The Company reached a settlement of the shareholder class action lawsuits. The settlement for $6 million was funded by insurance proceeds of $5.4 million and by the Company contributing 120,000 shares of common stock.

Linda M. Dairiki Shortliffe, M.D., Professor at Stanford University School of Medicine and Chair of the Urology Department, was elected to the Company's Board of Directors at the annual meeting of stockholders.

Tulane University School of Medicine reported data at the 94th annual meeting of the American Urologic Association confirming the safety and efficacy of MUSE for patients who were unsuccessful with Viagra(R) (sildenafil citrate) due to lack of efficacy or side effects of treatment.

The Company established a limited U.S. sales organization targeting major accounts.

Third Quarter 1999

The Company achieved profitability for the fourth consecutive quarter after restructuring in 1998, earning $0.03 per share.

The Company received a $2 million milestone payment for the MUSE marketing license approval in Spain.

The Company terminated its license agreement with Albert Einstein College of Medicine of Yeshiva University for the development of gene therapy for the treatment of ED, a strategic decision based on the development risks involved and the amount of funding and time required to potentially bring a product to market.

Fourth Quarter 1999

The Company achieved profitability for the fifth consecutive quarter after restructuring in 1998, earning $0.43 per share. Cash, cash equivalents and available-for-sale securities at December 31, 1999 increased $16.5 million from December 31, 1998, while total liabilities decreased $5.1 million during the same period.

The Company reached agreement with AstraZeneca regarding the financial obligations related to the return of marketing and distribution rights for MUSE in Europe, South America, Central America, Australia, and New Zealand. This resulted in the Company recording $20 million in revenue in the fourth quarter 1999.

The Company filed an NDA for ALIBRA with the FDA.

The Company initiated a proof-of-concept, Phase II clinical study for the evaluation of "on-demand" oral compounds for the treatment of premature ejaculation in men.

The Company entered into a binding Memorandum of Understanding to further solidify its FSD intellectual property position through an exclusive agreement with AndroSolutions, Inc., a privately held biomedical corporation. Definitive agreements were executed in March 2000. The Company and AndroSolutions have jointly formed ASIVI, LLC, a Delaware limited liability corporation, into which VIVUS has contributed its issued U.S. FSD patent and European application and into which AndroSolutions has contributed its U.S. and European FSD patent applications. In turn, ASIVI has granted the Company exclusive global rights to develop and commercialize FSD technologies based on this intellectual property, in return for certain milestone payments and royalties on FSD products developed by VIVUS. The Company and AndroSolutions will each own 50% of ASIVI, LLC. The Company intends to account for their interest in ASIVI, LLC. through the equity method of accounting.

VIVUS' TRANSURETHRAL SYSTEM FOR ERECTION

Administration. Administration of the transurethral system for erection is an easy and painless procedure. The end of the applicator is less than half the diameter of a man's urine stream and is inserted approximately three centimeters into the urethra. To use the transurethral system for erection, a patient urinates, shakes the penis to remove excess urine, inserts the transurethral system for erection into the urethra, releases the medication, and then massages the penis between the hands for 10 seconds to distribute the medication.

The application process takes less than a minute. Once administered, the pharmacologic agent dissolves in the small amount of urine that remains in the urethra, is absorbed across the urethral mucosa, and is transferred via local vasculature to the tissues of the erectile bodies. When successful, an erection is produced within 15 minutes of administration and lasts approximately 30 - 60 minutes. Many patients experience transient penile pain and/or local aching after administration and during intercourse.

Alprostadil is the first pharmacologic agent used in the transurethral system for erection. Alprostadil is the generic name for the synthetic version of prostaglandin E1, a naturally occurring vasodilator present throughout the body and at high levels in seminal fluid. There are four dosage strengths of alprostadil utilized in MUSE: 125 mcg, 250 mcg, 500 mcg, and 1000 mcg. It is recommended that patients initiating therapy with MUSE be titrated to the lowest effective dose under the supervision of a physician.

The Company's second transurethral product for the treatment of ED, ALIBRA utilizes a low 125 mcg dose of alprostadil administered in combination with 500 mcg of prazosin hydrochloride. Because alprostadil and prazosin effect vasodilation by complimentary mechanisms, this low-dose combination product appears to

have efficacy similar to higher doses of single-agent alprostadil and adequate safety for use as an initial starting dose. Since it is not necessary for patients to titrate among multiple doses, ALIBRA may provide patients with the advantage of initiating therapy at home, as opposed to titrating in the physician's office.

ADVANTAGES OF TRANSURETHRAL THERAPY

The Company's transurethral system for erection is designed to overcome the limitations of other available therapies through its unique product attributes that include:

Safety. The Company's transurethral system for erection is a safe local treatment for patients. Because therapeutic levels of drug are delivered locally to the erectile tissues with minimal systemic drug exposure, the opportunity for systemic drug-drug and drug-disease interactions is minimized. Transurethral therapy, therefore, offers an alternative to oral treatments that are delivered to the erectile tissues via the systemic circulation and may be more susceptible to these types of interactions.

Ease of Administration. The Company's transurethral system for erection is easy to use with minimal instruction, unlike needle injection therapy that requires precise injection into the penis.

Minimally-invasive. The Company's transurethral system for erection utilizes urethral delivery, permitting topical application to the urethral lining.

Discreet. The Company's transurethral system for erection utilizes a small, single-use disposable applicator that can be discreetly applied and is easily integrated into the normal sexual life of the patient. Administration takes less than a minute.

Quality of Erection. The Company's transurethral system for erection therapy mimics the normal vasoactive process, producing an erection that is more natural than those resulting from needle injection therapy, vacuum constriction devices or penile implants.

CURRENT THERAPIES

In addition to MUSE, the primary physiological therapies currently utilized for the treatment of ED are:

Oral Medications. In 1998, Pfizer Inc. received clearance from the FDA to market its oral treatment for ED, sildenafil. Commercial introduction of this new competitive product has adversely affected the Company's business, financial condition and results of operations. Yohimbine is another oral medication currently prescribed in the United States for the treatment of ED. Other large pharmaceutical companies are also actively engaged in the development of therapies for the treatment of ED. See "Risk Factors -- Intense Competition" on page 10.

Needle Injection Therapy. This form of treatment involves the needle injection of pharmacologic agents directly into the penis. These agents are generally vasoactive compounds such as alprostadil alone or in combination with phentolamine and papaverine. This form of treatment requires a prescription from a physician and instruction on self-injection. Side effects may include pain associated with injection, local pain and aching, priapism (persistent prolonged erections), fibrosis (build-up of scar tissue) and bleeding.

Vacuum Constriction Devices. This form of treatment involves the use of a mechanical system that creates a vacuum around the penis, causing the erectile bodies to fill with blood. A constriction band is then placed around the base of the penis to impede blood drainage and maintain the erection. Vacuum constriction devices are large, mechanical devices that can be unwieldy and somewhat difficult to use. In addition, the erection may not seem natural since only the part of the penis beyond the constriction band is rigid, and the penis can become cold and discolored due to the constriction of blood flow. Complications encountered by some users of vacuum constriction devices include pain and difficulty ejaculating.

Penile Implants. This therapy involves the surgical implantation of a semi-rigid, rigid or inflatable device into the penile structure to mechanically simulate an erection. In addition to the risks associated with surgical procedures, there is a significant rate of complication with implants such as infection and mechanical failure of the device. This may necessitate a second surgical procedure to remove or reposition the device. In addition,

due to the scarring associated with the implant procedure, the patient may no longer be a viable candidate for less radical therapies.

SALES AND MARKETING

The Company intends to market and sell its products worldwide through distribution, co-promotion or license agreements with corporate partners. The Company has entered into a marketing agreement with Janssen for certain international markets. The Company is currently seeking a pharmaceutical partner(s) to market, distribute and sell its products in Europe, Japan, South America and the United States.

Domestic

The Company supports MUSE sales in the United States with a small focused sales team calling on targeted physicians. VIVUS also participates in national urologic and sexual dysfunction forums and conferences such as the American Urologic Association annual meeting and the International Society for Impotence Research. In addition, the Company supports ongoing research and clinical investigation of MUSE and the publication of data in peer-reviewed journals.

International

The Company signed an international marketing agreement with Janssen in January 1997, a subsidiary of Johnson & Johnson. Janssen purchases the Company's products for resale in multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. In October 1997, the Company signed an agreement that expanded Janssen's territories to include the Middle East, Russia, the Indian sub-continent, and Africa. To date, Janssen has launched MUSE in several countries, including Canada, South Korea and Mexico.

The Company entered into an international marketing agreement with ASTRA AB (now "Astra-Zeneca") in May 1996 to purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. In October 1999, the marketing and distribution rights in these countries were returned to the Company by AstraZeneca. AstraZeneca will continue to support MUSE in countries where they have launched MUSE during a transition period. The Company is currently evaluating alternative strategic options regarding distribution of its products in these countries.

As of March 2000, approved/licensed countries include:

COUNTRY	APPROVAL DATE
USA	Nov-96
Argentina	Nov-97
Australia	Dec-98
Austria (EU)	Mar-99
Bahrain	Sep-98
Belgium (EU)	May-99
Brazil	Jan-98
Canada	Aug-98
Chile	Dec-98
Columbia	Feb-99
Cyprus	Nov-98
Czech Republic	Dec-99
Denmark (EU)	Dec-98
Finland (EU)	Dec-98
France (EU)	Mar-99
Germany (EU)	Feb-99
Greece (EU)	Apr-99
Hong Kong	Jul-98

COUNTRY	APPROVAL DATE
Iceland	Oct-99
Ireland (EU)	Feb-99
Israel	Oct-99
Italy (EU)	Oct-99
Jamaica	Nov-98
Kazachstan	Aug-99
Kuwait	Jan-99
Lithuania	Dec-98
Luxembourg (EU)	Dec-98
Macau	Sep-98

Malaysia	May-99
Malta	Jun-98
Mexico	May-98
Netherlands (EU)	Feb-99
New Zealand	Jul-98
Norway	Dec-98
Philippines	Jun-98
Portugal (EU)	Feb-99

COUNTRY	APPROVAL DATE
Russia	Feb-99
Singapore	Jul-98
South Africa	Jun-98
South Korea	Jan-98
Spain (EU)	Aug-99
Sweden (EU)	Apr-98

COUNTRY	APPROVAL DATE
Switzerland	Feb-98
Thailand	May-98
Trinidad	Nov-98
UK (EU)	Nov-97
United Arab Emirates	Jun-98
Uruguay	Mar-99

RESEARCH & DEVELOPMENT

VIVUS' objective is to become a global leader in the development and commercialization of innovative therapies for the treatment of sexual dysfunction and other urologic disorders in men and women. To this end, the Company utilizes its expertise and patent portfolio by focusing its R&D activities on male and female sexual dysfunction, premature ejaculation, and other urologic disorders. The Company also investigates novel patentable uses of pharmacologic agents for which significant safety data already exists. The Company believes that such agents present a lower development risk profile and may progress more rapidly through the clinical development and regulatory process than agents without pre-existing data.

DEVELOPMENT PROJECTS CURRENTLY INCLUDE:

DEVELOPMENT AREA	PRODUCT/TECHNOLOGY	STATUS
Male Erectile Dysfunction	ALIBRA(R) (Alprostadil and Prazosin)	NDA filed
Male Erectile Dysfunction	Third-generation male ED treatment	Preclinical
Female Sexual Dysfunction	ALISTA(TM) Topical Application of Vasodilator	Preclinical
Male Premature Ejaculation	On-Demand Oral Compound	Preclinical

The Company will continue to assess the feasibility and relevance of these and other R&D projects, as determined by the Company's management and Board of Directors.

CLINICAL STUDIES

In 1999, the Company completed a 19-site confirmatory Phase III study of ALIBRA for the treatment of men with ED. This study demonstrated that ALIBRA enabled patients to achieve erections sufficient for successful sexual intercourse significantly more often than did placebo, and it was well tolerated. In this study, ALIBRA demonstrated significant efficacy regardless of patient age, primary etiology of ED, or duration of the complaint. Additionally, the majority of patients treated had ED that was classified as "severe" by baseline scores on the Erectile Function domain of the International Index of Erectile Function Questionnaire. During 1999, the Company also performed an interim analysis on an ongoing long-term (1-year) evaluation of ALIBRA and initiated and completed a pharmacokinetic study evaluating the commercial formulation of ALIBRA. These studies enabled the filing of an NDA for ALIBRA during the fourth quarter of 1999.

During the fourth quarter of 1999, the Company initiated a proof of concept trial in patients with premature ejaculation to evaluate the feasibility of on-demand dosing with several classes of agents for the treatment of this disorder. The Company hopes that this study provides data that will allow the Company to make strategic decisions on various options for the further development of its intellectual property for this indication.

MANUFACTURING AND RAW MATERIALS

The Company has limited experience in manufacturing and selling MUSE in commercial quantities. The Company leases 90,000 square feet of space in New Jersey in which it has constructed manufacturing and testing facilities. The FDA and MCA authorized the Company to begin commercial production and shipment

of MUSE from its new facility in June and March 1998, respectively. In September 1998, the Company closed its contract manufacturing site within PACO Pharmaceutical Services, Inc. and significantly scaled back its manufacturing operations in the New Jersey facility, as a result of lower domestic and international demand for MUSE. Production is currently significantly below capacity for the plant resulting in a higher per unit cost.

The Company has obtained its supply of alprostadil from two sources. The first is Spolana Chemical Works a.s. in Neratovice, Czech Republic ("Spolana") pursuant to a supply agreement that was executed in May 1997. In January 1996, the Company entered into an alprostadil supply agreement with CHINOIN Pharmaceutical and Chemical Works Co., Ltd. ("Chinoin"). Chinoin is the Hungarian subsidiary of the French pharmaceutical company Sanofi Winthrop. Both agreements were amended in December 1998, as a result of excess inventory on hand to reduce future commitments for alprostadil purchases.

The Company relies on a single injection molding company, The Kipp Group ("Kipp"), for its supply of plastic applicator components. In turn, Kipp obtains its supply of resin, a key ingredient of the applicator, from a single source, Huntsman Corporation. The Company also relies on a single source, E-Beam Services, Inc. ("E-Beam"), for sterilization of its product. There can be no assurance that the Company will be able to identify and qualify additional sources of plastic components and an additional sterilization facility. See "Risk Factors -- Dependence on Single Source of Supply" on page 11.

GOVERNMENT REGULATION

The Company's research, pre-clinical development, clinical trials, manufacturing and marketing of its products are subject to extensive regulation by numerous governmental authorities in the United States and other countries. Clinical trials, manufacturing and marketing of the Company's products will be subject to the rigorous testing and approval processes of the FDA and equivalent foreign regulatory agencies. The process of obtaining FDA and other required regulatory approvals is lengthy and expensive. In November 1996, the Company received final marketing clearance from the FDA for MUSE. In November 1997, the Company obtained regulatory marketing clearance by the MCA to market MUSE in the United Kingdom. MUSE has also been approved in 48 countries around the globe. After regulatory approval is obtained, the Company's products are subject to continual review. In December 1999, the Company submitted an NDA for its second-generation product ALIBRA to the FDA. The approval process could take as long as 12 months for the FDA to review. See "Risk Factors -- Government Regulation and Uncertainty of Product Approvals" on pages 14 and 15.

In 1998, the Company leased 90,000 square feet of manufacturing space in Lakewood, New Jersey in which it has constructed manufacturing and testing facilities for the production of MUSE. The FDA and MCA authorized the Company to begin commercial production and shipment of MUSE from its new facility in June and March 1998, respectively.

EMPLOYEES

As of March 3, 2000, the Company employed 140 persons. Of these employees, 101 are located at the manufacturing facility in Lakewood, New Jersey; and 39 are located at the Company's corporate headquarters in Mountain View, CA and other U.S. and international locations. None of the Company's current employees are represented by a labor union or are the subject of a collective bargaining agreement. The Company believes that it maintains good relations with its employees.

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RISK FACTORS

LIMITED SALES AND MARKETING EXPERIENCE

The Company supports MUSE sales in the U.S. through physician and patient information/help lines, sales support for major accounts, product education newsletters and participation in national urologic and sexual dysfunction forums and conferences, such as the American Urological Association annual and regional meetings and the International Society for Impotence Research. In addition, the Company supports ongoing research and clinical investigation of MUSE and the publication of data in peer-reviewed journals. The Company is currently evaluating alternative strategic options regarding the U.S. market. There can be no assurance that the options are viable, or that the Company will be able to successfully implement those options.

The Company entered into an international marketing agreement with Janssen to purchase the Company's products for resale in multiple Pacific Rim countries (excluding Japan), Canada, Mexico, South Africa, the Middle East, Russia, the Indian sub-continent, and Africa. The marketing agreement does not have minimum purchase commitments and the Company is dependent on Janssen's efforts to distribute and sell the Company's products effectively in the above-mentioned markets. Janssen may take up to twelve months to introduce a product in a given country following regulatory approval in such country. There can be no assurance that such efforts will be successful or that Janssen will continue to support the product.

The Company entered into an international marketing agreement with ASTRA AB (now "AstraZeneca") to purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. In October 1999, the marketing and distribution rights in these countries were returned to the Company by AstraZeneca. The Company is currently evaluating alternative strategic options regarding distribution of its products in these countries. There can be no assurance that the Company's options are viable, or that the Company will be able to successfully implement those options.

INTENSE COMPETITION

Competition in the pharmaceutical and medical products industries is intense and is characterized by extensive research efforts and rapid technological progress. Certain treatments for ED exist, such as oral medications, needle injection therapy, vacuum constriction devices and penile implants, and the manufacturers of these products will continue to improve these therapies. The most significant competitive therapy is sildenafil, an oral medication marketed by Pfizer, which received regulatory approvals in the U.S. in March 1998 and in the European Union in September 1998. The commercial launch of sildenafil in the U.S. in April 1998 dramatically increased the number of men seeking treatment for impotence and significantly decreased demand for MUSE.

Additional competitive products in the erectile dysfunction market include needle injection therapy products from Pharmacia Upjohn and Schwartz Pharma, which were approved by the FDA in July 1995 and June 1997, respectively. Other large pharmaceutical companies are also actively engaged in the development of therapies for the treatment of ED. These companies have substantially greater research and development

capabilities as well as substantially greater marketing, financial and human resources than the Company. In addition, many of these companies have significantly greater experience than the Company in undertaking pre-clinical testing, human clinical trials and other regulatory approval procedures. There are also small companies, academic institutions, governmental agencies and other research organizations that are conducting research in the area of ED. For instance, Zonagen, Inc. has filed for FDA approval of its oral treatment and has received approval in Mexico; TAP Pharmaceuticals, Inc. has submitted an application to the FDA for approval of its sub-lingual treatment; ICOS Corporation has an oral medication in clinical testing; and Senetek has a needle injection therapy product approved recently in Denmark and has filed for approval in other countries. These entities may market commercial products either on their own or through collaborative efforts. For example, Zonagen, Inc. announced a worldwide marketing agreement with Schering-Plough in November 1997; and ICOS Corporation formed a joint venture with Eli Lilly in October 1998 to jointly develop and market its oral treatment. The Company's competitors may develop technologies and products that are more effective than those currently marketed or being developed by the Company. Such developments would render the Company's products less competitive or possibly obsolete. The Company is also competing with respect to marketing capabilities and manufacturing efficiency, areas in which it has limited experience.

DEPENDENCE ON SINGLE SOURCE OF SUPPLY

The Company relies on a single source, E-Beam Services, Inc., for sterilization of its product. There can be no assurance that the Company will be able to identify and qualify additional sterilization sources. The Company is required to receive FDA approval for suppliers. The FDA may require additional clinical studies or other testing prior to accepting a new supplier. Until the Company secures and qualifies additional sources of sterilization facilities, it is entirely dependent on E-Beam. If interruption in this service were to occur for any reason, including a decision by E-Beam to discontinue service, political unrest, labor disputes or a failure of E-Beam to follow regulatory guidelines, the development and commercial marketing of MUSE and other potential products could be delayed or prevented. An interruption in sterilization services would have a material adverse effect on the Company's business, financial condition and results of operations.

NEW PRODUCT DEVELOPMENT

The Company's future operating results may be adversely affected if the Company is unable to continue to develop, manufacture and bring to market pharmacological products rapidly. The process of developing new drugs and/or therapeutic solutions is inherently complex and uncertain. The Company must make long-term investments and commit significant resources before knowing whether its predictions will eventually result in products that will receive FDA approval and achieve market acceptance. After the FDA approves a product, the Company must quickly manufacture sufficient volumes to meet market demand. This is a process that requires accurate forecasting of market demand. Given the alternative treatments and the number of products introduced in the market each year, the drug development process becomes increasingly difficult and risky.

In December 1999, the Company submitted an NDA for ALIBRA to the FDA. The FDA may take up to 12 months to review the Company's submission, and may (1) ask the Company to provide more data; (2) ask the Company to perform additional clinical trials; or (3) not give the Company the approval. Even if ALIBRA is approved, there can be no assurances that there will be a market for this transurethral system to treat ED.

DEPENDENCE ON THIRD PARTIES

In 1996, the Company entered into a distribution agreement with CORD Logistics, Inc. ("CORD"), a wholly owned subsidiary of Cardinal Health, Inc. Under this agreement, CORD warehouses the Company's finished goods for U.S. distribution, takes customer orders; picks, packs and ships its product; invoices customers, and collects related receivables. As a result of this distribution agreement with CORD, the Company is heavily dependent on CORD's efforts to fulfill orders and warehouse its products effectively in the U.S. There can be no assurance that such efforts will be successful.

In 1996, the Company entered into a distribution agreement with Integrated Commercialization Services ("ICS"), a subsidiary of Bergen Brunswig Corporation. ICS provides "direct-to-physician" distribution capabilities in support of U.S. marketing and sales efforts. ICS also stores and ships various promotional materials to sales personnel, including MUSE patient and in-office instructional videos and brochures. As a result of this distribution agreement with ICS, the Company is dependent on ICS's efforts to distribute product samples effectively. There can be no assurance that such efforts will be successful.

In 1996, the Company entered into an agreement with WRB Communications ("WRB") to handle patient and healthcare professional hotlines for the Company. WRB maintains a staff of healthcare professionals to handle questions and inquires about MUSE and ACTIS. These calls may include complaints about the Company's product due to efficacy or quality, as well as reporting of adverse events. As a result of this agreement, the Company is dependent on WRB to effectively handle these hotline calls. There can be no assurance that such effort will be successful.

DEPENDENCE ON KEY PERSONNEL

The Company's success is highly dependent upon the skills of a limited number of key management personnel. To reach its business objectives, the Company will need to retain and hire qualified personnel in the areas of manufacturing, research and development, clinical trial management and pre-clinical testing. There can be no assurance that the Company will be able to retain or hire such personnel, as the Company must compete with other companies, academic institutions, government entities and other agencies. The loss of any of the Company's key personnel or the failure to attract or retain necessary new employees could have an adverse effect on the Company's research, product development and business operations.

FUTURE CAPITAL NEEDS AND UNCERTAINTY OF ADDITIONAL FINANCING

The Company anticipates that its existing capital resources combined with anticipated future revenues may not be sufficient to support the commercial introduction of any additional future products. The Company is currently seeking other sources of financing, which may include joint venture, co-development, or licensing agreement to support the development of its R&D pipeline.

The Company expects that it will be required to issue additional equity or debt securities or use other financing sources including, but not limited to, corporate alliances to fund the development and possible commercial launch of its future products. The sale of additional equity securities would result in additional dilution to the Company's stockholders. The Company's working capital and additional funding requirements will depend upon numerous factors, including: (i) results of operations; (ii) demand for MUSE; (iii) the activities of competitors; (iv) the progress of the Company's research and development programs; (v) the timing and results of pre-clinical testing and clinical trials; (vi) technological advances; and (vii) the level of resources that the Company devotes to sales and marketing capabilities.

HISTORY OF LOSSES AND LIMITED OPERATING HISTORY

The Company has generated a cumulative net loss of $91.0 million for the period from its inception through December 31, 1999. In order to sustain profitable operations, the Company must successfully manufacture and market MUSE and keep its expenditures in line with lower product revenues. The Company is subject to a number of risks including its ability to successfully market, distribute and sell its product, intense competition, and its reliance on a single therapeutic approach to erectile dysfunction and its ability to secure additional operating capital. There can be no assurance that the Company will be able to continue to achieve profitability on a sustained basis. Accordingly, there can be no assurance of the Company's future success.

During 1998, the Company took significant steps to restructure its operations in an attempt to bring the cost structure of the business in line with current demand for MUSE. These steps included significant reductions in personnel, closing the contract-manufacturing site located in PACO Pharmaceutical Services, Inc., the termination of the lease for the Company's leased corporate offices, and recorded significant write-

down of property, equipment and inventory. As a result of these and other factors, the Company experienced an operating loss of $80.3 million, or $2.52 per share, in the year ended December 31, 1998.

In September 1998, the Company significantly scaled back its manufacturing operations as a result of lower demand domestically and internationally for MUSE. Current production is significantly below capacity for the plant, resulting in a higher unit cost, and the Company expects that the gross margin from the sale of MUSE will be less predictable in future periods, which may cause greater volatility in the Company's results of operations and financial condition.

Management believes that these restructuring measures were adequate in bringing the cost structure in line with current and projected revenues; however, there can be no assurance that product demand will not weaken further or that these measures will result in sustained profitability in future periods.

LIMITED MANUFACTURING EXPERIENCE

The Company has limited experience in manufacturing and selling MUSE in commercial quantities. The Company initially experienced product shortages due to higher than expected demand and difficulties encountered in scaling up production of MUSE. The Company leases 90,000 square feet of space in New Jersey in which it has constructed manufacturing and testing facilities. The FDA and European Medicine Controls Agency ("MCA") authorized the Company to begin commercial production and shipment of MUSE from its new facility in June and March 1998, respectively. In September 1998, the Company closed its contract manufacturing site within PACO Pharmaceutical Services, Inc. and significantly scaled back its manufacturing operations in the New Jersey facility, as a result of lower domestic and international demand for MUSE. Production is currently significantly below capacity for the plant.

DEPENDENCE ON THE COMPANY'S TRANSURETHRAL SYSTEM FOR ERECTION

The Company currently relies on a single therapeutic approach to treat ED, its transurethral system for erection. Certain side effects have been found to occur with the use of MUSE. MUSE is applied into the urinary opening and is not for men with sickle cell trait, disease, or other blood disorders. One third of men reported genital pain, causing some to stop use. A few men reported dizziness and, less commonly, fainting. To date, the incidence of post-launch adverse side effects is consistent with that experienced in clinical trials. As a result of the Company's single therapeutic approach, the failure to successfully commercialize the product will have a material adverse effect to the Company's business.

The existence of side effects or dissatisfaction with product results may impact a patient's decision to use or continue to use or a physician's decision to recommend MUSE as a therapy for the treatment of ED, thereby affecting the commercial viability of MUSE.

In addition, technological changes or medical advancements could diminish or eliminate the commercial viability of the Company's product.

RISKS RELATING TO INTERNATIONAL OPERATIONS

The Company's product is currently marketed internationally. Changes in overseas economic and political conditions, currency exchange rates, foreign tax laws or tariffs or other trade regulations could have a material adverse effect on the Company's business, financial condition and results of operations. The international nature of the Company's business is also expected to subject it and its representatives, agents and distributors to laws and regulations of the foreign jurisdictions in which they operate or where the Company's product is sold. The regulation of drug therapies in a number of such jurisdictions, particularly in the European Union, continues to develop, and there can be no assurance that new laws or regulations will not have a material adverse effect on the Company's business, financial condition and results of operations. In addition, the laws of certain foreign countries do not protect the Company's intellectual property rights to the same extent, as do the laws of the United States.

GOVERNMENT REGULATION AND UNCERTAINTY OF PRODUCT APPROVALS

The Company's research, pre-clinical development, clinical studies, manufacturing and marketing of its products are subject to extensive regulation, rigorous testing and approval processes of the Food and Drug Administration ("FDA") and equivalent foreign regulatory agencies. The Company's product MUSE has received marketing clearance in 48 countries to date.

After regulatory approval is obtained, the Company's products are subject to continual review. Manufacturing, labeling and promotional activities are continually regulated by the FDA and equivalent foreign regulatory agencies, and the Company must also report certain adverse events involving its drugs to these agencies. Previously unidentified adverse events or an increased frequency of adverse events that occur post-approval could result in labeling modifications of approved products, which could adversely affect future marketing of a drug. Finally, approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems occur following initial marketing. The restriction, suspension or revocation of regulatory approvals or any other failure to comply with regulatory requirements would have a material adverse effect on the Company's business, financial condition and results of operations.

The Company's clinical studies for future products will generate safety data as well as efficacy data and will require substantial time and significant funding. There is no assurance that clinical studies related to future products would be completed successfully within any specified time period, if at all. Furthermore, the FDA could suspend clinical studies at any time if it is believed that the subjects participating in such studies are being exposed to unacceptable health risks.

Failure to comply with the applicable regulatory requirements can, among other things, result in fines, suspensions of regulatory approvals, product recalls, operating restrictions and criminal prosecution. In addition, the marketing and manufacturing of pharmaceutical products are subject to continuing FDA and other regulatory review, and later discovery of previously unknown problems with a product, manufacturer or facility may result in the FDA and other regulatory agencies requiring further clinical research or restrictions on the product or the manufacturer, including withdrawal of the product from the market. The restriction, suspension or revocation of regulatory approvals or any other failure to comply with regulatory requirements would have a material adverse effect on the Company's business, financial condition and results of operations.

In connection with routine inspection of the Company's New Jersey manufacturing facility at 745 Airport Road, the FDA issued to the Company an FDA Form 483 containing two observations. The observations identified specific areas where the FDA viewed the Company's operations not to be in explicit compliance with Current Good Manufacturing Practices ("cGMP") requirements. A detailed response to the observations was submitted to the FDA on November 24, 1999.

Failure to maintain satisfactory cGMP compliance would have a material adverse effect on the Company's ability to continue to market and distribute its products and, in the most serious cases, could result in the issuance of additional Warning Letters, seizure or recall of products, civil fines or closure of the Company's manufacturing facility until such cGMP compliance is achieved.

The Company obtains the necessary raw materials and components for the manufacture of MUSE as well as certain services, such as testing and sterilization, from third parties. The Company currently contracts with suppliers and service providers, including foreign manufacturers that are required to comply with strict standards established by the Company. Certain suppliers and service providers are required by the Federal Food, Drug, and Cosmetic Act, as amended, and by FDA regulations to follow cGMP requirements and are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMP and other applicable regulations. Certain of the Company's suppliers were inspected for cGMP compliance as part of the approval process. However, upon routine re-inspection of these facilities, there can be no assurance that the FDA and other regulatory agencies will find the manufacturing process or facilities to be in compliance with cGMP and other regulations. Failure to achieve satisfactory cGMP compliance as confirmed by routine inspections could have a material adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious case, result in the issuance of a

regulatory Warning Letter or seizure or recall of products, injunction and/or civil fines or closure of the Company's manufacturing facility until cGMP compliance is achieved.

PATENTS AND PROPRIETARY RIGHTS

The Company's policy is to aggressively maintain its patent position and to enforce all of its intellectual property rights.

The Company is the exclusive licensee of United States and Canadian patents originally filed in the name of Dr. Gene Voss. These patents claim methods of treating ED with a vasodilator-containing ointment that is administered either topically or transurethrally.

The Company is also the exclusive licensee of patents and patent applications filed in the name of Dr. Nils G. Kock, in numerous countries. Four United States patents have issued directed to methods and compositions for treating ED by transurethrally administering an active agent. Patents have also been granted in Australia, Austria, Belgium, Canada, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Spain, Sweden and South Africa. Patent applications are pending in Denmark and Romania. The foreign patents and applications, like the U.S. patents and applications, are directed to the treatment of ED by transurethral administration of certain active substances including alpha-receptor blockers, vasoactive polypeptides, prostaglandins or nitroglycerin dispersed in a hydrophilic vehicle.

The Company is the sole assignee of three United States patents, one divisional patent application and two continuation applications all deriving from patent applications originally filed by Alza, covering inventions of Dr. Virgil Place made while he was an employee of Alza. The patents and patent applications are directed to dosage forms for administering a therapeutic agent to the urethra, methods for treating erectile dysfunction and specific drug formulations that can be delivered transurethrally for the treatment of erectile dysfunction. The divisional and continuation applications were filed in the United States on June 7, 1995. All patents issuing on applications filed before June 8, 1995 will automatically have a term that is the greater of twenty years from the patent's effective filing date or seventeen years from the date of patent grant. Foreign patents have been granted in Australia, Europe (including Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, Norway, the Netherlands, Portugal, Spain, Sweden and Switzerland), New Zealand, South Africa and South Korea, and foreign applications are pending in Canada, Finland, Ireland, Mexico, and Japan.

The Company's license and assignment agreements for these patents and patent applications are royalty bearing and do not expire until the licensed patents expire. These license and assignment agreements provide that the Company may assume responsibility for the maintenance and prosecution of the patents and bring infringement actions.

In addition to the Voss, Kock, and Place patents and applications identified above, the Company has twelve issued United States patents, nine pending United States patent applications, three Patent Cooperation Treaty ("PCT") applications, two granted foreign patents, and seven pending foreign patent applications. Several of these patents and applications further address the prevention, treatment and diagnosis of ED, while others are directed to prevention and/or treatment of other types of sexual dysfunction, including premature ejaculation in men, and female sexual dysfunction. One of the Company's issued patents covers the Company's ACTIS(R) venous flow control device. Other issued patents and pending patent applications focus on prevention and/or treatment of conditions other than sexual dysfunction, including vascular disorders such as peripheral vascular disease ("PVD"), hormone replacement therapy, and contraception.

The Company has recently entered into an agreement with AndroSolutions, Inc., a privately held biomedical corporation based in Knoxville, Tennessee, that owns patents and applications complementary to the Company's patents and applications directed to the treatment of FSD. Both the Company and AndroSolutions have contributed their FSD patents and applications into a jointly formed limited liability company, ASIVI, LLC, which exclusively licenses to VIVUS worldwide rights to the common patents and applications, and will work to further develop FSD products of interest to the Company.

The Company's success will depend in large part on the strength of its current and future patent position relating to the transurethral delivery of pharmacologic agents for the treatment of erectile dysfunction. The Company's patent position, like that of other pharmaceutical companies, is highly uncertain and involves complex legal and factual questions. The claims of a U.S. or foreign patent application may be denied or significantly narrowed, and patents that ultimately issue may not provide significant commercial protection to the Company. The Company could incur substantial costs in proceedings before the United States Patent and Trademark Office, including interference proceedings. These proceedings could also result in adverse decisions as to the priority of the Company's licensed or assigned inventions. There is no assurance that the Company's patents will not be successfully challenged or designed around by others.

The Company is presently involved in an opposition proceeding that was instigated by the Pharmedic Company against a European patent, inventors Nils G. Kock et al., that is exclusively licensed to VIVUS. As a result of the opposition proceeding, certain pharmaceutical composition claims in the European patent were held unpatentable by the Opposition Division of the EPO. The patentability of all other claims in the patent was confirmed, i.e., those claims directed to the use of active agents in the treatment of ED, and to a pharmaceutical composition claim for prazosin. The Company appealed the EPO's decision with respect to the pharmaceutical composition claims that were held unpatentable. The Pharmedic Company appealed the EPO's decision with respect to the claims that were held patentable, but has since withdrawn the appeal. Despite the withdrawal of the Pharmedic Company from the appeal process, the Company has continued with its own appeal in an attempt to reinstate the composition claims. The EPO Appeals Board must make its own finding whether the claims that were deemed unpatentable by the Opposition Division are indeed patentable before it can reverse the Opposition Division's decision. There can be no assurance that the appeal will be successful or that further challenges to the Company's European patent will not occur should the Company try to enforce the patent in the various European courts.

The Company was also the first to file a Notice of Opposition to Pfizer's European patent application claiming the use of phosphodiesterase inhibitors to treat erectile dysfunction. Numerous other companies have also opposed the patent, and the Company will support these other entities in their oppositions as necessary.

There can be no assurance that the Company's products do not or will not infringe on the patent or proprietary rights of others. The Company may be required to obtain additional licenses to the patents, patent applications or other proprietary rights of others. There can be no assurance that any such licenses would be made available on terms acceptable to the Company, if at all. If the Company does not obtain such licenses, it could encounter delays in product introductions while it attempts to design around such patents, or the development, manufacture or sale of products requiring such licenses could be precluded. The Company believes there will continue to be significant litigation in the pharmaceutical industry regarding patent and other intellectual property rights.

In addition to its patent portfolio, the Company also relies on trade secrets and other unpatented proprietary technology. No assurance can be given that the Company can meaningfully protect its rights in such unpatented proprietary technology or that others will not independently develop substantially equivalent proprietary products and processes or otherwise gain access to the Company's proprietary technology. The Company seeks to protect its trade secrets and proprietary know-how, in part, with confidentiality agreements with employees and consultants. There can be no assurance that the agreements will not be breached or that the Company will have adequate remedies for any breach, or that the Company's trade secrets will not otherwise become known or be independently developed by competitors. In addition, protracted and costly litigation may be necessary to enforce and determine the scope and validity of the Company's proprietary rights.

UNCERTAINTY OF PHARMACEUTICAL PRICING AND REIMBURSEMENT

In the U.S. and elsewhere, sales of pharmaceutical products are dependent, in part, on the availability of reimbursement to the consumer from third party payors, such as government and private insurance plans. Third party payors are increasingly challenging the prices charged for medical products and services. With the introduction of sildenafil, third party payors have begun to restrict or eliminate reimbursement for erectile

dysfunction treatments. While a large percent of prescriptions in the U.S. for MUSE have been reimbursed by third party payors since its commercial launch in January 1997, there can be no assurance that the Company's products will be considered cost effective and that reimbursement to the consumer will continue to be available or sufficient to allow the Company to sell its products on a competitive basis.

In addition, certain healthcare providers are moving towards a managed care system in which such providers contract to provide comprehensive healthcare services, including prescription drugs, for a fixed cost per person. The Company hopes to further qualify MUSE for reimbursement in the managed care environment. However, the Company is unable to predict the reimbursement policies employed by third party healthcare payors. Furthermore, reimbursement for MUSE could be adversely affected by changes in reimbursement policies of governmental or private healthcare payors.

PRODUCT LIABILITY AND AVAILABILITY OF INSURANCE

The commercial launch of MUSE exposes the Company to a significant risk of product liability claims due to its availability to a large population of patients. In addition, pharmaceutical products are subject to heightened risk for product liability claims due to inherent side effects. The Company details potential side effects in the patient package insert and the physician package insert, both of which are distributed with MUSE, and the Company maintains product liability insurance coverage. However, the Company's product liability coverage is limited and may not be adequate to cover potential product liability exposure. Product liability insurance is expensive, difficult to maintain, and current or increased coverage may not be available on acceptable terms, if at all. Product liability claims brought against the Company in excess of its insurance coverage, if any, could have a material adverse effect upon the Company's business, financial condition and results of operations.

UNCERTAINTY AND POSSIBLE NEGATIVE EFFECTS OF HEALTHCARE REFORM

The healthcare industry is undergoing fundamental changes that are the result of political, economic and regulatory influences. The levels of revenue and profitability of pharmaceutical companies may be affected by the continuing efforts of governmental and third party payors to contain or reduce healthcare costs through various means. Reforms that have been and may be considered include mandated basic healthcare benefits, controls on healthcare spending through limitations on the increase in private health insurance premiums and Medicare and Medicaid spending, the creation of large insurance purchasing groups and fundamental changes to the healthcare delivery system. Due to uncertainties regarding the outcome of healthcare reform initiatives and their enactment and implementation, the Company cannot predict which, if any, of the reform proposals will be adopted or the effect such adoption may have on the Company. There can be no assurance that future healthcare legislation or other changes in the administration or interpretation of government healthcare or third party reimbursement programs will not have a material adverse effect on the Company. Healthcare reform is also under consideration in some other countries.

POTENTIAL VOLATILITY OF STOCK PRICE

The stock market has experienced significant price and volume fluctuations unrelated to the operating performance of particular companies. In addition, the market price of the Company's Common Stock has been highly volatile and is likely to continue to be so. Factors such as the Company's ability to increase demand for its product in the U.S., the Company's ability to successfully sell its product in the U.S. and internationally, variations in the Company's financial results and its ability to obtain needed financing, announcements of technological innovations or new products by the Company or its competition, comments by security analysts, adverse regulatory actions or decisions, any loss of key management, the results of the Company's clinical trials or those of its competition, changing governmental regulations, patents or other proprietary rights, product or patent litigation or public concern as to the safety of products developed by the Company, may have a significant effect on the market price of the Company's Common Stock.

ANTI-TAKEOVER EFFECT OF PREFERRED SHARES RIGHTS PLAN AND CERTAIN CHARTER AND BYLAW PROVISIONS

In February 1996, the Company's Board of Directors authorized its reincorporation in the State of Delaware (the "Reincorporation") and adopted a Preferred Shares Rights Plan. The Company's Reincorporation into the State of Delaware was approved by its stockholders and became effective in May 1996. The Preferred Shares Rights Plan provides for a dividend distribution of one Preferred Shares Purchase Right (a "Right") on each outstanding share of the Company's Common Stock. The Rights will become exercisable following the tenth day after a person or group announces acquisition of 20 percent or more of the Company's Common Stock, or announces commencement of a tender offer, the consummation of which would result in ownership by the person or group of 20 percent or more of the Company's Common Stock. The Company will be entitled to redeem the Rights at $0.01 per Right at any time on or before the tenth day following acquisition by a person or group of 20 percent or more of the Company's Common Stock.

The Preferred Shares Rights Plan and certain provisions of the Company's Certificate of Incorporation and Bylaws may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of the Company. The Company's Certificate of Incorporation allows the Company to issue Preferred Stock without any vote or further action by the stockholders, and certain provisions of the Company's Certificate of Incorporation and Bylaws eliminate the right of stockholders to act by written consent without a meeting, specify procedures for director nominations by stockholders and submission of other proposals for consideration at stockholder meetings, and eliminate cumulative voting in the election of directors. Certain provisions of Delaware law could also delay or make more difficult a merger, tender offer or proxy contest involving the Company, including Section 203, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years unless certain conditions are met. The Preferred Shares Rights Plan, the possible issuance of Preferred Stock, the procedures required for director nominations and stockholder proposals and Delaware law could have the effect of delaying, deferring or preventing a change in control of the Company, including without limitation, discouraging a proxy contest or making more difficult the acquisition of a substantial block of the Company's common stock. These provisions could also limit the price that investors might be willing to pay in the future for shares of the Company's Common Stock.

ITEM 2. PROPERTIES

The Company leases 90,000 square feet of space in New Jersey in which it has constructed manufacturing and testing facilities. The FDA and MCA authorized the Company to begin commercial production and shipment of MUSE from its new facility in June and March 1998, respectively. In September 1998, the Company closed its contract manufacturing site within PACO Pharmaceutical Services, Inc. and significantly scaled back its manufacturing operations in the New Jersey facility, as a result of lower demand domestically and internationally for MUSE.

In January 2000, the Company leased 14,237 square feet of space in Mountain View, California, which serves as the principal site for administration, clinical trial management, regulatory affairs and monitoring of product production and quality control, as well as its research and development. The Company's lease covering premises consisting of 6,000 square feet of space in a different building in Mountain View, California expired in January 2000.

ITEM 3. LEGAL PROCEEDINGS

On October 5, 1998, the Company was named in a civil action filed in the Superior Court of New Jersey. This complaint seeks specific performance and other relief in connection with the Company's leased manufacturing facilities, located in Lakewood, New Jersey. The Company's lease agreement requires that the Company provide a removal security deposit in the form of cash or a letter of credit. The Company and lessor ("plaintiff") have reached a tentative agreement whereby the Company will provide an irrevocable standby letter of credit in the amount of $3.3 million for such security deposit.

On February 18, 1998, a purported shareholder class action entitled Crain et al. v. VIVUS, Inc. et al. was filed in Superior Court of the State of California for the County of San Mateo. Five identical complaints were

subsequently filed in the same court. These complaints were filed on behalf of a purported class of persons who purchased stock between May 15, 1997 and December 9, 1997. The complaints alleged that the Company and certain current and former officers or directors artificially inflated the Company's stock price by issuing false and misleading statements concerning the Company's prospects and issuing false financial statements. On March 16, 1998, a purported shareholder class action entitled Cramblit et al. v. VIVUS Inc. et al. was filed in the United States District Court for the Northern District of California. Five additional complaints were subsequently filed in the same court. The federal complaints were filed on behalf of a purported class of persons who purchased stock between May 2, 1997 and December 9, 1997. The federal complaints asserted the same factual allegations as the state court complaints, but asserted legal claims under the Federal Securities Laws. The federal court cases were consolidated, and a lead plaintiff was appointed and the plaintiff filed a consolidated and amended complaint in 1998.

On May 4, 1999 the Company reached a settlement with plaintiffs of the shareholder class action lawsuits described above. The aggregate settlement amount is $6 million. The settlement is funded by insurance proceeds of $5.4 million and by the Company contributing 120,000 shares of VIVUS Common Stock to the settlement fund.

On November 3, 1999, VIVUS International Limited ("VINTL") filed a demand for arbitration against Janssen Pharmaceutica International ("Janssen") with the American Arbitration Association pursuant to the terms of the Distribution Agreement entered into between VINTL and Janssen on January 22, 1997. VINTL seeks compensation for inventory manufactured by VINTL in 1998 in reliance on contractual forecasts and orders submitted by Janssen. VINTL also seeks compensation for forecasts and order shortfalls attributed to Janssen in 1998, pursuant to the terms of the Distribution Agreement. VINTL seeks an award of $3.9 million plus costs and interest. On December 3, 1999, Janssen submitted its response to VINTL's arbitration demand denying liability. On January 3, 2000, each party designated an independent arbitrator. The designated arbitrators will select a third neutral arbitrator. An arbitration hearing is expected to occur in the second quarter of 2000.

During the first quarter of 2000, the Company reached agreement with Oxford Asymmetry International, plc. ("Oxford") to terminate a long-term supply agreement for prostaglandin E(1)("alprostadil") that was executed on August 29, 1997, following the receipt of a notice of demand for arbitration from Oxford. As a part of this agreement, the Company paid $500 thousand for a non-exclusive license to use analytical and stability data related to alprostadil that was provided by Oxford to the Company. The payment to Oxford will not impact the Company's earnings, as this amount was fully reserved for by the Company as part of its 1998 restructuring.

In the normal course of business, the Company receives and makes inquiries regarding patent infringement and other legal matters. The Company believes that it has meritorious claims and defenses and intends to pursue any such matters vigorously. The Company is not aware of any asserted or unasserted claims against it where the resolution would have an adverse material impact on the operations or financial position of the Company.

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

No matters were submitted to a vote of the Company's stockholders during the quarter ended December 31, 1999.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The Company's Common Stock trades publicly on the Nasdaq Stock Market under the symbol "VVUS." The following table sets forth for the periods indicated the quarterly high and low closing sales prices of the Common Stock on the Nasdaq Stock Market.

	THREE MONTHS ENDED			
	MARCH 31	JUNE 30	SEPTEMBER 30	DECEMBER 31
1999				
High	$ 4.81	$ 5.31	$ 4.72	$5.69
Low	2.06	2.63	2.88	2.00
1998				
High	$15.50	$14.25	$10.25	$4.00
Low	9.63	5.81	2.06	2.19

As of March 3, 2000, there were no outstanding shares of Preferred Stock and 746 holders of record of 32,219,353 shares of outstanding Common Stock. The Company has not paid any dividends since its inception and does not intend to pay any dividends on its Common Stock in the foreseeable future.

ITEM 6. SELECTED FINANCIAL DATA

SELECTED FINANCIAL DATA
(IN THOUSANDS, EXCEPT PER SHARE AND EMPLOYEE DATA)

SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

	QUARTER ENDED,			
	MARCH 31	JUNE 30	SEPTEMBER 30	DECEMBER 31
1999				
Net income	$ 3,792	$ 292	$ 897	$13,820
Net income per diluted share	$ 0.12	$ 0.01	$ 0.03	$ 0.43
1998				
Net income (loss)	$(2,389)	$(24,179)	$(54,725)	$ 1,040
Net income (loss) per diluted share	$ (0.07)	$ (0.76)	$ (1.72)	$ 0.03

SELECTED ANNUAL FINANCIAL DATA

	YEAR ENDED DECEMBER 31,				
	1999	1998	1997	1996	1995
Income Statement Data:					
Product revenue -- U.S.	$ 21,168	$ 39,041	$128,320	$ --	$ --
Product revenue -- International	19,996	32,658	1,017	--	--
Milestone Revenue	8,000	3,000	9,000	20,000	--
Other Revenue	3,142	--	--	--	--
Returns	(9,118)	--	--	--	--
Total revenue	43,188	74,699	138,337	20,000	--
Gross margin	30,819	19,083	100,049	20,000	--
Operating expenses:					
Research and development	7,884	16,178	12,123	28,279	21,313
Selling, general and administrative	6,332	40,477	47,931	11,733	4,389
Write-offs and other charges	(1,193)	44,653	5,050	--	--
Total operating expenses	13,023	101,308	65,104	40,012	25,702
Income (loss) from operations	17,796	(82,225)	34,945	(20,012)	(25,702)
Interest and other income	1,994	1,972	4,856	3,485	2,891
Income (loss) before taxes	19,790	(80,253)	39,801	(16,527)	(22,811)
Net income (loss)	$ 18,801	$ (80,253)	$ 36,617	$(16,527)	$(22,811)
Net income (loss) per diluted share	$ 0.58	$ (2.52)	$ 1.03	$ (0.55)	$ (0.85)
Shares used in per share computation	32,507	31,876	35,559	29,833	26,914
Financial position at year end:					
Working capital	$ 26,616	$ 10,324	$ 54,888	$ 60,388	$ 19,878
Total assets	$ 68,760	$ 54,108	$150,669	$ 96,532	$ 44,049
Accumulated deficit	$(90,989)	$(109,790)	$(29,537)	$(66,154)	$(49,627)
Stockholders' equity	$ 41,496	$ 21,677	$123,930	$ 89,780	$ 41,181
Additional information:					
Common shares outstanding	32,211	31,890	33,168	32,454	26,952
Number of employees	134	101	215	95	38

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

In the Management Discussion and Analysis section of the 10-K we are providing more detailed information about our operating results and changes in financial position over the past three years. This section should be read in conjunction with the Consolidated Financial Statements and related Notes beginning on page 26.

VIVUS, Inc. ("VIVUS" or the "Company") is the developer and manufacturer of MUSE(R) (alprostadil) and ACTIS(R), two advancements in the treatment of men with erectile dysfunction ("ED"), also known as impotence. The Company's objective is to become a global leader in the development and commercialization of innovative therapies for the treatment of sexual dysfunction and urologic disorders in men and women. VIVUS has ongoing research and development ("R&D") programs in male ED, female sexual dysfunction ("FSD"), and male premature ejaculation ("PE"), and intends to pursue targeted technology acquisitions to expand its R&D pipeline. The Company intends to market and sell its products through distribution, co-promotion or license agreements with corporate partners. In December 1999, the company filed a New Drug Application ("NDA") with the U.S. Food and Drug Administration ("FDA") for ALIBRA(R), its second-generation male ED treatment.

In November 1996, the Company obtained marketing clearance by the FDA to manufacture and market its first product, MUSE, and commercially introduced MUSE in the United States beginning in January 1997. The launch of MUSE went on to become one of the top 25 most successful drug launches in the U.S., and the Company recorded a net profit of $36.6 million and product revenue of $129.3 million for the year ended December 31, 1997.

During 1998, the Company experienced a significant decline in market demand for MUSE as the result of the introduction of a competitor's product in April 1998. During the second and third quarters of 1998, the Company took significant steps to restructure its operations in an attempt to bring the cost structure in line with current and projected revenues. As a result, the Company recorded a net loss of $80.3 million for the year ended December 31, 1998.

In 1999, the Company focused its efforts on building a solid foundation for future growth. The Company achieved profitable quarters throughout 1999 and recorded net income of $18.8 million for the year. We successfully completed our ALIBRA Phase III clinical trials and filed an NDA in the fourth quarter with the FDA. We completed enrollment of our premature ejaculation Phase II proof-of-concept study, and we have strengthened our financial position, increasing our cash position from $24 million at December 31, 1998 to $40 million at December 31, 1999, while decreasing total liabilities by $5 million during the same period.

The Company supports MUSE sales in the U.S. through physician and patient information/help lines, sales support for major accounts, product education newsletters and participation in national urologic and sexual dysfunction forums and conferences, such as the American Urological Association annual and regional meetings and the International Society for Impotence Research. In addition, the Company supports ongoing research and clinical investigation of MUSE and the publication of data in peer-reviewed journals. Internationally, the Company has entered into a licensing and distribution agreement with Janssen Pharmaceutical ("Janssen") for certain international markets, including multiple Pacific Rim countries (excluding Japan), Canada, Mexico, South Africa and Australia. The Company is seeking a partner(s) to market and sell its products through distribution, co-promotion or license agreements in the United States, Europe, Japan and South America.

1999 HIGHLIGHTS

The Company was granted a new patent for the "Treatment of Female Sexual Dysfunction" by the U.S. Patent Office, providing broad patent protection for the commercialization of topical formulations of vasodilating agents and steroid hormones for the treatment of sexual dysfunction affecting women. The Company entered into a binding Memorandum of Understanding to further solidify its FSD intellectual property position through an exclusive agreement with AndroSolutions, Inc., a privately held biomedical corporation. Definitive agreements were executed in March 2000. The Company and AndroSolutions have jointly formed ASIVI, LLC, a Delaware limited liability corporation, into which VIVUS contributed its issued U.S. FSD patent and European application and into which AndroSolutions has contributed its U.S. and European FSD patent applications. In turn, ASIVI has granted the Company exclusive global rights to develop and commercialize FSD technologies based on this intellectual property, in return for certain milestone payments and royalties on FSD products developed by VIVUS. The Company and AndroSolutions will each own 50% of ASIVI, LLC. The Company intends to account for their interest in ASIVI, LLC. through the equity method of accounting. The Company began development for its product for the treatment of FSD, ALISTA(TM) and expects to enter clinical testing during year 2000.

The Company was granted a new patent for the "Method and Composition for Treating Erectile Dysfunction" by the U.S. Patent Office, providing broad patent protection for the commercialization of ALIBRA, its second-generation transurethral treatment for male ED. The Company filed an NDA for ALIBRA with the FDA in the fourth quarter of 1999.

The Company initiated a proof-of-concept, Phase II clinical study for the evaluation of "on-demand" oral compounds for the treatment of premature ejaculation in men.

The Company received $8 million in milestone payments for the approval of MUSE marketing licenses in France, Germany, Spain and Italy.

The Company reached a settlement of the shareholder class action lawsuits. The settlement for $6 million was funded by insurance proceeds of $5.4 million and by the Company contributing 120,000 shares of common stock.

The Company terminated its license agreement with Albert Einstein College of Medicine of Yeshiva University for the development of gene therapy for the treatment of ED, a strategic decision based on the development risks involved and the amount of funding and time required to potentially bring a product to market.

The marketing and distribution rights in Europe, Australia, New Zealand, Central and South America were returned to the Company by AstraZeneca. This resulted in the Company recording $20 million in revenue in the fourth quarter of 1999, consisting of $14.9 million in product revenue associated with shipments that occurred throughout 1998 and 1999, $2 million in milestone revenue associated with marketing clearance in Italy, and $3.1 million in other revenue.

RESULTS OF OPERATIONS

Years Ended December 31, 1999 and 1998

Product revenues for year ended December 31, 1999 were $21.2 million in the U.S. and $20.0 million internationally, compared to $39.0 million in the U.S. and $32.7 internationally for the same period in 1998. The significant decline in U.S. product revenue is due to lower demand for the Company's product MUSE, which resulted from the launch of sildenafil, a competitive oral treatment for erectile dysfunction. Internationally, revenues decreased to $20.0 million in 1999, compared to $32.7 million in 1998. The revenue decrease from 1998 is mainly attributable to reduced orders from both AstraZeneca and Janssen.

For the year ended December 31, 1999, the Company recorded $8 million in milestone revenue from AstraZeneca related to regulatory approvals of MUSE in France, Germany, Italy and Spain. For the year ended December 31, 1998, the Company recorded $3 million milestone revenue from Janssen related to regulatory approvals of MUSE in South Korea and Canada.

Total revenue in 1999 also includes $3.1 million in other revenue associated with the return of marketing and distribution rights for MUSE from AstraZeneca. Additionally the Company recorded a $9.1 million charge for the actual and anticipated return of expired product in the U.S. These returns are primarily the result of shipments made during the fourth quarter of 1997 and first quarter of 1998. Demand for MUSE declined following the launch of a competitive product in April 1998, resulting in excess inventories of wholesalers and retailers.

Cost of goods sold for the year ended December 31, 1999 were $12.4 million, compared to $55.6 million for the same period in 1998. The decrease was primarily a result of lower unit shipments in 1999. In addition, an inventory valuation reserve of $16.0 million was recorded in 1998 as part of the Company's restructuring of its operations.

Research and development (R&D) expenses for the year ended December 31, 1999 were $7.9 million, compared to $16.2 million in the year ended December 31, 1998. Lower spending in 1999 was primarily a result of the Company's effort to bring overall cost levels in line with the Company's projected current and projected revenues. Higher spending in 1998 was mainly associated with a significantly larger R&D organization.

Selling, general and administrative expenses for the year ended December 31, 1999 were $6.3 million, compared to $40.5 million in the year ended December 31, 1998. The lower expenses in 1999 were primarily a result of the Company's effort to bring overall cost levels in line with the Company's projected future demand for MUSE. Included in selling, general and administration expenses for 1998 were significant expenses for a direct-to-consumer advertising campaign as well as a direct sales force, which are not included in 1999.

Operating expenses for the year ended December 31, 1999 include a non-cash charge of $600,000 for the issuance of 120,000 share of common stock toward the settlement of shareholders class action lawsuits. In addition, the Company reclassified $1.8 million from other restructuring costs during the fourth quarter to allowance for product returns during earlier quarters. (SEE NOTE 6 on page 38). Operating expenses for the year ended December 31, 1998 include a restructuring charge of $12.5 million, primarily associated with the sales force and other personnel reductions; and a $32.2 million write-down of property and equipment. The write-down was calculated in accordance with the provisions of Statement of Financial Accounting Standards No. 121 and represents the excess of the carrying values of property and equipment over the projected future discounted cash flows for the Company.

The Company recorded a tax provision of five percent of net income before taxes for 1999. The effective tax rate calculation includes the effect of NOLs carried forward from prior periods. The tax rate would have been substantially higher if the NOLs were not available to offset current income. The Company had no tax provision for 1998 as a result of the loss recorded for this year.

Years Ended December 31, 1998 and 1997

During fiscal 1998, the Company took significant steps to restructure its operations in an attempt to bring the cost structure of the business in line with current revenue projections. These steps included significant reductions in headcount in all departments, as well as the closing of VIVUS' contract manufacturing site located within PACO Pharmaceutical Services, Inc., and the consolidation of employees at the Company's corporate headquarters into a smaller space within its current building. As a result, the Company recorded $60.7 million of costs and write-downs during fiscal 1998.

Product revenues for year ended December 31, 1998 were $39.0 million in the U.S. and $32.7 million internationally, compared to $128.3 million in the U.S. and $1.0 million internationally for the same period in 1997. The significant decline in U.S. product revenue is due to lower demand for the Company's product MUSE, which resulted from the U.S. launch of sildenafil, a competitive oral treatment for erectile dysfunction. Underlying demand for MUSE domestically, as measured by retail prescriptions, declined approximately 80% following the commercial launch of sildenafil in April 1998. Internationally, revenues increased to $32.7 million in 1998 as Janssen and AstraZeneca were preparing to launch MUSE in various countries.

For the year ended December 31, 1998, the Company recorded $3 million milestone revenue from Janssen related to regulatory approvals of MUSE in South Korea and Canada. For the year ended December 31, 1997, the Company recorded $7 million milestone revenue; $5 million from Janssen for signing the initial and expanded distribution agreements and $2 million from AstraZeneca for regulatory approval in the United Kingdom.

Cost of goods sold for the year ended December 31, 1998 were $55.6 million, compared to $38.3 million for the same period in 1997. The increase was primarily a result of an inventory valuation reserve of $16.0 million, primarily related to excess raw materials and future inventory purchase commitments for raw materials in excess of anticipated future demand recorded as a part of the Company's restructuring in the third quarter of 1998.

Research and development (R&D) expenses for the year ended December 31, 1998 were $16.2 million, compared to $12.1 million in the year ended December 31, 1997. The increase was mainly due to increased spending associated with new product development.

Selling, general and administrative expenses for the year ended December 31, 1998 were $40.5 million, compared to $47.9 million in the year ended December 31, 1997. The decrease was primarily the result of lower marketing and advertising expenses in addition to personnel reductions in administration, sales and marketing. During 1998, the Company discontinued its direct-to-consumer-advertising, terminated its sales force services agreement with Innovex, and agreed to facilitate the transition of its direct sales force to Alza Corporation. The Company also announced its decision to seek a major pharmaceutical partner to market, distribute and sell MUSE in the U.S. and its comprehensive effort to reduce expenses.

Interest and other income for the year ended December 31, 1998 was $2.0 million, compared with $4.9 million for the same period in 1997. The decrease was primarily the result of lower average invested cash balances.

LIQUIDITY AND CAPITAL RESOURCES

Since inception, the Company has financed operations primarily from the sale of preferred and common stock. Through December 31, 1999, VIVUS has raised $153.8 million from financing activities and has an accumulated deficit of $91.0 million at December 31, 1999.

Cash, cash equivalents and available-for-sale securities totaled $40.4 million at December 31, 1999, compared with $23.9 million at December 31, 1998. The $16.5 million increase during 1999 was primarily the result of net income of $18.8 million and collection of accounts receivable of $3.1 million. These increases were partially offset by payments made related to the restructuring reserve established in 1998 of $5.4 million.

Accounts receivable at December 31, 1999 were $4.4 million, compared with $5.2 million at December 31, 1998, a decrease of $715 thousand due primarily to lower sales and improved collections.

Total liabilities were $27.3 million at December 31, 1999, compared with $32.4 million at December 31, 1998, a decrease of $5.1 million. This decrease relates primarily to the payments made related to the restructuring reserve of $5.4 million and recognition of unearned revenue of $3.1 million. These decreases are partially offset by and increase in the reserve for product returns of $4.3 million.

On October 5, 1998, the Company was named in a civil action filed in the Superior Court of New Jersey. This complaint seeks specific performance and other relief in connection with the Company's leased manufacturing facilities located in Lakewood, New Jersey. The Company's lease agreement requires that the Company provide a removal security deposit in the form of cash or a letter of credit. The Company and lessor ("plaintiff") have reached a tentative agreement whereby the Company will provide an irrevocable standby letter of credit in the amount of $3.3 million for such security deposit.

The Company believes that current cash, investments, and future cash flows will be sufficient to support the Company's operating needs through 12/31/00. The Company expects that it will be required to issue additional equity or debt securities or use other financing source to fund the development and possible commercial launch of its future products.

This Form 10-K contains "forward-looking" statements about future financial results, future products and other events that have not yet occurred. For example, statements like we "expect," we "anticipate" or we "believe" are forward-looking statements. Investors should be aware that actual results may differ materially from our expressed expectations because of risks and uncertainties about the future. We will not necessarily update the information in this Form 10-K if any forward-looking statement later turns out to be inaccurate. Details about risks affecting various aspects of our business are discussed throughout this Form 10-K. Investors should read all of these risks carefully, and should pay particular attention to risks affecting the following areas: future capital needs and uncertainty of additional financing (page 12); history of losses and limited operating history (pages 12 and 13); limited sales and marketing experience (page 10); dependence on third parties (pages 11 and 12); intense competition (page 11); dependence on key personnel (page 12); and other risk factors as stated (pages 10 through 18).

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

VIVUS, INC.

1. INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

The following financial statements are filed as part of this Report:

	PAGE
Report of Arthur Andersen LLP, independent public accountants	27
Consolidated Balance Sheets as of December 31, 1999 and 1998	28
Consolidated Statements of Operations for the three years ended December 31, 1999, 1998 and 1997	29
Consolidated Statements of Comprehensive Income (loss) for the three years ended December 31, 1999, 1998 and 1997	30
Consolidated Statements of Stockholders' Equity for the three years ended December 31, 1999, 1998 and 1997	31
Consolidated Statements of Cash Flows for the three years ended December 31, 1999, 1998 and 1997	32
Notes to Consolidated Financial Statements	33

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Stockholders and Board of Directors of VIVUS, Inc.:

We have audited the accompanying consolidated balance sheets of VIVUS, Inc. (a Delaware corporation) and subsidiaries as of December 31, 1999 and 1998, and the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 1999. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of VIVUS, Inc. and subsidiaries at December 31, 1999 and 1998, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States.

/s/ ARTHUR ANDERSEN LLP

San Jose, California
January 21, 2000

VIVUS, INC.

CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNT)

ASSETS

	DECEMBER 31,	
	1999	1998
Current assets:		
Cash and cash equivalents	$ 8,785	$ 2,989
Available-for-sale securities	27,049	20,903
Accounts receivable (net of allowance for doubtful accounts of $147 and $341 at December 31, 1999 and 1998)	4,432	5,197
Inventories	3,527	5,272
Prepaid expenses and other assets	4,338	534
Total current assets	48,131	34,895
Property and equipment	16,071	19,213
Available-for-sale securities, non-current	4,558	--
Total	$ 68,760	$ 54,108

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Accounts payable	$ 2,453	$ 3,277
Accrued and other liabilities	19,062	21,294
Total current liabilities	21,515	24,571
Accrued and other long-term liabilities	5,749	7,860
Total liabilities	27,264	32,431
Commitments (Note 10)		
Stockholders' equity:		
Common stock; $.001 par value; shares authorized -- 200,000 at December 31, 1999 and 1998; shares outstanding -- December 31, 1999, 32,211, December 31, 1998, 31,890	32	32
Paid in capital	132,643	131,466
Accumulated other comprehensive income	(190)	(31)
Accumulated deficit	(90,989)	(109,790)
Total stockholders' equity	41,496	21,677
Total	$ 68,760	$ 54,108

See notes to consolidated financial statements.

VIVUS, INC.

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

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
Revenue			
US product	$21,168	$ 39,041	$128,320
International product	19,996	32,658	1,017
Milestone	8,000	3,000	9,000
Other Revenue	3,142	--	--
Returns	(9,118)	--	--
Total revenue	43,188	74,699	138,337
Operating expenses:			
Cost of goods sold	12,369	55,616	38,288
Research and development	7,884	16,178	12,123
Selling, general and administrative	6,332	40,477	47,931
Settlement of lawsuits	600	--	5,050
Write-down of property	--	32,163	--
Other restructuring costs	(1,793)	12,490	--
Total operating expenses	25,392	156,924	103,392
Income (loss) from operations	17,796	(82,225)	34,945
Interest and other income	1,994	1,972	4,856
Income (loss) before taxes	19,790	(80,253)	39,801
Provision for income taxes	989	--	3,184
Net income (loss)	$18,801	$(80,253)	$ 36,617
Net income (loss) per share:			
Basic	$ 0.59	$ (2.52)	$ 1.11
Diluted	$ 0.58	$ (2.52)	$ 1.03
Shares used in per share computation:			
Basic	32,085	31,876	32,996
Diluted	32,507	31,876	35,559

See notes to consolidated financial statements.

VIVUS, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(IN THOUSANDS)

	TWELVE MONTHS ENDED DECEMBER 31,		
	1999	1998	1997
Net Income (loss)	$18,801	$(80,253)	36,617
Other comprehensive income:			
Unrealized gain (loss) on securities	(143)	(129)	21
Income tax expense (benefit)	7	--	(4)
	(136)	(129)	17
Comprehensive income (loss)	$18,665	$(80,382)	$36,634

See notes to consolidated financial statements.

VIVUS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(IN THOUSANDS)

	COMMON STOCK AND PAID IN CAPITAL		UNREALIZED GAIN (LOSS) ON	DEFERRED	ACCUMULATED
	SHARES	AMOUNT	SECURITIES	COMPENSATION	DEFICIT
Balances, December 31, 1996	32,454	$156,205	$ 77	$(348)	$ (66,154)
Warrants exercised, net	166	--			
Sale of common stock through employee stock purchase plan	34	486			
Exercise of common stock options for cash	851	4,254			
Repurchase of common stock for cash	(337)	(7,716)			
Stock compensation costs		140		348	
Unrealized gain on securities			21		
Net income					36,617
Balances, December 31, 1997	33,168	153,369	98	--	(29,537)
Sale of common stock through employee stock purchase plan	77	489			
Exercise of common stock options for cash	288	576			
Repurchase of common stock for cash	(1,663)	(23,584)			
Stock compensation costs	20	648			
Unrealized gain on securities			(129)		
Net (loss)					(80,253)
Balances, December 31, 1998	31,890	131,498	(31)	--	(109,790)
Sale of common stock through employee stock purchase plan	97	208			
Exercise of common stock options for cash	104	188			
Lawsuit settlement	120	600			
Stock compensation costs		181			
Unrealized gain on securities			(159)		
Net income					18,801
Balances, December 31, 1999	32,211	$132,675	$(190)	$ --	$ 90,989

See notes to consolidated financial statements.

VIVUS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss)	$ 18,801	$(80,253)	$ 36,617
Adjustments to reconcile net income (loss) to net cash provided by (used for) operating activities:			
Depreciation and amortization	3,316	3,688	2,138
Property write-down	--	32,163	--
Inventory write-down	--	16,083	--
Stock compensation costs	181	648	488
Issuance of common stock for patent rights	600	--	--
Changes in assets and liabilities:			
Accounts receivable	765	6,594	(11,791)
Inventories	1,745	(12,271)	(4,544)
Prepaid expenses and other assets	(3,804)	1,102	(301)
Accounts payable	(824)	(3,297)	3,250
Accrued and other liabilities	(4,344)	8,989	16,737
Net cash provided by (used for) operating activities	16,436	(26,554)	42,594
CASH FLOWS FROM INVESTING ACTIVITIES:			
Property and equipment purchases	(173)	(18,602)	(32,268)
Investment purchases	(134,860)	(180,791)	(323,609)
Proceeds from sale/maturity of securities	123,997	245,294	321,865
Net cash provided by (used for) investing activities	(11,036)	45,901	(34,012)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Exercise of common stock options	188	576	4,254
Sale of common stock through employee stock purchase plan	208	489	486
Repurchase of common stock	--	(23,584)	(7,716)
Net cash provided by (used for) financing activities	396	(22,519)	(2,976)
NET INCREASE (DECREASE) IN CASH	5,796	(3,172)	5,606
CASH:			
Beginning of year	2,989	6,161	555
End of year	$ 8,785	$ 2,989	$ 6,161
NON-CASH INVESTING AND FINANCING ACTIVITIES:			
Unrealized gain (loss) on securities	$ (143)	$ (129)	$ 21
SUPPLEMENTAL CASH FLOW DISCLOSURE:			
Income taxes paid	$ 36	$ 71	$ 1,653

See notes to consolidated financial statements.

VIVUS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

BUSINESS

VIVUS, Inc. was incorporated in California in 1991 to develop products for the treatment of erectile dysfunction. The Company was reincorporated in Delaware in 1996. The classification of the capital accounts reflects the effect of the reincorporation for all periods presented.

The Company obtained clearance from the U.S. Food and Drug Administration ("FDA") to manufacture and market MUSE in the U.S. in November 1996. The Company received approval to market MUSE in the United Kingdom from the Medicines Control Agency ("MCA") in November 1997, and is now approved in all European Union Countries. The Company commercially introduced MUSE in the U.S. in January 1997, and MUSE went on to become one of the top 25 most successful drug launches in the U.S., and the Company recorded a net profit of $36.6 million and product revenue of $129.3 million for the year ended December 31, 1997.

During 1998, the Company experienced a significant decline in market demand for MUSE as the result of the introduction of a competitor's product in April 1998. During the second and third quarters of 1998, the Company took significant steps to restructure its operations in an attempt to bring the cost structure in line with current and projected revenues.

In 1999, the Company focused its efforts on building a solid foundation for future growth. We successfully completed our ALIBRA Phase III clinical trials and filed an NDA in the fourth quarter with the FDA. We completed enrollment of our premature ejaculation Phase II proof-of-concept study, and we have strengthened our financial position, increasing our cash position from $24 million at December 31, 1998 to $40 million at December 31, 1999, while decreasing total liabilities by $5 million during the same period.

SIGNIFICANT ACCOUNTING POLICIES

Revenue Recognition

Product revenue is generally recognized upon shipment. The Company primarily sells its products through the wholesale channel in the United States. Product shipments are generally to distribution centers throughout the United States for the larger wholesalers.

The Company recognized revenues of $8 million, $3 million, and $9 million in the years ended December 31, 1999, 1998, and 1997, respectively, as a result of achieving certain milestones related to its international marketing agreements. The amounts are not refundable and do not involve any significant future performance obligations.

The marketing and distribution rights in Europe, Australia, New Zealand, Central and South America were returned to the Company by AstraZenica during the fourth quarter of 1999. This resulted in the Company recording $20 million in revenue in the fourth quarter of 1999, consisting of $14.9 million in product revenue associated with shipments that occurred throughout 1998 and 1999, $2 million in milestone revenue associated with marketing clearance in Italy, and $3.1 million in other revenue.

Principles of Consolidation

The consolidated financial statements include VIVUS, Inc., VIVUS International Limited, a wholly-owned subsidiary, and VIVUS Ireland Limited, VIVUS UK Limited and VIVUS BV Limited, wholly-owned subsidiaries of VIVUS International Limited. All significant intercompany transactions and balances have been eliminated.

Cash and Cash Equivalents

The Company considers all highly liquid debt instruments purchased with an original maturity of 90 days or less to be cash equivalents.

Inventories

Inventories are stated at the lower of cost (first-in, first-out basis) or market. Cost includes material and conversion costs. Pending FDA marketing clearance, which was obtained in November 1996, the Company expensed to research and development all raw material purchases prior to October 1, 1996. Certain of these expensed raw material costs benefited 1997 and 1998 by reducing cost of sales by $4.7 million and $2.7 million, respectively. During the quarter ended September 30, 1998, the Company wrote down its inventory to align with new estimates of expected future demand for MUSE. The Company had built up its inventory level prior to and after Pfizer's launch of sildenafil and had not anticipated the impact that this competing product would have on the demand for MUSE. The Company had anticipated sales to ultimately increase as a result of an expanding impotence market. Given the protracted decline in demand for MUSE, the Company recorded a valuation reserve of $16.0 million, primarily related to excess raw materials and future inventory purchase commitments for raw materials. This write-down is included in "Cost of Sales" in 1998 as part of the Company's restructuring.

Available-for-Sale Securities

The Company accounts for available-for-sale securities in accordance with Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities." Available-for-sale securities represent debt securities that are stated at fair value. The difference between amortized cost (cost adjusted for amortization of premiums and accretion of discounts which are recognized as adjustments to interest income) and fair value, representing unrealized holding gains or losses, are recorded in "Accumulated Other Comprehensive Income," a separate component of stockholders' equity until realized. The Company's policy is to record debt securities as available-for-sale because the sale of such securities may be required prior to maturity. Any gains and losses on the sale of debt securities are determined on a specific identification basis.

Prepaid Expenses and Other Assets

Prepaid expense and other assets generally consist of deposits, prepayments for future services and other assets. Prepayments are expensed when the services are received. At December 31, 1999, the prepaid expenses and other assets include a $3.1 million receivable of other revenue due from AstraZeneca in connection with the return of marketing and distribution rights to MUSE.

Property

Property and equipment are stated at cost. For financial reporting, depreciation and amortization are computed using the straight-line method over estimated useful lives of three to seven years. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful lives on remaining lease term. During 1998, the Company took multiple steps to restructure the operations of the Company to bring the cost structure in line with current and anticipated future revenues. These steps included the closing of the Company's contract manufacturing facility within PACO Pharmaceutical Services, Inc., and the termination of the Company's leased corporate offices. The Company recorded a $32.2 million write-down of property and equipment. This write-down was calculated in accordance with the provisions of SFAS No. 121 and represents the excess of the carrying values of, property and equipment, primarily the Company's New Jersey manufacturing leaseholds and equipment, over the projected future discounted cash flows for the Company.

Income Taxes

The Company accounts for income taxes in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," which requires an asset and liability approach for financial reporting of income taxes.

License Agreements

The Company has obtained rights to patented technologies related to its initial product MUSE under several licensing agreements. These agreements generally required milestone payments during the development period and royalties on product sales. Royalties on product sales are included in cost of goods sold. Milestone payments were included in research and development expenses in 1998, 1997 and years prior to 1997.

Net Income (Loss) Per Share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the periods. Diluted earnings per share is based on the weighted average number of common and common equivalent shares, which represent shares that may be issued in the future upon the exercise of outstanding stock options and warrants under the treasury stock method. The computation of basic and diluted earnings per share for the years ended December 31, 1999, 1998 and 1997 are as follows:

	1999	1998	1997
	(IN THOUSANDS, EXCEPT PER SHARE DATA)		
Net income (loss)	$18,801	$(80,253)	$36,617
Net income (loss) per share -- Basic	$ .59	$ (2.52)	$ 1.11
Common equivalent shares:			
Options	(0.01)	--	(0.07)
Warrants	--	--	(0.01)
Net income (loss) per share -- Diluted	$ .58	$ (2.52)	$ 1.03
Shares used in the computation of net income (loss) per share -- Basic	32,085	31,876	32,996
Common equivalent shares:			
Options	422	--	2,215
Warrants	--	--	348
Diluted shares	32,507	31,876	35,559

Options to purchase 286,500 shares at prices ranging from $24.81 to $37.38 which were outstanding at December 31, 1997 are not included in the computation of diluted EPS for 1997 because the option prices were greater than the average market price of common shares. Options to purchase 964,879 shares at prices ranging from $3.25 to $25.88 which were outstanding at December 31, 1999 are not included in the computation of diluted EPS for 1999 because the option prices were greater than the average market price of common shares. Warrants to purchase 325,000 shares with an exercise price of $4.31 expired on July 12, 1999.

Foreign Currency

Assets and liabilities recorded in foreign currencies are translated at the exchange rate on the balance sheet date. Revenue, cost and expenses are translated at average rates of exchange in effect during the year. Net gains and losses resulting from foreign exchange transactions were not material in all periods.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Recently Issued Accounting Pronouncements

Accounting for Derivative Instruments and Hedging Activities. In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards "SFAS No. 133," "Accounting for Derivative Instruments and Hedging Activities." This statement, as amended in June 1999, will require companies to recognize all derivatives, including those used for hedging foreign currency exposures, on the balance sheet at fair value and is effective for all fiscal years beginning after June 15, 2000. We believe the adoption of this statement will not have a significant effect on the results of operations.

Revenue Recognition in Financial Statements. In December 1999, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 101 "SAB 101," "Revenue Recognition in Financial Statements." SAB 101 provides guidance on applying generally accepted accounting principles to revenue recognition issues in financial statements. We will adopt SAB 101 as required in the first quarter of 2000. We do not expect the adoption of SAB 101 to have a material impact on our consolidated results of operations and financial position.

Reclassifications

Reclassifications have been made to the prior years' Consolidated Financial Statements to conform to the fiscal 1999 presentation.

NOTE 2. AVAILABLE-FOR-SALE SECURITIES

The fair value and the amortized cost of available-for-sale securities at December 31, 1999 and 1998 are presented in the table that follows. Fair values are based on quoted market prices obtained from an independent broker. For each category of investment securities, the table presents gross unrealized holding gains and losses. As of December 31, 1998, available-for-sale securities with maturities between one and two years, which total $12.7 million, are classified as short term assets as it is the Company's intention to sell these securities before maturity as necessary to meet current liability obligations.

As of December 31, 1999 (in thousands):

	AMORTIZED COST	FAIR MARKET VALUE	UNREALIZED HOLDING GAINS	UNREALIZED HOLDING LOSSES
U.S. government securities.....	$25,155	$24,980	$1	$(176)
Corporate debt.....	6,642	6,627	2	(17)
Total.....	$31,797	$31,607	$3	$(193)

As of December 31, 1998 (in thousands):

	AMORTIZED COST	FAIR MARKET VALUE	UNREALIZED HOLDING GAINS	UNREALIZED HOLDING LOSSES
U.S. government securities	$16,379	$16,380	$ 7	$(6)
Corporate debt	4,558	4,568	10	--
Total	$20,937	$20,948	$17	$(6)

NOTE 3. INVENTORIES

Inventories are recorded net of reserves of $15.0 million and $14.8 million as of December 31, 1999 and 1998, respectively, and consist of (in thousands):

	1999	1998
Raw materials	$2,039	$4,021
Work in process	143	162
Finished goods	1,346	1,089
Total	$3,527	$5,272

NOTE 4. FIXED ASSETS

Property and equipment as of December 31 consists of (in thousands):

	1999	1998
Machinery and equipment	$ 18,755	$ 18,762
Computers and software	3,935	3,866
Furniture and fixtures	2,195	2,195
Building Improvements	11,714	11,642
	36,599	36,465
Accumulated depreciation and amortization	(20,528)	(17,252)
Property and equipment, net	$ 16,071	$ 19,213

NOTE 5. ACCRUED AND OTHER LIABILITIES

In 1999, the Company recorded an allowance for product returns of $9.1 million related to expired products related to excess inventory in the wholesale channel prior to the launch of sildenafil. At December 31, 1999, a balance of $4.3 million remained to offset anticipated future returns.

Accrued and other liabilities as of December 31 consist of (in thousands):

	1999	1998
Restructuring	$ 8,185	$15,058
Product returns	4,300	--
Income taxes	3,016	2,082
Research and clinical expenses	2,803	2,337
Royalties	2,312	2,133
Unearned revenue	1,930	5,040
Employee compensation and benefits	1,286	902
Other	978	1,602
	$24,810	$29,154

NOTE 6. RESTRUCTURING AND RELATED CHARGES

During the second quarter of 1998, the Company recorded restructuring and related costs of $6.5 million. The charge included costs of $3.2 million resulting from the termination of certain marketing and promotional programs, a provision of $2.3 million for reductions in the Company's workforce that includes severance compensation and benefit costs, and $1.0 million in write-down of fixed assets.

During the third quarter of 1998, the Company took additional steps to restructure its operations and recorded $54.2 million of costs and write-downs. These charges included a $16.0 million write-down of inventory, primarily raw materials and commitments to buy raw materials, a $32.2 million write-down in property, and $6.0 million of other restructuring costs primarily related to personnel costs and operating lease commitments. These write-downs were calculated in accordance with the provisions of SFAS No. 121 and represents the excess of the carrying value of property and equipment, primarily the Company's New Jersey manufacturing leaseholds and equipment, over the projected future discounted cash flows for the Company.

During first quarter, second quarter and third quarter 1999, the Company included expired products returns of $500,000, $1 million, and $293,000, respectively, against the "Other" restructuring. In the fourth quarter 1999, the Company reclassified these charges to returns reserve to offset product revenues, and reversed the "Other" restructuring reserve from operating expenses as such reserves were determined to be excess in 1999.

Restructuring and related charges in fiscal 1999 and 1998 (in thousands):

	SEVERANCE AND EMPLOYEE COSTS	INVENTORY AND RELATED COMMITMENTS	PROPERTY AND RELATED COMMITMENTS	MARKETING COMMITMENTS	OTHER	TOTAL
Restructuring Provision	$ 3,069	$ 16,083	$ 34,684	$ 3,191	$ 3,708	$ 60,735
Incurred in 1998	(1,159)	(10,699)	(30,020)	(1,884)	(1,915)	(45,677)
Balance at December 31, 1998	1,910	5,384	4,664	1,307	1,793	15,058
Incurred in 1999	(1,610)	(1,379)	(784)	(1,307)	(1,793)	(6,873)
Balance at December 31, 1999	$ 300	$ 4,005	$ 3,880	$ 0	$ 0	$ 8,185

The Company expects that during the fiscal year 2000 it will make cash payments of approximately $2.4 million related to the restructuring, with the remaining $5.7 million in cash payments to occur in later years.

NOTE 7. STOCKHOLDERS' EQUITY

Common Stock

The Company is authorized to issue 200 million shares of common stock. As of December 31, 1999 and 1998, 32,210,500, and 31,890,091 shares, respectively, were issued and outstanding.

The Company's Board of Directors approved a stock repurchase program in May 1997 whereby the Company could purchase up to two million shares of its common stock. As of December 31, 1997, the Company had repurchased 336,700 shares at a cost of $7,716,000. During January and February 1998, the Company repurchased 1,663,300 additional shares of its common stock at a cost of $23,583,990.

During second quarter 1999, the Company reached a settlement of the shareholder class action lawsuits, in which the company incurred a non-cash expense of $600,000 for the issuance of 120,000 shares of VIVUS, Inc. common stock.

Preferred Stock

The Company is authorized to issue 5,000,000 shares of undesignated preferred stock. Shares of preferred stock may be issued by the Company in the future, without stockholder approval, upon such terms as the Company's Board of Directors may determine.

Stock Warrants

In connection with the issuance of convertible preferred stock in 1993, the Company issued warrants exercisable for up to 528,600 shares of common stock at an exercise price of $4.31 per share. In June 1997, 203,590 warrants were exercised and the Company issued 165,928 net shares based on the market price on June 23, 1997. The remaining 325,010 warrants were not exercised and expired on July 12, 1999.

NOTE 8. STOCK OPTION AND PURCHASE PLANS

Stock Option Plans

Under the 1991 Incentive Stock Plan (the Plan), the Company may grant incentive or non-statutory stock options or stock purchase rights (SPRs). Up to 7,800,000 shares of common stock have been authorized for issuance under the Plan. The Plan allows the Company to grant incentive stock options (ISOs) to employees and nonstatutory stock options (NSOs) to employees, directors and consultants at not less than the fair market value (for an ISO) of the stock at the date of grant (110% of fair market value for individuals who control more than 10% of the Company stock; otherwise, not less than 85% of fair market value for an NSO), as determined by the Board of Directors. Under the Plan, 25% of the options generally become exercisable after one year and 2.0833% per month thereafter. The term of the option is determined by the Board of Directors on the date of grant but shall not be longer than ten years. The Plan allows the Company to grant SPRs to employees and consultants at not less than 85% of the fair market value of the stock at the date of grant, as determined by the Board of Directors. Sales of stock under SPRs are made pursuant to restricted stock purchase agreements containing provisions established by the Board of Directors. The Company has a right to repurchase the shares at the original sale price, which expires at a rate to be determined by the Board of Directors. As of December 31, 1999, no SPRs have been granted under the Plan.

Under the 1994 Director Option Plan (the Director Option Plan), the Company reserved 400,000 shares of common stock for issuance to nonemployee directors of the Company pursuant to nonstatutory stock

options issued at the fair market value of the Company's common stock at the date of grant. Under the Director Option Plan, nonemployee directors will receive an option to purchase 32,000 shares of common stock when they join the Board of Directors. These options vest 25% after one year and 25% annually thereafter. Each director shall receive an option to purchase 8,000 shares of the Company's common stock annually upon their reelection. These options are fully exercisable ratably over eight months.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions used for grants: risk-free rates ranging from 5 - 6% and corresponding to government securities with original maturities similar to the vesting periods; expected dividend yield of 0%; expected lives of .64 years beyond vest dates; and expected volatility of 55% in all years.

Details of option activity under these plans are as follows:

	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding, December 31, 1996	4,197,850	$ 9.13
Granted	1,289,722	22.32
Exercised	(850,550)	5.00
Cancelled	(115,827)	12.90
Outstanding, December 31, 1997	4,521,195	13.57
Granted	1,093,338	4.96
Exercised	(379,375)	4.23
Cancelled	(2,163,416)	14.23
Repricing cancellation	(1,910,523)	15.16
Repricing issuance	1,910,523	3.42
Outstanding, December 31, 1998	3,071,742	3.90
Granted	300,783	3.36
Exercised	(103,623)	2.13
Cancelled	(324,626)	.43
Outstanding, December 31, 1999	2,944,276	$ 3.52

OPTIONS OUTSTANDING				OPTIONS EXERCISABLE	
RANGE OF EXERCISE PRICES	NUMBER OUTSTANDING AT DECEMBER 31, 1999	WEIGHTED-AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED-AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE DECEMBER 31, 1999	WEIGHTED-AVERAGE EXERCISE PRICE
$0.24 - $ 2.72	1,013,656	7.47 years	$2.10	449,177	$1.48
$2.94	948,653	6.15 years	2.94	753,115	2.94
$3.00 - $25.88	981,967	6.42 years	5.54	727,259	5.54
$0.24 - $25.88	2,944,276	6.7 years	$3.52	1,929,551	$3.58

At December 31, 1999, 5,960,960 options remained authorized and unissued and options to purchase 1,929,551 shares were exercisable under these plans. The weighted average fair values of options granted during 1999, 1998, and 1997, were $3.36, $4.96, and $9.32, respectively.

During 1997, options to purchase 100,000 shares of common stock were granted to research consultants at the fair market value on the date of grant. Compensation costs, including the impact of re-pricing, using the Black-Scholes option-pricing model approximately $1.1 million over the option's vesting period of which $182,000, $648,000 and $140,000 were recorded as expenses for the years ended December 31, 1999, 1998 and 1997, respectively. These options were cancelled in July 1999, when the Company decided not to renew the

contract with the research consultants. The research consultants exercised a total of 25,000 shares of these options during 1999.

In October 1998, the Company's Board of Directors authorized the re-pricing of all non-executive employees' options, certain consultants' options, and 50% of executives' options to the closing value as of October 19, 1998. The remaining 50% of executive options were re-priced at 150% of the closing value as of the same date. All re-priced stock options have a six-month "black out" period, whereby the re-priced stock options are not exercisable, even if vested. The "black out" period of all re-priced options ended April 18, 1999, and are now exercisable if vested.

The Company accounts for these plans under APB Opinion No. 25. Except for compensation discussed in the preceding paragraph, no compensation cost has been recognized because the exercise price equals the market value of stock on the date of grant. Options under these plans generally vest over four years, and all options expire after ten years.

Under FASB Statement No. 123 (FASB 123), "Accounting for Stock-based Compensation," the estimated fair value of options is amortized to expense over the options' vesting period. In accordance with the disclosure requirements of FASB 123, if the Company had elected to recognize this expense, income (loss) and income (loss) per share would have been reduced to the following pro forma amounts (in thousands, except per share data):

	1999	1998	1997
Pro forma net income (loss)	$17,341	$(83,129)	$31,958
Pro forma net income (loss) per share:			
Basic	$ 0.54	$ (2.61)	$ 0.97
Diluted	$ 0.53	$ (2.61)	$ 0.90

Stock Purchase Plan

In June 1994, the Company implemented an employee stock purchase plan under which eligible employees may authorize payroll deductions of up to 10% of their base compensation (as defined) to purchase common stock at a price equal to 85% of the lower of the fair market value as of the beginning or the end of the offering period. A total of 400,000 shares were reserved for issuance under the employee stock purchase plan. As of December 31, 1999, 269,172 shares have been issued to employees. During 1999, the weighted average fair market value of shares issued under the employee stock purchase plan was $2.16 per share.

NOTE 9. LICENSE AGREEMENTS

The Company has entered into several agreements to license patented technologies that are essential to the development and production of the Company's products. In connection with these agreements, upon meeting certain milestones (as defined) and contingent on the issuance of patents in certain countries, the Company is obligated to (1) pay license fees of $2,575,000 (of which $2,175,000 was paid prior to December 31, 1997 and $400,000 was paid in January 1998); (2) issue 896,492 shares of the Company's common stock (all of which has been issued); and (3) pay royalties on product sales covered by the license agreements (4% of U.S. and Canadian product sales and 3% of sales elsewhere in the world). In 1996, the Company issued an additional 400,000 shares of common stock to maintain exclusive rights to certain patents and patent applications beyond 1998. In connection with this issuance, the Company recorded a charge of $5,821,000 to the consolidated statements of operations. In 1997, 1998 and 1999, the Company recorded royalty expenses as cost of goods sold based on product sales.

NOTE 10. LEASE COMMITMENTS

The Company leases its manufacturing facilities under a five-year non-cancelable operating lease expiring in 2002. The Company has the option to extend this lease for two renewal terms of five years each. In January 2000, the Company entered into a seven-year lease for a new corporate headquarters in Mountain View, California, which lease expires in January 2007.

Future minimum lease payments under operating leases are as follows (in thousands):

2000	$1,342
2001	1,417
2002	844
2003	717
2004	737
Thereafter	1,629
	$6,686

Rent expense under operating leases totaled $994,000, $2,472,000 and $1,320,000 for the years ended December 31, 1999, 1998, 1997, respectively.

NOTE 11. INCOME TAXES

Deferred income taxes result from differences in the recognition of expenses for tax and financial reporting purposes, as well as operating loss and tax credit carryforwards. Significant components of the Company's deferred income tax assets as of December 31, are as follows (in thousands):

	1999	1998
Deferred tax assets:		
Net operating loss carryforwards	$ 6,230	$ 17,309
Research and development credit carryforwards	4,820	4,625
Capitalized research and development expenses	534	1,385
Inventory reserve	6,100	5,808
Accruals and other	5,163	11,007
Deferred gain	(272)	(573)
Depreciation	4,974	5,466
	27,549	45,027
Valuation allowance	(27,549)	(45,027)
Total	$ --	$ --

For federal and state income tax reporting purposes, net operating loss carryforwards of approximately $17,719,000 and $440,000 are available to reduce future taxable income, if any. These carryforwards begin to expire in 2019. In 1995, the Company implemented an international product distribution strategy for its products. Implementation included the transfer of international product manufacturing and marketing rights to VIVUS International Limited in a taxable transaction. The transfer of rights and related allocation of research and development costs resulted in the current utilization of $29,467,000 of the net operating loss carryforward. Should significant changes in the Company's ownership occur, the annual amount of tax loss and credit carryforwards available for future use would be limited.

The provision for income taxes consisted of the following components for the years ended December 31, 1999 and 1997, (in thousands):

	1999	1997
Current		
Federal	$730	$ 2,170
State	95	1,332
Total current	989	3,502
Deferred (prepaid)		
Federal	--	(318)
State	--	--
Total deferred (prepaid), net	--	(318)
Total provision for income taxes	$989	$ 3,184

The provisions for income taxes differs from the amount computed by applying the statutory federal income tax rates as follows, for the years ended December 31, 1999 and 1997:

	1999	1997
Provision computed at federal statutory rates	35%	35%
State income taxes, net of federal tax effect	6	6
Net operating losses utilized	(31)	(20)
Tax credits utilized	--	(10)
Income not subject to federal and state taxation	(4)	(4)
Other	(1)	1
Provision for income taxes	5%	8%

NOTE 12. LEGAL MATTERS

On November 3, 1999, VIVUS International Limited ("VINTL") filed a demand for arbitration against Janssen Pharmaceutica International ("Janssen") with the American Arbitration Association pursuant to the terms of the Distribution Agreement entered into between VINTL and Janssen on January 22, 1997. VINTL seeks compensation for inventory manufactured by VINTL in 1998 in reliance on contractual forecasts and orders submitted by Janssen. VINTL also seeks compensation for forecasts and order shortfalls attributed to Janssen in 1998, pursuant to the terms of the Distribution Agreement. VINTL seeks an award of $3.9 million plus costs and interest. On December 3, 1999, Janssen submitted its response to VINTL's arbitration demand denying liability. On January 3, 2000, each party designated an independent arbitrator. The designated arbitrators will select a third neutral arbitrator. An arbitration hearing is expected to occur in the second quarter of 2000.

On October 5, 1998, the Company was named in a civil action filed in the Superior Court of New Jersey. This complaint seeks specific performance and other relief in connection with the Company's leased manufacturing facilities, located in Lakewood, New Jersey. The Company's lease agreement requires that the Company provide a removal security deposit in the form of cash or a letter of credit. The Company and lessor ("plaintiff") have reached a tentative agreement whereby the Company will provide an irrevocable standby letter of credit in the amount of $3.3 million for such security deposit in the fourth quarter.

On February 18, 1998, a purported shareholder class action entitled Crain et al. v. VIVUS, Inc. et al., was filed in Superior Court of the State of California for the County of San Mateo. Five identical complaints were subsequently filed in the same court. These complaints were filed on behalf of a purported class of persons who purchased stock between May 15, 1997 and December 9, 1997. The complaints alleged that the Company and

certain current and former officers or directors artificially inflated the Company's stock price by issuing false and misleading statements concerning the Company's prospects and issuing false financial statements. On March 16, 1998, a purported shareholder class action entitled Cramblit et al. v. VIVUS, Inc. et al. was filed in the United States District Court for the Northern District of California. Five additional complaints were subsequently filed in the same court. The federal complaints were filed on behalf of a purported class of persons who purchased stock between May 2, 1997 and December 9, 1997. The federal complaints asserted the same factual allegations as the state court complaints, but asserted legal claims under the Federal Securities Laws. The federal court cases were consolidated, and a lead plaintiff was appointed and the plaintiff filed a consolidated and amended complaint in 1998.

On May 4, 1999, the Company reached a settlement with plaintiffs of the shareholder class action lawsuits described above. The aggregate settlement amount was $6 million. The settlement was funded by insurance proceeds of $5.4 million and by the Company contributing 120,000 shares of VIVUS Common Stock to the settlement fund.

In the normal course of business, the Company receives and makes inquiries regarding patent infringement and other legal matters. The Company believes that it has meritorious claims and defenses and intends to pursue any such matters vigorously. The Company is not aware of any asserted or unasserted claims against it where the resolution would have an adverse material impact on the operations or financial position of the Company.

NOTE 13. SEGMENT INFORMATION

During 1998, the Company adopted Statement of Financial Accounting Statement SFAS No. 131, "Disclosure About Segments of an Enterprise and Related Information." SFAS 131 requires a new basis of determining reportable business segments, i.e. the management approach. This approach requires that businesses disclose segment information used by management to assess performance and manage company resources. On this basis, the Company primarily sells its product through wholesale channels in the United States. International sales are made only to the Company's two international partners. All transactions are denominated in U.S. dollars, therefore, the Company considers the arrangement as operating in a single segment.

	1999	1998	1997
Top five customers accounted for:			
Customer A	47%	35%	*
Customer B	10%	13%	24%
Customer C	9%	*	13%
Customer D	9%	11%	14%
Customer E	6%	10%	18%
Customer F	*	*	11%
Customer G	*	11%	*

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* Customer's percentage did not fall in the top five

NOTE 14. SUBSEQUENT EVENT (UNAUDITED)

The Company entered into a binding Memorandum of Understanding to further solidify its female sexual dysfunction ("FSD") intellectual property position through an exclusive agreement with AndroSolutions, Inc., a privately held biomedical corporation and definitive agreements were executed in March 2000. The Company and AndroSolutions have jointly formed ASIVI, LLC, a Delaware limited liability company, into which VIVUS has contributed its issued U.S. FSD patent and European application and into which

AndroSolutions has contributed its U.S. and European FSD patent applications. In turn, ASIVI has granted the Company exclusive global rights to develop and commercialize FSD technologies based on this intellectual property, in return for certain milestone payments and royalties on FSD products developed by VIVUS. The Company and AndroSolutions will each own 50% of ASIVI, LLC. The Company intends to account for their interest in ASIVI, LLC. through the equity method of accounting.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

PART III

ITEM 10. EXECUTIVE OFFICERS AND DIRECTORS OF THE REGISTRANT

The information required by this item is incorporated by reference from the discussion in the Company's Proxy Statement captioned "Proposal One: Election of Directors."

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference from the discussion in the Company's Proxy Statement captioned "Executive Compensation."

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this item is incorporated by reference from the discussion in the Company's Proxy Statement captioned "Record Date and Share Ownership."

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

This information required by this item is incorporated by reference from the discussion in the Company's Proxy Statement captioned "Certain Transactions and Reports."

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENTS SCHEDULES AND REPORTS ON FORM 8-K

(a) The following documents are filed as part of this Report:

1. FINANCIAL STATEMENTS

2. FINANCIAL STATEMENT SCHEDULES

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

3. EXHIBITS

EXHIBIT NUMBER	DESCRIPTION
3.2(7)	Amended and Restated Certificate of Incorporation of the Company
3.3(4)	Bylaws of the Registrant, as amended
3.4(8)	Certificate of Designations of Rights, Preferences and Privileges of Series A Participating Preferred Stock
4.1(7)	Specimen Common Stock Certificate of the Registrant
4.2(7)	Registration Rights, as amended
4.4(1)	Form of Preferred Stock Purchase Warrant issued by the Registrant to Invemed Associates, Inc., Frazier Investment Securities, L.P., and Cristina H. Kepner
4.5(8)	Second Amended and Restated Preferred Shares Rights Agreement, dated as of April 15, 1997 by and between the Registrant and Harris Trust Company of California, including the Certificate of Determination, the form of Rights Certificate and the Summary of Rights attached thereto as Exhibits A, B, and C, respectively
10.1(1)+	Assignment Agreement by and between Alza Corporation and the Registrant dated December 31, 1993
10.2(1)+	Memorandum of Understanding by and between Ortho Pharmaceutical Corporation and the Registrant dated February 25, 1992

EXHIBIT NUMBER	DESCRIPTION
10.3(1)+	Assignment Agreement by and between Ortho Pharmaceutical Corporation and the Registrant dated June 9, 1992
10.4(1)+	License Agreement by and between Gene A. Voss, MD, Allen C. Eichler, MD, and the Registrant dated December 28, 1992
10.5A(1)+	License Agreement by and between Ortho Pharmaceutical Corporation and Kjell Holmquist AB dated June 23, 1989
10.5B(1)+	Amendment by and between Kjell Holmquist AB and the Registrant dated July 3, 1992
10.5C(1)	Amendment by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
10.5D(1)+	Stock Purchase Agreement by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
10.6A(1)+	License Agreement by and between Amsu, Ltd., and Ortho Pharmaceutical Corporation dated June 23, 1989
10.6B(1)+	Amendment by and between Amsu, Ltd., and the Registrant dated July 3, 1992
10.6C(1)	Amendment by and between Amsu, Ltd., and the Registrant dated April 22, 1992
10.6D(1)+	Stock Purchase Agreement by and between Amsu, Ltd., and the Registrant dated July 10, 1992
10.11(4)	Form of Indemnification Agreements by and among the Registrant and the Directors and Officers of the Registrant
10.12(2)	1991 Incentive Stock Plan and Form of Agreement, as amended
10.13(1)	1994 Director Option Plan and Form of Agreement
10.14(1)	Form of 1994 Employee Stock Purchase Plan and Form of Subscription Agreement
10.17(1)	Letter Agreement between the Registrant and Leland F. Wilson dated June 14, 1991 concerning severance pay
10.21(3)+	Distribution Services Agreement between the Registrant and Synergy Logistics, Inc. (a wholly-owned subsidiary of Cardinal Health, Inc.)+ dated February 9, 1996
10.22(3)+	Manufacturing Agreement between the Registrant and CHINOIN Pharmaceutical and Chemical Works Co., Ltd. dated December 20, 1995
10.22A(11)+	Amendment One, dated as of December 11, 1997, to the Manufacturing Agreement by and between VIVUS and CHINOIN Pharmaceutical and Chemical Works Co., Ltd. dated December 20, 1995
10.23(6)+	Distribution and Services Agreement between the Registrant and Alternate Site Distributors, Inc. dated July 17, 1996
10.24(5)+	Distribution Agreement made as of May 29, 1996 between the Registrant and ASTRAZ AB
10.24A(14)++	Amended Distribution Agreement dated December 22, 1999 between AstraZeneca and the Registrant
10.27(11)+	Distribution Agreement made as of January 22, 1997 between the Registrant and Janssen Pharmaceutica International, a division of Cilag AG International
10.27A(11)+	Amended and Restated Addendum 1091, dated as of October 29, 1997, between VIVUS International Limited and Janssen Pharmaceutica International
10.28(7)	Lease Agreement made as of January 1, 1997 between the Registrant and Airport Associates
10.29(7)	Lease Amendment No. 1 as of February 15, 1997 between Registrant and Airport Associates
10.29A(10)	Lease Amendment No. 2 dated July 24, 1997 by and between the Registrant and Airport Associates
10.29B(10)	Lease Amendment No. 3 dated July 24, 1997 by and between the Registrant and Airport Associates
10.31(9)+	Manufacture and Supply Agreement between Registrant and Spolana Chemical Works, A.S. dated May 30, 1997

EXHIBIT NUMBER	DESCRIPTION
10.32A(11)	Agreement between ADP Marshall, Inc. and the Registrant dated December 19, 1997
10.32B(11)	General Conditions of the Contract for Construction
10.32C(11)	Addendum to General Conditions of the Contract for Construction
10.34(12)+	Agreement dated as of June 30, 1998 between Registrant and Alza Corporation
10.35(12)+	Sales Force Transition Agreement dated July 6, 1998 between Registrant and Alza Corporation
10.36(13)	Form of, "Change of Control Agreements," dated July 8, 1998 by and between the Registrant and certain Executive Officers of the Company.
10.30A(13)	Amendment of lease agreement made as of October 19, 1998 by and between Registrant and 605 East Fairchild Associates, L.P.
10.37(13)	Sublease agreement made as of November 17, 1998 between Caliper Technologies, Inc. and Registrant
10.22B(13)+	Amendment Two, dated as of December 18, 1998 by and between VIVUS, Inc. and CHINOIN Pharmaceutical and Chemical Works Co.
10.31A(13)+	Amendment One, dated as of December 12, 1998 by and between VIVUS, Inc. and Spolana Chemical Works, A.S.
10.38(14)++	License Agreement by and between ASIVI, LLC, AndroSolutions, Inc., and the Registrant dated February 29, 2000
10.38A(14)++	Operating Agreement of ASIVI, LLC, between AndroSolutions, Inc. and the Registrant dated February 29, 2000
10.39(14)	Sublease agreement between KVO Public Relations, Inc. and the Registrant dated December 21, 1999
21.2	List of Subsidiaries
23.1	Consent of Independent Public Accountants
24.1	Power of Attorney (see "Power of Attorney")
27.1	Financial Data Schedule

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\+ Confidential treatment granted.

++ Confidential treatment requested.

(1) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-75698, as amended.

(2) Incorporated by reference to the same numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-90390, as amended.

(3) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1995, as amended.

(4) Incorporated by reference to the same numbered exhibit filed with the Registrant's Form 8-B filed with the Commission on June 24, 1996.

(5) Incorporated by reference to the same numbered exhibit filed with the Registrant's Current Report on Form 8-K/A filed with the Commission on June 21, 1996.

(6) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996.

(7) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1996, as amended.

(8) Incorporated by reference to exhibit 99.1 filed with Registrant's Amendment Number 2 to the Registration Statement of Form 8-A (File No. 0-23490) filed with the Commission on April 23, 1997.

(9) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1997.

(10) Incorporated by reference to the same numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1997.

(11) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1997.

(12) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.

(13) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1998.

(14) Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1999.

(b) REPORTS ON FORM 8-K

None.

SIGNATURES

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

VIVUS, INC.,
a Delaware Corporation

By: /s/ RICHARD WALLISER

Richard Walliser
Vice President of Finance and
Chief Financial Officer
(Principal Financial and Accounting
Officer)

Date: March 30, 2000

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Leland F. Wilson and Richard Walliser as his attorney-in-fact for him, in any and all capacities, to sign each amendment to this Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

SIGNATURE	TITLE	DATE
/s/ LELAND F. WILSON Leland F. Wilson	President, Chief Executive Officer (Principal Executive Officer) and Director	March 30, 1999
/s/ VIRGIL A. PLACE Virgil A. Place	Chairman of the Board and Chief Scientific Officer and Director	March 30, 1999
/s/ RICHARD WALLISER Richard Walliser	Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	March 30, 1999
/s/ JOSEPH E. SMITH Joseph E. Smith	Director	March 30, 1999
/s/ MARIO M. ROSATI Mario M. Rosati	Director	March 30, 1999
/s/ MARK B. LOGAN Mark H. Logan	Director	March 30, 1999
/s/ LINDA M. SHORTLIFFE, M.D. Linda M. Shortliffe, M.D.	Director	March 30, 1999

VIVUS, INC.

REPORT ON FORM 10-K FOR
THE YEAR ENDED DECEMBER 31, 1998

INDEX TO EXHIBITS*

EXHIBIT NUMBER	EXHIBIT NAME	SEQUENTIALLY NUMBERED PAGE
10.24A++	Amended Distribution Agreement dated December 22, 1999 between AstraZeneca and the Registrant.....	
10.38++	License Agreement by and between ASIVI, LLC, AndroSolutions, Inc., and the Registrant dated February 29, 2000.....	
10.38A++	Operating Agreement of ASIVI, LLC, between AndroSolutions, Inc. and the Registrant dated February 29, 2000.....	
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21.2	List of Subsidiaries.....	
23.1	Consent of Independent Public Accountants.....	
24.1	Power of Attorney (see "Power of Attorney").....	
27.1	Financial Data Schedule.....	

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* Only exhibits actually filed are listed. Exhibits incorporated by reference are set forth in the exhibit listing included in Item 14 of the Report on Form 10-K.

++ Confidential treatment requested.

Exhibit 10.24A

* Certain information on all pages have been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

[ASTRAZENECA LETTERHEAD]

Leland Wilson, President
VIVUS International Ltd.
c/o VIVUS Inc.
605 E. Fairchild Drive
MOUNTAIN VIEW, CA 94043
USA

December 22, 1999

RE. DISTRIBUTION AGREEMENT ENTERED INTO BY AND BETWEEN ASTRA AB ("ASTRA") AND VIVUS INTERNATIONAL LTD. ("VIVUS") ON MAY 29, 1996 (THE "AGREEMENT")

Dear Sirs,

(All terms defined in the Agreement and used herein with capital letters shall have the meaning provided for in the Agreement.)

I write to you to acknowledge the following agreement reached between ASTRA and VIVUS regarding the settlement of any claims pursuant to or relating to the Agreement;

(i) ASTRA shall pay to VIVUS no later than January 31, 2000 the amount of [*]. Such amount shall be the full payment for any financial obligation on ASTRA, not already as of this date fulfilled by ASTRA, to VIVUS pursuant to or in relation to the Agreement, incurred as of this date or hereafter. As a consideration for such payment ASTRA shall have the right to have any quantity of PRODUCT manufactured by VIVUS, and held in stock for ASTRA as of this date, delivered to ASTRA without any requirement on ASTRA to make any further payment for such delivery. The parties acknowledge that the quantity of PRODUCT currently manufactured and kept in stock for ASTRA amounts to [*].

(ii) Subject to the payment under (i) being made, the parties agree, effective also during the period starting on the date of this letter and until the date of such payment, to the following. ASTRA and VIVUS withdraw any financial claims pursuant to or in relation to the Agreement and the parties shall have no financial claims or obligations in relation to each other pursuant to or in

relation to the Agreement incurred as of this date or hereafter. ASTRA's right to have PRODUCT delivered according to (i) shall, however, survive until such delivery has been made in full and further the parties responsibilities regarding product liability in accordance with Sections 13.3 and 13.4 of the Agreement shall apply in accordance with what is stated therein.

Consequently VIVUS withdraws any claim and allegation stated in its notice of default of December 16, 1999, and the parties will not as a consequence of such VIVUS' letter enter into any particular procedure for resolution of issues laid down in the Agreement. The parties will not regarding any issue contemplated in the settlement under (i) and this (ii) make any claims, take any legal action or seek any remedy provided for under the Agreement or otherwise, other than in order to enforce its rights in accordance with what is stated in this letter.

(iii) The parties acknowledge that ASTRA may at its discretion continue to sell, but with no performance obligation or obligation to market or otherwise support the promotion of, the PRODUCT in certain countries of the TERRITORY during a period of time to be defined in detail by the parties but basically to expire no later than [*]

(iv) The parties agree that what is stated under (i) and (ii) shall not prevent that either party may be entitled to get reimbursed for minor costs not to exceed one hundred thousand dollars ($100,000) appropriate and provided for in the Agreement directly connected to the handback of distribution of the PRODUCT pursuant to the reversion of rights to the PRODUCT under the Agreement.

(v) The parties acknowledge that the Agreement, pursuant to ASTRA's discontinuance to sell the PRODUCT, substantially lacks content and that the parties shall use their best reasonable efforts to amicably settle any outstanding issues not included in the settlement mentioned above under (i) and (ii), thereby formally terminating the Agreement.

[ASTRAZENECA LOGO]

Leland Wilson, President December 22, 1999

I would appreciate your approval to the above by signing the attached copy of this letter and return it to me. This letter has been sent also by fax and I would therefore appreciate your signed fax copy in return by fax as well.

Yours sincerely,

ASTRA AB
(publ)

/s/ John Patterson

John Patterson, FRCP FFPM
Executive Vice President
Product Strategy & Licensing

cc. Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
USA

Approved:

Date:
VIVUS International Ltd.

_____
Leland Wilson,
President

EXHIBIT 10.38

*CERTAIN INFORMATION ON ALL PAGES HAVE BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement"), effective as of February 29, 2000 (the "Effective Date"), is by and between ASIVI, LLC, a Delaware limited liability company, with offices at 1172 Castro Street, Mountain View, California 94040 ("ASIVI"), and VIVUS, INC., a Delaware corporation with a principal place of business at 1172 Castro Street, Mountain View, California 94040 ("VI").

BACKGROUND

A. ASIVI owns certain Patent Rights (as defined below) relating to, inter alia, the design, development, manufacture and use of products containing prostaglandin E and/or other vasodilators for the treatment of female sexual dysfunction ("FSD"); and

B. VI desires to obtain an exclusive license under the ASIVI Technology (as defined below) to develop and commercialize Products (as defined below) for the diagnosis, prophylaxis and treatment of FSD, and ASIVI desires to grant such a license to VI, on the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set out herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASIVI and VI agree as follows:

1. DEFINITIONS

1.1 "Affiliate" shall mean any corporation or other entity which controls, is controlled by or is under common control with VI. For purposes of this definition only, "control" shall mean ownership or control, directly or indirectly, of more than fifty percent (50%) of the shares or other rights of the subject entity entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, to the election of the corresponding managing authority).

1.2 "ASI" shall mean AndroSolutions, Inc., a Tennessee corporation located at 200 Fort Sanders West Blvd., Suite 309, Knoxville, TN 37922.

1.3 "ASI Product Formulation" shall mean a Product formulation listed on Exhibit 1.3. The optimum proportions of the excipients in the ASI Product Formulation may be altered as Product development progresses and will not result in reclassification of the Product formulation.

1.4 "Commercially Reasonable Efforts" shall, with respect to a Product, mean efforts and resources equivalent to those normally employed by entities in the biopharmaceutical marketplace, substantially comparable to VI, to develop, manufacture, market or sell a product of similar market potential at a similar stage in its product life, taking into account for example the establishment of the Product in the marketplace, the competitiveness of alternative products, the proprietary position of the Product, the likelihood of regulatory approval, including consideration of safety and efficacy, for the Product given the regulatory authority and structure involved, the profitability of the Product and VI's available resources. Commercially Reasonable Efforts shall be determined on a market-by-market basis for each Product.

1.5. "Confidential Information" shall have the meaning specified in that certain Confidentiality and Non-Disclosure Agreement, dated December 16, 1999, by and between ASI, VI and ASIVI.

1.6. "Control" or "Controlled" shall mean possession of the ability to grant a license or sublicense as provided for herein, without violating the terms of any agreement or other arrangement with any third party.

1.7. "FDA" shall mean the U.S. Food and Drug Administration, or any successor agency.

1.8. "FSD IP" shall mean the patent rights, including issued patents and/or pending patent applications, relating to, inter alia, the design, development, manufacture, and use of products containing prostaglandin E and/or other vasodilators for the treatment of FSD that will be assigned to ASIVI pursuant to (a) the Assignment Agreement executed by ASI, and (b) the Assignment Agreement executed by VI, each dated the date hereof.

1.9. "First Commercial Sale" shall mean, with respect to each Product in each country, the first bona fide commercial sale of such Product in such country by or under authority of VI.

1.10. "ASIVI Technology" shall mean the Know How and Patent Rights, in each case that are Controlled by ASIVI during the term of this Agreement.

1.10.1 "Know How" shall mean the Confidential Information owned or Controlled by ASIVI as of the Effective Date and made available to VI by ASIVI necessary for the exercise of the Patent Rights, including technical data, protocols and methods. For the avoidance of doubt, the Know How does not include any Patent Rights.

1.10.2 "Patent Rights" shall mean all United States and foreign patents (including all reissues, extensions, substitutions, re-examinations, supplementary protection certificates and the like, and patents of addition) and patent applications (including, without limitation, all continuations, continuations-in-part and divisions thereof) owned or Controlled by ASIVI, in each case, which claim an invention that is necessary to develop, produce, make, have made, import, have imported, export, have exported, use, offer for sale and sell Products, in each case that are Controlled by ASIVI during the term of this Agreement.

1.11. "Marketing Approval" shall mean, with respect to each country for a particular Product, approval of the MAA filed in such country by the FDA, or the health regulatory authority in such country that is the counterpart of the FDA.

1.12. "Marketing Approval Application" or "MAA" shall mean a New Drug Application ("NDA"), Premarket Approval ("PMA") application, Premarket Notification (510(k)) application, Product Licensure Approval (PLA) application, Biologics Licensure Approval (BLA) application, or other similar regulatory filings as required under the United States Federal Food, Drug and Cosmetics Act and the regulations promulgated thereunder, or a comparable filing for Marketing Approval in a country for the manufacture, use or sale of a Product in that country.

1.13. "Net Sales" shall mean the amount invoiced by VI or its Affiliates or its Sublicensees (for purposes of this definition, as applicable, the "Selling Party") for the sale of Products to bona

fide independent third parties throughout the world, less (i) ordinary and customary trade discounts actually allowed by the Selling Party to the third party purchaser; (ii) credits, rebates and returns allowed and credited to the third party purchaser (including, but not limited to, wholesaler and retailer returns); (iii) freight, handling and duties paid on shipments by the Selling Party to the third party purchaser and separately identified on the invoice; and (iv) sales taxes, excise taxes, consumption taxes, customs duties and other compulsory payments to governmental authorities actually paid with respect to the sale by the Selling Party to the third party purchaser. For the avoidance of doubt, Net Sales shall not include sales by a Selling Party to its Affiliates or Sublicensees for resale; provided, however, that if the Selling Party sells a Product to an Affiliate or Sublicensee for resale, Net Sales shall include the amounts invoiced by such Affiliate or Sublicensee to third parties on the resale of such Product.

Net Sales, as defined herein, also includes any and all non-cash consideration received by VI, and VI's Affiliates and Sublicensees, from sublicensing, marketing, promotion, use, distribution, sale or other disposal of the Products, excluding the distribution of Products for use in research and/or development, in clinical trials or as promotional samples. All non-cash consideration will be valued at the fair market value thereof established by agreement of the parties or, failing that, by a qualified independent accountant approved by ASIVI and VI. ASIVI will bear the cost of such accountant.

In the case of discounts on "bundles" of products or services which include Products, Net Sales will be calculated by discounting the bona fide list price of such Product by the average percentage discount of all products of VI and/or its Sublicensees in a particular "bundle," calculated as follows:

Average percentage discount on a particular bundle = (1 - A/B) x 100

where A equals the total discounted price of a particular "bundle" of products, and B equals the sum of the undiscounted bona fide list prices of each unit of every product in such "bundle." VI shall provide ASIVI documentation, reasonably acceptable to ASIVI, establishing such average discount with respect to each "bundle." If VI cannot so establish the average discount of a "bundle," Net Sales shall be based on the undiscounted list price of the Products in the "bundle." If a Product in a "bundle" is not sold separately and no bona fide list price exists for such Product, the parties shall negotiate in good faith an imputed list price for such Product, and Net Sales with respect thereto shall be based on such imputed list price.

1.14. "Phase II" and "Phase III" shall mean Phase II, and Phase III clinical trials, respectively, in each case as prescribed by the U.S. Food and Drug Administration or a corresponding foreign entity.

1.15. "Product" shall mean any product containing prostaglandin E and/or other vasodilators for the treatment of FSD covered by the FSD IP.

1.15.1 "Initial Product" shall mean the Product which is selected for Phase III clinical trials as defined in Section 3.2.3.

1.16. "Sublicensee" shall mean a third party to whom VI has granted a license or sublicense pursuant to Section 2.2 hereof.

1.17. "Valid Claim" means (i) a claim of an issued and unexpired patent included within the Patent Rights which has not been held unenforceable or invalid by a court or other governmental agency of competent jurisdiction, and which has not been disclaimed or admitted to be invalid or unenforceable through reissue or otherwise, or (ii) a claim of a pending patent application within the Patent Rights.

1.18. "VI Product Formulation" shall mean a Product formulation listed on Exhibit 1.18. The optimum proportions of the excipients in the VI Product Formulation may be altered as Product development progresses and will not result in reclassification of the Product formulation.

2. LICENSE

2.1. Grant of Rights to VI. Subject to the terms and conditions of this Agreement, ASIVI hereby grants to VI and VI's Affiliates an exclusive [subject to the rights granted under Section 11.6 of that certain LLC Agreement of ASIVI dated February 29, 2000], worldwide right and license under the ASIVI Technology to make, have made, import, have imported, export, have exported, use, sell, have sold, offer for sale Products, practice any method, process or procedure and otherwise exploit the ASIVI Technology.

2.2. Sublicenses. The license granted under Section 2.1 above shall include the right to grant and authorize sublicenses under the ASIVI Technology to make, have made, import, have imported, export, have exported, use, sell, have sold, offer for sale Products, practice any method, process or procedure and otherwise exploit the ASIVI Technology. VI shall use all commercially reasonable efforts to cause each of its Sublicensees, if any, to purchase either (i) its requirements for Products from VI, or (ii) [*]

3. RESEARCH AND DEVELOPMENT

3.1. Regulatory Matters. VI shall use Commercially Reasonable Efforts to develop and commercialize Products, including (i) the preparation and filing of all MAAs, and (ii) carrying out and completing all associated activities, including design and management of clinical trials, in each case up to and including Marketing Approval, and shall thereafter maintain such approval. VI shall be the record holder of such Marketing Approval. VI shall also obtain any export approvals required by the FDA to export Products to other countries. ASIVI shall provide VI with a copy of any data that are within ASIVI's possession and Control and are necessary to file an MAA in a particular country.

3.2. Initial Product Development. The formulation of the Initial Product under this Agreement shall be determined as follows:

[*]

3.2.2. Phase II Clinical Trials. VI shall conduct Phase II clinical trials based on the results of the analysis set forth in Section 3.2.1 above, wherein both an ASI Product Formulation and a VI Product Formulation shall be tested. Such Phase II clinical trials may be conducted with only one (1) candidate Product formulation upon agreement between VI and ASI.

3.2.3. Phase III Clinical Trials. Based on the final results of the Phase II studies set forth in Section 3.2.2 above, VI and ASI will select the Initial Product formulation, if any, for Phase III studies. To the extent that the parties disagree with respect to the Product formulation to be selected for the Phase III clinical trial, such dispute will be settled according to Article 9.

4. PAYMENTS

4.1. Milestone Payments. VI agrees to make the following payments to ASIVI, in connection with the Initial Product only, upon the occurrence of each milestone specified below:

MILESTONES	PAYMENT
[*]	[*]
[*]	[*]
[*]	[*]

4.1.1. Milestones for Other Products. ASIVI and VI shall negotiate in good faith with ASI additional milestone payments, if any, for any Products other than the Initial Product subjected to the Phase III clinical trial set forth in Section 3.2.3.

4.1.2. Payment. The payments set forth in this Section 4.1 shall each be due and payable within thirty (30) days after the occurrence of the milestone event. VI shall promptly notify ASIVI and ASI of the achievement of any milestone.

4.2. Royalties.

4.2.1. Royalty on Net Sales by VI or its Affiliates. In partial consideration for the rights granted in Section 2.1, VI shall pay to ASIVI a royalty on annual Net Sales of Products sold by VI and its Affiliates, as follows:

Annual VI Worldwide Net Sales	Royalty Rate
[*]	[*]
[*]	[*]

[*] [*]
[*] [*]

4.2.2. Royalty on Net Sales for Products Sold by Sublicensees. In partial consideration for the rights granted in Section 2.1, VI shall pay to ASIVI a royalty on annual Net Sales of Products sold by Sublicensees, as follows:

Annual Sublicensee Worldwide Net Sales	Royalty Rate
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

4.2.3. Third Party Royalties. If VI, or any Affiliate or Sublicensee of VI becomes obligated to pay to third parties royalties or other amounts with respect to any Product through litigation or under agreements for patent rights or other technologies which VI, or such Affiliates or Sublicensee determines are desirable to license or acquire with respect to such Product, VI shall be responsible for making such payments. VI shall not deduct such payments from any payments to ASIVI, and such payments shall not be deducted from gross invoiced amounts for Products in calculating Net Sales.

4.2.4. One Royalty. No more than one royalty payment shall be due with respect to a sale of a particular Product.

4.2.5. Royalty Term. The royalties due under this Section 4.2 shall be payable until the expiration of the last to expire Valid Claim.

5. PAYMENTS; REPORTS; AND RECORDS.

5.1. Payments.

5.1.1. Timing of Payments. After the First Commercial Sale of a Product on which royalties are payable hereunder, VI shall make quarterly written reports to ASIVI within sixty (60) days after the end of each calendar quarter, stating in such report, separately for VI and each Affiliate and Sublicensee, the number, description and aggregate Net Sales, by country, of each Product sold during the calendar quarter upon which a royalty is payable. Such reports shall be Confidential Information of VI subject to the provisions of the Confidentiality and Non-Disclosure Agreement, dated December 16, 1999 by and between ASI, VI and ASIVI. Concurrently with the making of such reports, VI shall pay to ASIVI royalties due at the rates specified hereunder. Notwithstanding the foregoing, if VI receives provisional payments from Affiliates or Sublicensees relating to actual or anticipated sales of Products, VI must provide a quarterly written report containing the information specified above as it relates to such provisional payments, together with payment of royalties, at the rates specified in Section 4.2.2, on the amounts of such provisional payments (without setoff or deduction of any kind), within sixty (60) days after the end of each calendar quarter

in which VI receives such provisional payments. Any necessary adjustments to be made to amounts paid as royalties on provisional payments (in order to effect payment of all royalties due on Net Sales) shall be made to the first payment due to ASI (for royalties not based on provisional payments) following the calendar quarter in which the applicable Products are sold.

5.1.2. Payment Method. All payments due under this Agreement shall be made by bank wire transfer in immediately available funds to a bank account designated by ASIVI. All payments due to ASIVI hereunder shall be paid in United States dollars.

5.1.3. Currency Conversion. If any currency conversion shall be required in connection with the calculation of amounts payable hereunder, such conversion shall be made using the buying exchange rate for conversion of the foreign currency into U.S. Dollars, quoted for current transactions reported in The Wall Street Journal (U.S., Western Edition) for the last business day of the calendar quarter to which such payment pertains.

5.1.4. Taxes. All payments required to be paid to ASIVI pursuant to this Agreement shall be paid with deduction for withholding for or on account of any applicable sales, use, value-added, or other federal, state or local taxes or import duties or tariffs, or similar governmental charges imposed by a jurisdiction other than the United States ("Withholding Taxes"). VI shall provide ASIVI a certificate evidencing payment of any Withholding Taxes hereunder, and shall provide any further assistance reasonably requested by ASIVI to enable ASIVI to obtain the benefit of any deduction.

5.2. Reports: Inspection. VI shall maintain accurate books and records that enable the calculation of royalties payable hereunder to be verified. VI shall retain the books and records for each calendar year period for three (3) years after the submission of the corresponding report under Section 5.1.1 hereof. Upon thirty (30) days prior notice to VI, independent accountants selected by ASIVI, reasonably acceptable to VI, after entering into a confidentiality agreement with VI, may have access to VI's books and records during VI's normal business hours to conduct a review or audit once per calendar year, for the sole purpose of verifying the accuracy of VI's payments and compliance with this Agreement. Any such inspection or audit shall be at ASIVI's expense; however, if an inspection reveals underpayment of five percent (5%) or more in any audit period, VI shall pay the costs of the inspection. VI shall promptly pay to ASIVI any underpayment identified in such an audit.

6. CONFIDENTIALITY

6.1. Confidential Information. The parties confidentiality and non-disclosure obligations relating to their respective Confidential Information are set forth in that certain Confidentiality and Non-Disclosure Agreement, dated December 16, 1999, by and between ASI, VI and ASIVI.

6.2. Confidential Terms. Each party agrees not to disclose any terms of this Agreement to any third party without the consent of the other party; provided, disclosures may be made as required by securities or other applicable laws, or to a party's accountants, attorneys and other professional advisors, or by VI, ASIVI, and ASI to actual or prospective investors or corporate partners.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. ASIVI. ASIVI represents, warrants and covenants to VI that: (i) it is a limited liability company duly organized validly existing and in good standing under the laws of the State of Delaware; (ii) the execution, delivery and performance of this Agreement have been duly authorized by all necessary company action on the part of ASIVI; (iii) it is the sole, equal, and exclusive owner of all right, title and interest in the Patent Rights; (iv) it has the right to grant the rights and licenses granted herein, and the Patent Rights are free and clear of any lien, encumbrance or security interest; (v) it has not previously granted, and will not grant during the term of this Agreement, any right, license or interest in and to the Patent Rights, or any portion thereof, inconsistent with the license granted to VI herein; and (vi) there are no threatened or pending actions, lawsuits, claims or arbitration proceedings in any way relating to the Patent Rights.

7.2. VI. VI represents, warrants and covenants to ASIVI that: (i) it is a corporation duly organized validly existing and in good standing under the laws of the State of Delaware; (ii) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of VI; and (iii) it will use Commercially Reasonable Efforts to sell Products and to cause its Affiliates and Sublicensees to sell Products.

8. INTELLECTUAL PROPERTY

8.1. Prosecution and Maintenance of Patent Rights. Following completion of the Priority IP Analysis provided in that certain Memorandum of Understanding dated October 14, 1999, ASIVI will form an Intellectual Property Advisory Committee ("IPAC") comprised of one representative each from ASI and VI. Each representative from ASI and VI may appoint up to two (2) additional IPAC members. It is understood that ASI and VI will each bear the costs, if any, of participating on this committee. The IPAC will meet at least on a quarterly basis and on an ad hoc basis as necessary to review and provide guidance with respect to the preparation, filing, prosecution and maintenance of any patent applications within the Patent Rights. VI will submit to the IPAC periodic reports at intervals no less frequently than quarterly, setting forth the status of all activities relating to the preparation, filing, prosecution and maintenance of any patent applications within the Patent Rights. VI shall have the right to control, at its own expense, the preparation, filing, prosecution and maintenance of any patent applications within the Patent Rights, subject to the following conditions with respect to each patent application within the Patent Rights: (1) VI, its attorneys and/or representatives involved in the prosecution of such application will promptly advise ASI of all due dates for any actions to be taken and will forward copies of all papers received from the U.S. Patent and Trademark Office ("USPTO") or foreign patent office within ten (10) days of receipt of such papers; (2) as soon as reasonably possible, but in no event more than thirty (30) days prior to the date for filing of any papers with the USPTO or foreign patent office, VI, its attorneys, and/or representatives involved in the prosecution of such application will forward to ASI drafts of such papers for review; (3) as soon as reasonably possible, but in no event more than fifteen (15) days of receipt of drafts of such papers, ASI, its attorneys and/or representatives will provide written comments and/or revised drafts of such papers to VI, its attorneys and/or representatives which VI, its attorneys and/or representatives agree to consider in good faith; (4) VI, its attorneys and/or representatives agree to prepare, file, prosecute, and maintain the Patent Rights in good faith with due consideration to all written comments and/or revised drafts of such papers provided by ASI, its attorneys and/or

representatives, and to use all commercially reasonable efforts to obtain and maintain protection for the Product. In the event that VI, its attorneys and/or representatives and ASI, its attorneys and/or representatives participating in the IPAC cannot reach agreement regarding the filing of any paper with the USPTO and/or foreign patent office, the issue(s) upon which there is disagreement will be submitted to the Chief Executive Officer of VI and ASI to be resolved in good faith.

8.2. Enforcement. If either party hereto becomes aware that any Patent Rights are being or have been infringed by any third party, such party shall promptly notify the other party hereto in writing describing the facts relating thereto in reasonable detail. VI shall have the initial right, but not the obligation, to institute, prosecute and control any action, suit or proceeding with respect to such infringement, including any declaratory judgment action (each an "Action"), at its expense; using counsel of its choice. VI shall not be entitled to offset any amount expended in connection with such Action against royalties, if any, due under Section 3. In any such event, ASIVI shall cooperate reasonably with VI in connection with any such Action, at VI's expense; including without limitation, by joining such Action as a party if requested by VI. In the event VI fails to initiate or defend any Action involving the Patent Rights within three (3) months of receiving notice of any infringement, ASIVI shall have the right, but not the obligation, to initiate and control such an Action, at its expense; provided, any amounts recovered by ASIVI in such Action shall be used first to reimburse ASIVI and VI for the expenses incurred in connection with such Action and any remainder shall be treated as Net Sales of Products pursuant to Section 4.

8.3. Infringement Claims. If the practice by VI of the license granted herein results in any allegation or claim of infringement of an intellectual property right of a third party against VI, VI shall have the exclusive right to defend any such claim, suit or proceeding, at its own expense, by counsel of its own choice and shall have the sole right and authority to settle any such suit without prejudice to ASIVI; provided, however, ASIVI shall cooperate reasonably with VI, at VI's reasonable request and expense, in connection with the defense of such claim. Notwithstanding the foregoing, ASIVI may participate in the investigation and defense thereof, and any negotiations related thereto, directly or through separate counsel chosen and paid for by ASIVI.

9. DISPUTE RESOLUTION

If the parties are unable to resolve any dispute, controversy or claim between them arising out of or relating to the validity, construction, enforceability or performance of this Agreement, including disputes relating to alleged breach or to termination of this Agreement (each, a "Dispute"), the Dispute shall be settled by binding arbitration conducted in Chicago, Illinois, or such other location mutually agreed to by the parties, pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect by one (1) arbitrator appointed in accordance with such rules. The decision and/or award rendered by the arbitrator shall be written (specifically stating the arbitrator's findings of facts as well as the reasons upon which the arbitrator's decision is based), final and nonappealable (except for an alleged act of corruption or fraud on the part of the arbitrator) and may be entered in any court of competent jurisdiction. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award punitive or exemplary damages against any party. The arbitrator shall determine what discovery will be permitted, consistent with the goal of limiting the cost and time that the parties must expend for discovery; provided the arbitrator shall permit such discovery as he or she deems necessary to permit an equitable resolution of the dispute. Evidence need not be obtained in the presence of the arbitrator. At the arbitration hearing, each party may make written and oral presentations

to the arbitrator, present testimony and written evidence, and examine witnesses. The costs of any arbitration, including administrative fees and fees of the arbitrator, shall be shared equally by the parties. Each party shall bear the cost of its own attorneys' fees and expert fees. The parties and the arbitrator shall use their best efforts to complete any such arbitration within one (1) year after the appointment of the arbitrator, unless a party can demonstrate to the arbitrator that the complexity of the issues or other reasons warrant the extension of the timetable. In such case, the arbitrator may extend such timetable as reasonably required. The arbitrator shall, in rendering his or her decision, apply the substantive law of the State of Delaware, without regard to its conflict of laws provisions, except that the interpretation of and enforcement of this Article 9 shall be governed by the U.S. Federal Arbitration Act. Notwithstanding the foregoing, either party may seek from any court of competent jurisdiction any interim or provisional relief including injunctive and other equitable relief as appropriate. If a party seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by the other party, such other party agrees that it shall not allege in any such proceeding that the party seeking such relief has an adequate remedy at law. If a party seeks any equitable remedies (including injunctive relief), it shall not be precluded or prevented from seeking remedies at law, nor shall it be deemed to have made an election of remedies.

10. INDEMNIFICATION

10.1. Indemnification of ASIVI. VI shall indemnify, defend and hold harmless ASIVI and its directors, officers and employees (each an "ASIVI Indemnitee") from and against any and all liabilities, damages, losses, costs or expenses (including reasonable attorneys' and professional fees and other expenses of litigation and/or arbitration) (a "Liability") resulting from a claim, suit or proceeding (any of the foregoing, a "Claim") brought by a third party against an ASIVI Indemnitee, arising from or occurring as a result of activities performed by VI, its Affiliates, or its Sublicensees in connection with the development, manufacture or sale of any Product, except to the extent caused by the negligence or willful misconduct of ASIVI.

10.2. Indemnification of VI. ASIVI shall indemnify, defend and hold harmless VI, its Affiliates, Sublicensees and their directors, officers and employees (each a "VI Indemnitee") from and against any and all liabilities, damages, losses, costs or expenses (including reasonable attorneys' and professional fees and other expenses of litigation and/or arbitration) (a "Liability") resulting from a claim, suit or proceeding (any of the foregoing, a "Claim") brought by a third party against a VI Indemnitee, arising from or occurring as a result of (a) a material breach by ASIVI of its obligations under this Agreement, or (b) the negligence or willful misconduct of ASIVI, except, in each case, to the extent caused by the negligence or willful misconduct of VI, its Affiliates or Sublicensees.

10.3. Indemnification Procedures. In the event that an Indemnitee intends to claim indemnification under this Article 10, it shall promptly notify the other party (the "Indemnitor") in writing of such alleged Liability. The Indemnitor shall have the sole right to control the defense and/or settlement thereof, provided that the indemnified party may participate in any such proceeding with counsel of its choice at its own expense. The indemnity agreement in this Article 10 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnitee under this Article 10 but the omission so to deliver written notice

to the Indemnitor shall not relieve the Indemnitor of any liability that it may have to any Indemnitee other than under this Article 10. The Indemnitee under this Article 10, its employees and agents, shall cooperate fully with the Indemnitor and its legal representatives and provide full information in the investigation of any Claim covered by this indemnification. Neither party shall be liable for any costs or expenses incurred by the other party without its prior written authorization.

11. TERM AND TERMINATION

11.1. Term. The term of this Agreement shall commence on the Effective Date, and unless earlier terminated as provided in this Article 11, shall continue in full force and effect until the expiration of the last to expire Valid Claim.

11.2. Termination for Cause. Either party will have the right to terminate this Agreement upon sixty (60) days notice of a material breach by the other party, provided that the party accused of breach may avoid such termination if before the end of such sixty (60) day period said party cures such breach or default. However, if the party accused of breach disputes an asserted breach in writing within such sixty (60) day period, the non-breaching party shall not have the right to terminate this Agreement unless and until it has been determined in an arbitration proceeding under Article 9 above that this Agreement was materially breached, and the party accused of breach fails to cure such breach within sixty (60) days after such determination.

11.3. Termination for Insolvency. Either party may terminate this Agreement if the other becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if that petition or proceeding is not dismissed with prejudice within sixty (60) days after filing.

11.4. Effect of Termination.

11.4.1. Accrued Rights and Obligations. Termination of this Agreement for any reason shall not release any party hereto from any liability which, at the time of such termination, has already accrued to the other party or which is attributable to a period prior to such termination, nor preclude either party from pursuing any rights and remedies it may have hereunder or at law or in equity which accrued or are based upon any event occurring prior to such termination.

11.4.2. Return of Confidential Information. The parties' obligations with respect to the return of Confidential Information is as set forth in that certain Confidentiality and Non-Disclosure Agreement, dated December 16, 1999, by and between ASI, VI and ASIVI.

11.4.3. Stock on Hand. In the event this Agreement is terminated for any reason, VI and its Affiliates and Sublicensee(s) shall have the right to sell or otherwise dispose of the stock of any Product then on hand, subject to Articles 4 and 5.

11.4.4. Sublicense. In the event of any termination of this Agreement, any sublicense by VI shall remain in force and effect.

11.5. Survival. Sections 8.1, 11.4 and 11.5 and Articles 4, 5, 6, 9 and 12 of this Agreement shall survive termination of this Agreement for any reason.

12. MISCELLANEOUS

12.1. Governing Law. This Agreement, and any proceeding subject to Article 9, shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to its conflicts of laws provisions.

12.2. Independent Contractors. The relationship of the parties hereto is that of independent contractors. The parties hereto are not deemed to be agents, partners or joint ventures of the other for any purpose as a result of this Agreement or the transactions contemplated thereby. Neither party shall have the power to obligate or bind the other party in any manner whatsoever.

12.3. Assignment. The parties agree that their rights and obligations under this Agreement shall not be delegated, transferred or assigned to a third party without the prior written consent of the other party hereto; provided that either party may assign all of its rights and obligations under this Agreement, without the other party's consent (a) to its Affiliates, and (b) to an entity that acquires all or substantially all of the business or assets of the assigning party to which this Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise; which Affiliate or acquiring entity (y) agrees in a writing provided to the non-assigning party prior to any assignment, to assume all of the obligations of the assigning party hereunder, and (z) has provided to the non-assigning party evidence reasonably satisfactory to the non-assigning party of its ability to perform all such obligations in a timely manner. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

12.4. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be sent by hand delivery, by prepaid registered or certified mail, return receipt requested, or by facsimile transmission, addressed to the other party at the address shown below or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given upon delivery, if sent by hand delivery, three (3) days after deposit in the mail, or upon transmission by facsimile.

To ASIVI: ASIVI, LLC
1172 Castro Street
Mountain View, California 94040
Attention: Leland F. Wilson, President, CEO
Facsimile: (650) 934-5356

With a copy to: AndroSolutions, Inc.
200 Fort Sanders West Blvd., Suite 309
Knoxville, TN 37922
Attention: Gary W. Neal, M.D., President
Facsimile: (423) 531-6550

And with a copy to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Fountain Square
11911 Freedom Drive
Reston, VA 20190
Attention: Martin M. Zoltick, Esq.
Facsimile: (703) 464-4895

To VIVUS: VIVUS, Inc.
1172 Castro Street
Mountain View, CA 94040
Attention: Leland F. Wilson, President, CEO
Facsimile: (650) 934-5356

With a copy to: Wilson Sonsini Goodrich & Rosati, PC
650 Page Mill Road
Palo Alto, CA 94304
Attention: Mark Casper, Esq.
Facsimile: (650) 496-4082

12.5. Force Majeure. Neither party shall lose any rights hereunder or be liable to the other party for damages or losses (except for payment obligations) on account of failure of performance if such failure is occasioned by war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence, intentional conduct or misconduct of the nonperforming party and such party has exerted all reasonable efforts to avoid or remedy such force majeure; provided, however, that in no event shall a party be required to settle any labor dispute or disturbance.

12.6. Advice of Counsel. VI and ASIVI have each consulted counsel of their choice regarding this Agreement, and each acknowledges and agrees that this Agreement shall not be deemed to have been drafted by one party or another and will be construed accordingly.

12.7. Compliance with Laws. Each party shall furnish to the other party any information requested or required by that party during the term of this Agreement or any extensions hereof to enable that party to comply with the requirements of any U.S. or foreign, state and/or government agency.

12.8. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, OR FOR ANY LOST PROFITS, BUSINESS OR REVENUE, LOSS OF USE OR GOODWILL, OR OTHER LOST ECONOMIC ADVANTAGE, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE BREACH HEREOF, WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, STRICT LIABILITY, TORT, ANY FEDERAL OR STATE STATUTORY CLAIM, OR ANY OTHER LEGAL THEORY AND EVEN IF THE OTHER PARTY KNEW, SHOULD HAVE KNOWN, OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION SPECIFIED IN THIS SECTION 12.9 SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED

REMEDY SPECIFIED IN THIS AGREEMENT IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12.9. Further Assurances. At any time from time to time on and after the date of this Agreement, ASIVI shall at the request of VI: (i) deliver to VI such records, data or other documents consistent with the provisions of this Agreement, (ii) execute, and deliver or cause to be delivered, all such consents, documents or further instruments, and (iii) take or cause to be taken all such actions; as VI may reasonably deem necessary or desirable in order for VI to obtain the full benefits of this Agreement and the transactions contemplated hereby.

12.10. Severability; Waiver. If any provision(s) of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect without said provision. The parties shall in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which shall most nearly approximate the intent of the parties in entering this Agreement. The failure of a party to enforce any provision of the Agreement shall not be construed to be a waiver of the right of such party to thereafter enforce that provision or any other provision or right.

12.11. Entire Agreement; Modification. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior discussions, agreements and writings in relating thereto. This Agreement may not be altered, amended or modified in any way except by a writing signed by both parties.

12.12. Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

IN WITNESS WHEREOF, ASIVI and VI have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

ASIVI, LLC	VIVUS, INC.
By: /s/ Gary W. Neal	By: /s/ Leland F. Wilson
AndroSolutions, Inc.	Leland F. Wilson
Managing Member	President/Chief Executive Officer
Gary W. Neal, M.D., President	

By: /s/ Leland F. Wilson
VIVUS, Inc.
Managing Member
Leland F. Wilson
President/Chief Executive Officer

EXHIBIT 1.13

[ANDRO SOLUTIONS, INC. LETTERHEAD]

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EXHIBIT 1.18

(VIVUS letterhead)

[*]

* Certain information on all pages has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

Exhibit 10.38A

STATE OF DELAWARE

OFFICE OF THE SECRETARY OF STATE

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "ASIVI, LLC", FILED IN THIS OFFICE ON THE SECOND DAY OF MARCH, A.D. 2000, AT 5 O'CLOCK P.M.

[SECRETARY OF STATE SEAL]

/s/ Edward J. Freel

Edward J. Freel, Secretary of State

3141736 8100

AUTHENTICATION: 0293184

001107575

DATE: 03-03-00

CERTIFICATE OF FORMATION
OF
ASIVI, LLC

This Certificate of Formation of ASIVI, LLC, dated as of March 2, 2000, is being duly executed and filed by Mark J. Casper, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act.

FIRST. The name of the limited liability company formed hereby is ASIVI, LLC (the "LLC").

SECOND. The name of the registered office of the LLC in the State of Delaware is c/o Capitol Services, Inc., 9 East Loockerman Street, Dover, Delaware 19901.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware Capital Services, Inc., 9 East Loockerman Street, Suite 214, Dover, Delaware 19901 Kent County.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as the date first above written.

/s/ Mark J. Casper

Name: Mark J. Casper
Authorized Person

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 05:00 PM 03/02/2000
001107575 - 3141736

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SCHEDULE A (Including Schedule A-1 and Schedule A-2)
EXHIBIT 1 Technology Transfer Agreement (VIVUS, Inc.) (Including Schedule A)
EXHIBIT 2 Technology Transfer Agreement (AndroSolutions, Inc.) (Including Schedule A)

OPERATING AGREEMENT
OF
ASIVI, LLC
A DELAWARE LIMITED LIABILITY COMPANY
FEBRUARY 29, 2000

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY HAS APPROVED OR DISAPPROVED THIS OPERATING AGREEMENT OR THE LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS ("INTERESTS") PROVIDED FOR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE COMPANY IS UNDER NO OBLIGATION TO REGISTER THE INTERESTS UNDER THE SECURITIES ACT IN THE FUTURE.

AN INTEREST MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. ADDITIONAL RESTRICTIONS ON THE TRANSFER OF INTERESTS ARE CONTAINED IN SECTION 7 OF THIS AGREEMENT. BASED UPON THE FOREGOING, EACH ACQUIRER OF AN INTEREST MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME.

THIS OPERATING AGREEMENT of ASIVI, LLC, a Delaware limited liability company, is entered into as of February 29, 2000.

SECTION 1

DEFINITIONS

1.1 SPECIFIC DEFINITIONS. As used in this Agreement:

ACT shall mean the Delaware Limited Liability Company Act, Title 6, Delaware Code Ann., Section 18-101 et. seq., as amended.

AFFILIATE shall mean, with respect to any Person, any other Person with regard to which the Person is controlling, controlled or commonly controlled. For purposes of the preceding sentence, "control" shall mean the power to direct the principal business management and activities of a Person, whether through ownership of voting securities, by agreement, or otherwise.

AGREEMENT shall mean this Operating Agreement of ASIVI, LLC, a Delaware limited liability company, including all schedules, appendices, and exhibits hereto, as amended in accordance with the terms hereof.

ALLOCATION PERCENTAGE shall mean, for each Member, as of the date of determination, the percentage specified for such Member on Schedule A (as adjusted pursuant to this Agreement).

BANK shall mean the Bank of America National Trust & Savings Assn., San Francisco, California main branch (or any successor entity thereto).

BANKRUPTCY shall mean, with respect to a Member, the following: (i) a Member shall seek liquidation under the bankruptcy laws of the United States or under the insolvency, liquidation, receivership or other similar laws of any jurisdiction, domestic or foreign, now or hereafter existing, or (ii) a proceeding is commenced against a Member for liquidation, dissolution or similar relief under the bankruptcy laws of the United States or other similar laws of any jurisdiction, domestic or foreign, now or hereafter existing, which is not dismissed, bonded or discharged within 60 days from the commencement of such proceedings.

BENEFICIAL OWNER shall mean, with respect to a Member, any Person that holds an equity interest in such Member, either directly or indirectly through a nominee or agent or through one or more intervening entities qualifying as partnerships, grantor trusts or S corporations, in each case as determined for Federal income tax purposes.

BUSINESS shall mean the actions, operations and activities associated with conducting research and development regarding manufacturing, marketing, selling, distributing, and otherwise dealing in (directly or indirectly, through employees, agents or independent contractors) products and methods for the treatment of female dysfunction.

CAPITAL ACCOUNT shall mean, for each Member, a separate account that is:

(a) Increased by: (i) the amount of such Member's Capital Contribution and (ii) allocations of Profit to such Member pursuant to Section 4;

(b) Decreased by: (i) the amount of cash distributed to such Member by the Company, (ii) the Fair Market Value of any other property distributed to such Member by the Company (determined as of the time of distribution, without regard to Section 7701(g) of the Code, and net of liabilities secured by such property that the Member assumes or to which the Member's ownership of the property is subject) and (iii) allocations of Loss to such Member pursuant to Section 4;

(c) Revalued in connection with any event described in Treasury Regulation Section 1.704-1(b)(2)(iv)(f); and

(d) Otherwise adjusted so as to conform to the requirements of Sections 704(b) and (c) of the Code and the Treasury Regulations issued thereunder.

CAPITAL COMMITMENT shall have the meaning set forth in Section 3.1(a).

CAPITAL CONTRIBUTION shall mean, for any Member, the sum of the net amount of cash and the Fair Market Value of any other property (determined as of the time of contribution, without regard to Section 7701(g) of the Code, and net of liabilities secured by such property that the Company assumes or to which the Company's ownership of the property is subject) contributed by such Member to the capital of the Company. The term "capital contribution" (where not capitalized) shall mean any contribution to the capital of the Company valued in accordance with the rules set forth in the preceding sentence. For purposes of this Agreement, each capital contribution shall be deemed to have been made at the later of: (i) the Close of Business on the due date of such capital contribution as determined in accordance with this Agreement; or (ii) the Close of Business on the date on which such capital contribution is actually received by the Company.

CLOSE OF BUSINESS shall mean 5:00 p.m., local time, in San Francisco, California.

CODE shall mean the United States Internal Revenue Code of 1986, as amended.

COMPANY shall mean ASIVI, LLC, a Delaware limited liability company.

DERIVATIVE COMPANY INTEREST shall mean any actual, notional or constructive interest in, or right in respect of, the Company (other than a Member's total interest in the capital, profits and management of the Company) that, under Treasury Regulation Section 1.7704-1(a)(2), is treated as an interest in the Company for purposes of Section 7704 of the Code. Pursuant to the foregoing, "Derivative Company Interest" shall include any financial instrument that is treated as debt for Federal income tax purposes and (i) is convertible into or exchangeable for an interest in the capital or profits of the Company or (ii) provides for one or more payments of equivalent value.

DISPUTE NOTICE shall have the meaning set forth in Section 6.12.

DISSOLUTION shall mean, with respect to a legal entity other than a natural person, that such entity has "dissolved" within the meaning of the partnership, corporation, limited liability company, trust or other statute under which such entity was organized.

FAIR MARKET VALUE shall have the meaning set forth in Section 6.12.

FISCAL YEAR shall mean the period from January 1 through December 31 of each year (unless otherwise required by law).

GAAP shall mean United States Generally Accepted Accounting Principles, consistently applied.

INDEMNIFIED PERSON shall mean each Managing Member and each equityholder, member, director, officer, employee, or agent of a Managing Member. In addition, "Indemnified Person" shall mean any Non-Managing Member, employee or agent of the Company to the extent determined by the Managing Members in their reasonable discretion. A Person that has ceased to hold a position that previously qualified such Person as an Indemnified Person shall be deemed to continue as an Indemnified Person with regard to all matters arising or attributable to the period during which such Person held such position.

INTEREST shall mean, for each Member, such Member's rights, duties and interest in respect of the Company in such Member's capacity as such (as distinguished from any other capacity such as employee, debtor or creditor) and shall include such Member's right, if any, to vote on Company matters, bind the Company vis-a-vis third parties, or receive distributions as well as such Member's obligation, if any, to provide services, make capital contributions to take any other action.

LICENSING AGREEMENT shall mean that certain Licensing Agreement by and among the Company and VIVUS, Inc. of even date herewith (the "Licensing Agreement").

LIQUIDATING MEMBER shall mean VIVUS, Inc.

MAJORITY-IN-INTEREST OF THE MEMBERS OR MANAGING MEMBERS shall mean a group of Members or Managing Members whose aggregate Allocation Percentages at the time of determination exceed 50 percent of the total Allocation Percentages of all the Members or Managing Members, as applicable, at such time.

MANAGING MEMBER shall mean each Person listed on Schedule A as such, for so long as such Person does not become a Withdrawn Member. Except where the context otherwise requires, or as provided in Section 6.1(b), a reference in this Agreement to "the Managing Members" shall mean all of the Managing Members (taken together or acting unanimously, as appropriate).

MATERIAL MISCONDUCT shall mean, with respect to an Indemnified Person, gross negligence, willful and material breach of this Agreement, fraud, or the commission of a felony (except in the case of a felony where the Indemnified Person reasonably believed that no such felony would occur in consequence of such Indemnified Person's action or inaction, as the case may be). For purposes of the preceding sentence: (i) an Indemnified Person shall be deemed to have acted in good faith and without negligence with regard to any action or inaction that is taken in accordance with the advice or opinion of an attorney, accountant or other expert advisor so long as such advisor was selected with reasonable care and the Indemnified Person made a good faith effort to inform such advisor of all the facts pertinent to such advice or opinion; and (ii) an Indemnified Person's reliance upon the truth and accuracy of any written statement, representation or warranty of a Member shall be deemed to have been reasonable and in good faith absent such Indemnified Person's actual knowledge that such statement, representation or warranty was not, in fact, true and accurate.

MEMBER shall mean any Person listed on Schedule A as a Member. Except where the context requires otherwise, a reference in this Agreement to "the Members" shall mean all of the Members (taken together or acting unanimously, as appropriate).

MEMBER NONRECOURSE DEDUCTION shall mean an item of loss, expense or deduction attributable to a nonrecourse liability of the Company for which a Member bears the economic risk of loss within the meaning of Treasury Regulation Section 1.704-2(i).

MINIMUM GAIN of the Company shall, as provided in Treasury Regulation Section 1.704-2, mean the total amount of gain the Company would realize for Federal income tax purposes if it disposed of all assets subject to nonrecourse liability for no consideration other than full satisfaction thereof.

NONRECOURSE DEDUCTION shall mean an item of loss, expense or deduction (other than a Member Nonrecourse Deduction) attributable to a nonrecourse liability of the Company within the meaning of Treasury Regulation Section 1.704-2(b).

OBJECTING MEMBER shall have the meaning set forth in Section 6.12(b).

PATENT RIGHTS shall mean all United States and foreign patents (including all reissues, extensions, substitutions, re-examinations, supplementary protection certificates and the like, and patents of addition) and patent applications (including, without limitation, all continuations, continuations-in-part and divisions thereof) owned or controlled by Company, in each case, which claim an invention which is necessary to develop, produce, make, have made, import, have imported, export, have exported, use, offer for sale and sell Products, in each case that are controlled by Company.

PERSON shall mean an individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture, governmental agency, or other entity, whether domestic or foreign.

PRINCIPAL OFFICE shall have the meaning set forth in Section 2.4.

PRODUCT is a product containing prostaglandin E and/or other vasodilators useful for the treatment of female sexual dysfunction ("FSD") covered by the intellectual property ("IP") contributed by AndroSolutions, Inc. and VIVUS, Inc. to Company pursuant to the Technology Assignment Agreements attached hereto as Exhibits 1 and 2 and as further described on attached Schedule A-1 and Schedule A-2.

PROFITS AND LOSSES shall mean, for any period, the Company's items of income and gain (including items not subject to Federal income tax) as well as items of loss, expense and deduction (including items not deductible, depreciable, amortizable or otherwise excludable from income for Federal income tax purposes), respectively, as determined under Federal income tax principles; provided, however, that Profits and Losses attributable to assets with a book value that differs from tax basis (as determined under Federal income tax rules) shall be determined with regard to such book value in the manner required under Treasury Regulation Section 1.704-1(b).

SECURITIES ACT shall mean the United States Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder.

STATE shall mean any constituent state of the United States, as well as the District of Columbia.

TAX MATTERS PARTNER shall mean VIVUS, Inc.

TAX PERCENTAGE shall have the meaning set forth in Section 5.1(a)(ii).

Term shall have the meaning set forth in Section 2.2. Where not capitalized, "term" shall mean the entire period of the Company's existence, including any period of winding-up and liquidation following the Dissolution of the Company pursuant to Section 8.1.

Termination shall mean, with respect to a legal entity other than a natural person, that such entity has Dissolved, completed its process of winding-up and liquidation, and otherwise ceased to exist.

Transfer shall mean any sale, exchange, transfer, gift, encumbrance, assignment, pledge, mortgage, hypothecation or other disposition, whether voluntary or involuntary.

Treasury Regulation shall mean a regulation issued by the United States Treasury Department and relating to a matter arising under the Code.

United States shall mean the United States of America.

Updated Capital Account shall mean, with respect to a Member, such Member's Capital Account determined as if, immediately prior to the time of determination, all of the Company's assets had been sold for Fair Market Value and any previously unallocated Profits or Losses had been allocated pursuant to Section 4.

Valuation Notice shall have the meaning set forth in Section 6.12(a).

Withdrawal Event shall have the meaning set forth in Section 7.3.

Withdrawn Member shall have the meaning set forth in Section 7.3.

1.2 General Usage. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Except where the context clearly requires to the contrary: (i) each reference in this Agreement to a designated "Section," "Schedule," "Exhibit," or "Appendix" is to the corresponding Section, Schedule, Exhibit, or Appendix of or to this Agreement; (ii) instances of gender or entity-specific usage (e.g., "his" "her" "its" "person" or "individual") shall not be interpreted to preclude the application of any provision of this Agreement to any individual or entity; (iii) the word "or" shall not be applied in its exclusive sense; (iv) "including" shall mean "including, without limitation"; (v) references to laws, regulations and other governmental rules, as well as to contracts, agreements and other instruments, shall mean such rules and instruments as in effect at the time of determination (taking into account any amendments thereto effective at such time without regard to whether such amendments were enacted or adopted after the effective date of this Agreement) and shall include all successor rules and instruments thereto; (vi) references to "$" or "dollars" shall mean the lawful currency of the United States; (vii) references to "Federal" or "federal" shall be to laws, agencies or other attributes of the United States (and not to any State or locality thereof); (viii) the meaning of the terms "domestic" and "foreign" shall be determined by reference to the United States; (ix) references to "days" shall mean calendar days; references to "business days" shall mean all days other than Saturdays, Sundays and days that are legal holidays in the State of California; (x) references to months or years shall be to the actual calendar months or years at issue (taking into account the actual number of days in any such month or year); (xi) days, business days and times of day shall be determined by reference to local time in San Francisco, California; and (xii) the English language version of this Agreement shall govern all questions of interpretation relating to this Agreement, notwithstanding that this Agreement may have been translated into, and executed in, other languages.

SECTION 2

FORMATION

2.1 Formation and Name. The Members hereby enter into and form the Company as a limited liability company in accordance with the Act.

(a) The name of the Company shall be "ASIVI, LLC".

2.2 Term. The "Term" of the Company shall commence on the date first above written and shall continue until the Close of Business on February 28, 2029. Except as specifically provided in Section 8.1, the Company shall not be Dissolved prior to the end of its Term.

2.3 Purpose and Scope.

(a) Within the meaning and for purposes of the Act, the purpose and scope of the Company shall include any lawful action or activity permitted to a limited liability company under the Act.

(b) Solely for purposes of determining the rights and obligations of each Member vis-a-vis the other Members and the Company under this Agreement, and without any consequence for the binding nature of an action taken on behalf of the Company by any Member, the purpose and scope of the Company shall be limited to conducting and engaging in the Business, and engaging in such other lawful actions and activities as are reasonably determined by the Managing Members to be necessary or advisable in furtherance thereof.

2.4 Principal Office. The Company shall have a single "Principal Office" which shall at all times be located within the United States. The Principal Office initially shall be located at 1172 Castro Street, Mountain View, California 94040, and may thereafter be changed from time to time only by the unanimous consent of the Managing Members.

2.5 Delaware Office and Agent. The Company shall maintain a Delaware registered office and agent for service of process as required by the Act. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Managing Members shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be.

2.6 Names and Contact Information of the Members. Set forth below the name of each Member on Schedule A shall be appropriate contact information for such Member (including such Member's mailing address, telephone number, and facsimile number as well as, in the case of a Member that is an entity, the name or title of an individual to whom notices and other correspondence should be directed). Each Member shall promptly provide the Company with the information required to be set forth for such Member on Schedule A and shall thereafter promptly notify the Company of any change to such information.

2.7 Additional Documents.

(a) The Managing Members shall cause to be executed, filed, recorded, published, or amended any documents, as the Managing Members in their reasonable discretion determine to be necessary or advisable, (x) in connection with the formation, operation, Dissolution, winding-up, or Termination of the Company pursuant to applicable law or (y) to otherwise give effect to the terms of this Agreement. The terms and provisions of each document described in the preceding sentence shall be initially established and shall be amended as necessary to cause such terms and provisions to be consistent with the terms and provisions of this Agreement.

2.8 Title to Property. Title to all Company property shall be held in the name of the Company.

SECTION 3

CAPITALIZATION

3.1 Capital Commitments.

(a) Initial Capital Commitments. Concurrently with its execution of this Agreement, each Member shall make a capital contribution as set forth as such Member's Capital Commitment on Schedule A. Except as specifically provided in this Agreement, the "Capital Commitment" of a Member: (i) shall represent the maximum aggregate amount of cash and property that such Member shall be required to contribute to the capital of the Company; and (ii) shall not be changed during the term of the Company.

(b) Increased Capital Commitments. The Capital Commitments of the Members may be increased (in proportion to the Members' respective Allocation Percentages) at such times and in such amounts as shall be determined by the Managing Members based upon their good faith determination that any such increase is necessary or advisable for the proper and effective functioning of the Company.

3.2 Capital Contributions. Except to the extent set forth on Schedule A or provided in Section 3.7, all capital contributions shall be in cash. The obligation of a Member to satisfy its Capital Commitment shall be without interest. Capital Contributions otherwise required to be made by a Member under Section 3.1(b) shall be due and payable, upon not less than 10 days notice, only at such times and in such amounts as shall be specified in one or more capital calls issued by the Managing Members. The Managing Members or either of them may decline to issue or consent to a capital call in their sole and absolute discretion.

3.3 Limitation on Capital Contributions. Except as specifically provided in this Section 3 or Section 4.5(c), no Person shall be permitted or required to make a contribution to the capital of the Company.

3.4 Withdrawal and Return of Capital. No Member may withdraw any portion of its Capital Contribution or Capital Account balance. Except as provided in Sections 5 and 8, no Member shall be entitled to the return of such Member's Capital Contribution, a distribution in respect of such Member's Capital Account balance, or any other distribution in respect of such Member's Interest.

3.5 LOANS TO THE COMPANY. No Member shall be required to lend any money to the Company or to guaranty any Company indebtedness.

3.6 INTEREST ON CAPITAL. No Member shall be entitled to interest on such Member's Capital Contribution, Capital Account balance, or share of unallocated Profits.

3.7 LIMITATION OF LIABILITY; RETURN OF CERTAIN DISTRIBUTIONS.

(a) Except as otherwise required by applicable law, a Member shall have no personal liability for the debts and obligations of the Company.

(b) A Member that receives a distribution (i) in violation of this Agreement or (ii) that is required to be returned to the Company under applicable law shall return such distribution within 30 days after demand therefor by any Member.

(c) Nothing in this Section 3.7 shall be applied to release any Member from (i) its obligation to make capital contributions or other payments specifically required under this Agreement or (ii) its obligations pursuant to any relationship between the Company and such Member acting in a capacity other than as a Member (including, for example, as a borrower or independent contractor).

3.8 CONTRIBUTED PROPERTY. With respect to any property contributed by a Member to the Company, such Member shall provide to the Company any information reasonably requested by the Company for purposes of determining the Company's tax basis in such property.

SECTION 4

PROFITS AND LOSSES

4.1 ALLOCATIONS OF COMPANY PROFITS AND LOSSES.

(a) GENERAL. Except as otherwise provided in this Section 4, the items of Company Profit and Loss for each fiscal quarter (or shorter period selected by the Managing Members) shall be allocated among the Members in proportion to their respective Allocation Percentages.

(b) ALLOCATION ADJUSTMENTS REQUIRED TO COMPLY WITH SECTION 704(b) OF THE CODE.

(i) LIMITATION ON ALLOCATION OF LOSSES. There shall be no allocation of Losses to any Member to the extent that such allocation would create a negative balance in the Member's Capital Account (or increase the amount by which the Member's Capital Account balance is negative) unless such allocation would be treated as valid under Section 704(b) of the Code. Any Losses that, pursuant to the preceding sentence, cannot be allocated to a Member shall be reallocated to the other Members (but only to the extent that such other Members can be allocated Losses without violating the requirements of the preceding sentence) in proportion to their respective Allocation Percentages.

(ii) QUALIFIED INCOME OFFSET. If in any Fiscal Year a Member receives (or is reasonably expected to receive) a distribution, or an allocation or adjustment to the Member's Capital Account, that creates a negative balance in such Account (or increases the amount by which the balance in such Account is negative), there shall be allocated to the Member such items of Company income or gain as are necessary to satisfy the requirements of a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b).

(iii) MEMBER NONRECOURSE DEDUCTIONS. In accordance with the provisions of Treasury Regulation Section 1.704-2(i), each item of Member Nonrecourse Deduction shall be allocated among the Members in proportion to the economic risk of loss that the Members bear with respect to the nonrecourse liability of the Company to which such item of member Nonrecourse Deduction is attributable.

(iv) MINIMUM GAIN CHARGEBACK. This Section 4.1(b)(iv) hereby incorporates by reference the "minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2. In general, upon a reduction of the Company's Minimum Gain, the preceding sentence shall require that items of income and gain be allocated among the Members in a manner that reverses prior allocations of Nonrecourse and Member Nonrecourse Deductions as well as reductions in the Members' Capital Account balances resulting from distributions that, notwithstanding Section 4.2, are allocable to increases in the Company's Minimum Gain. Subject to the provisions of Section 704 of the Code and the Treasury Regulations thereunder, if the Managing Members determine at any time that operation of such "minimum gain chargeback" provisions likely will not achieve such a reversal by the conclusion of the liquidation of the Company, such Members shall adjust the allocation provisions of this Section 4.1 as necessary to accomplish that result.

(v) ALLOCATIONS SUBSEQUENT TO CERTAIN ALLOCATION ADJUSTMENTS. Any special allocations of items of Profit or Loss pursuant to Section 4.1(b)(i) or 4.1(b)(ii) shall be taken into account in computing subsequent allocations pursuant to Section 4.1(a) so that, for each Member, the net amount of any such special allocations and all allocations pursuant to Section 4.1(a) shall, to the extent possible and taking into account any adjustments previously made pursuant to Section 4.1(g), be equal to the net amount that would have been allocated to such Member pursuant to the provisions of Section 4.1(a) without application of Section 4.1(b)(i) or 4.1(b)(ii).

(c) BOOK - TAX ACCOUNTING DISPARITIES. If Company property is reflected in the Capital Accounts of the Members at a value that differs from the adjusted tax basis of such property (whether because such property was contributed to the Company by a Member or because of a revaluation of the Members' Capital Accounts under Treasury Regulation Section 1.704-1(b)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner which takes such difference into account in accordance with Code Section 704(c) and the Treasury Regulations issued thereunder.

(d) ALLOCATIONS IN EVENT OF TRANSFER. If an Interest is Transferred in accordance with this Agreement, allocations of Profits and Losses as between the transferor and transferee shall be made using any method selected by the Managing Members and permitted under Section 706 of the Code.

(e) ADJUSTMENT TO CAPITAL ACCOUNTS FOR DISTRIBUTIONS OF PROPERTY. If property distributed in kind is reflected in the Capital Accounts of the Members at a book value that differs from the Fair Market Value of such property at the time of distribution, the difference shall be treated as Profit or Loss on the sale of the property and shall be allocated among the Members in accordance with the provisions of this Section 4.1.

(f) TAX CREDITS AND SIMILAR ITEMS. Any tax credits or similar items not allocable pursuant to Section 4.1(a) through 4.1(e) shall be allocated to the Members in proportion to their respective Allocation Percentages. Notwithstanding the preceding sentence, if Company expenditures that give rise to tax credits also give rise to Member Nonrecourse Deductions, the tax credits attributable to such expenditures shall be allocated in accordance with Treasury Regulation Section 1.704-1(b)(4)(ii).

(g) REALLOCATION OF CERTAIN LOSSES. To the extent that: (i) Losses which otherwise would have been allocated to a Member under this Section 4.1 were allocated to one or more other Members pursuant to Section 4.1(b)(i) or any other provision of this Agreement that prohibits the allocation to a Member of Losses which would reduce such Member's Capital Account (or Updated Capital Account) balance below a specified amount; (ii) such allocation has not been reversed pursuant to the subsequent operation of Section 4.1(b)(v) or this Section 4.1(g); and (iii) the Member thereafter returns a distributed amount as required under Section 3.7 or otherwise makes a contribution to the capital of the Company, the Capital Accounts of the Members shall be adjusted in connection with such return or contribution (to the extent of the value thereof) to effect a reallocation, in reverse order, of such Losses to the Member.

4.2 NONALLOCATION OF DISTRIBUTIONS TO INCREASES IN MINIMUM GAIN. To the extent permitted under Treasury Regulation Section I.704-2(h), distributions to Members shall not be allocable to increases in the Company's Minimum Gain. In general, and except as provided in such Treasury Regulation, the preceding sentence is intended to ensure that reductions in a Member's Capital Account balance resulting from distributions of money or other property to that Member are not reversed by the minimum gain chargeback provisions of Section 4.1(b)(iv).

4.3 ALLOCATION OF LIABILITIES. Solely for purposes of determining the Members' respective shares of the nonrecourse liabilities of the Company within the meaning of Treasury Regulation Section 1.752-3(a)(3), each Member's interest in Company Profits shall be equal to the ratio that such Member's Allocation Percentage bears to the aggregate Allocation Percentages of the Members.

4.4 MODIFICATIONS TO PRESERVE UNDERLYING ECONOMIC OBJECTIVES. If, in the opinion of counsel to the Company, there is a change in the Federal income tax law (including the Code as well as the Treasury Regulations, rulings, and administrative practices thereunder) which makes it necessary or prudent to modify the allocation provisions of this Section 4 in order to preserve the underlying economic objectives of the Members as reflected in this Agreement, the Managing Members shall make the minimum modification necessary to achieve such purpose.

4.5 WITHHOLDING TAXES.

(a) The Company shall withhold taxes from distributions to, and allocations among, the Members to the extent required by law (as determined by the Managing Members in their reasonable discretion). Except as otherwise provided in this Section 4.5, any amount so withheld by the Company with regard to a Member shall be treated for purposes of this Agreement as an amount actually distributed to such Member pursuant to Section 5.1. An amount shall be considered withheld by the Company if, and at the time, remitted to a governmental agency without regard to whether such remittance occurs at the same time as the distribution or allocation to which it relates; provided, however, that an amount actually withheld from a specific distribution or designated by the Managing Members as withheld from a specific allocation shall be treated as if distributed at the time such distribution or allocation occurs.

(b) To the extent that operation of Section 4.5(a) would create a negative balance in a Member's Updated Capital Account or increase the amount by which such Updated Capital Account balance is negative, the amount of the deemed distribution shall instead be treated as a loan by the Company to such Member, which loan shall be payable upon demand by the Company and shall bear interest at a floating rate equal to the prime rate as announced from time to time by the Bank, compounded daily.

(c) In the event that the Managing Members determine in their reasonable discretion that the Company lacks sufficient cash available to pay withholding taxes in respect of a Member, one or more of the Managing Members may, in their sole and absolute discretion (but only with the consent of the Managing Members), make a loan or capital contribution to the Company to enable the Company to pay such taxes. Any such loan shall be full-recourse to the Company and shall bear interest at a floating rate equal to the prime rate as announced form time to time by the Bank, compounded daily. Notwithstanding any provision of this Agreement to the contrary, any loan (including interest accrued thereon) or capital contribution made to the Company by a Managing Member pursuant to this Section 4.5(c) shall be repaid or returned as promptly as is reasonably possible.

(d) Each Member hereby agrees to indemnify the Company and the other Members for any liability they may incur for failure to properly withhold taxes in respect of such Member; moreover, each Member hereby agrees that neither the Company nor any other Member shall be liable for any excess taxes withheld in respect of such Member's Interest and that, in the event of overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority.

(e) Taxes withheld by third parties from payments to the Company shall be treated as if withheld by the company for purposes of this Section 4.5. Such withholding shall be deemed to have been made in respect of all the Members in proportion to their respective allocative shares under this Section 4 of the underlying items of Profit to which such third party payments are attributable. In the event that the Company receives a refund of taxes previously withheld by a third party from one or more payments to the Company, the economic benefit of such refund shall be apportioned among the Members in a manner reasonably determined by the Managing Members to offset the prior operation of this Section 4.5(e) in respect of such withheld taxes.

(f) In the event that the Company is required to recognize income or gain for income tax purposes under Section 684 of the Code (or similar provision of State or local law) in respect of an in-kind distribution to a Member, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the Managing Members in their reasonable discretion), the income or gain shall be allocated entirely to such Member.

(g) In the event that the Company is required to remit cash to a governmental agency in respect of a withholding obligation arising from an in-kind distribution by the Company or the Company's receipt of an in-kind payment, the Managing Members may cause the Company to sell an appropriate portion of the property at issue and, to the extent permitted by applicable law (as determined by the Managing Members in their reasonable discretion), any resulting income or gain shall be allocated solely for income tax purposes entirely to the Members in respect of whom such withholding obligation arises.

4.6 Special Allocation. Notwithstanding anything to the contrary contained in this Agreement, [*] of the Company's income up to an amount equivalent to all amounts earned in a Fiscal Year under the Licensing Agreement shall be allocated to AndroSolutions, Inc.

SECTION 5

DISTRIBUTIONS

5.1 OPERATING DISTRIBUTIONS. Except as otherwise provided in this Agreement, distributions prior to the Dissolution of the Company shall be made in accordance with this Section 5.1 and each Member actually receiving amounts pursuant to a specific distribution by the Company shall receive a pro rata share of each item of cash or property of which such distribution is constituted (based upon such Member's share under this Agreement of the total amount to be included in such distribution).

(a) MANDATORY TAX DISTRIBUTIONS.

(i) The Company shall distribute to each Member, not later than 90 days after the close each Fiscal Year, an amount of cash equal to the sum of the following:

(A) The product of the Tax Percentage for such Fiscal Year and such Member's allocated share of the Company's net long-term capital gain (as defined in Section 1222(7) of the Code) for such Fiscal Year as shown on the Company's Federal income tax return (subject to the modification described in Section 5.1(a)(iii); and

(B) The product of the Tax Percentage for such Fiscal Year and such Member's allocated share of the Company's net ordinary income and net short-term capital gain (as defined in Section 1222(5) of the Code) for such Fiscal Year as shown on the Company's Federal income tax return (subject to the modification described in Section 5.1(a)(iii)).

(ii) For purposes of this Section 5.1(a): (x) the "Tax Percentage" with respect to each specific item of net long-term capital gain shall be the highest blended Federal and State marginal income tax rate applicable to such specific item of net long-term capital gain recognized by an individual resident, or a corporation doing business, in the state with the highest marginal individual or corporate income tax rate applicable to items of net long-term capital gain; and (y) the "Tax Percentage" with respect to items of net ordinary income and net short-term capital gain shall be the highest blended Federal and State marginal income tax rate applicable to ordinary income recognized by an individual resident, or a corporation doing business, in the State with the highest marginal individual or corporate income tax rate applicable to items of ordinary income. In all cases, the highest marginal income tax rate shall be the highest statutory rate applicable to the specific type of income or gain in question and shall be determined without regard to phaseouts of deductions or similar adjustments; moreover, a corporate franchise tax imposed in lieu of an income tax shall be treated as an income tax. The Managing Members, acting in their reasonable discretion, may adjust the determination of Tax Percentages pursuant to this Section 5.1(a)(ii): (x) as necessary to ensure that the distribution required to be made to each Member pursuant to Section 5.1(a)(i) for any Fiscal Year is not less than such Member's actual Federal and State income tax liability in respect of allocations made to such Member by the Company for such Fiscal Year, or (y) to reflect any city or other local income tax to which any Member or Members may be subject; provided, however, that the Tax Percentage with regard to a particular type of income or gain shall in all events be the same percentage for all Members.

(iii) For purposes of calculating the Company's net income and gain under clause (i), above, there shall be disregarded any items of loss, expense or deduction the ultimate deductibility of which may, in respect of any Member or equityholder of a Member, be subject to limitation under Section 67 of the Code.

(iv) For purposes of determining whether the Company has satisfied its distribution obligation under Section 5.1(a)(i), all cash distributions made during a Fiscal Year shall be treated as distributions made pursuant to Section 5.1(a)(i) in respect of such Fiscal Year (except to the extent that such distributions were required to satisfy the obligations of the Company under Section 5.1(a)(i) in respect of one or more prior Fiscal Years, in which case such distributions shall be treated as having been made pursuant to Section 5.1(a)(i) in respect of such prior Fiscal Year or Years).

(b) DISCRETIONARY DISTRIBUTIONS. In addition to the distributions provided for in Section 5.1(a), the Managing Members may cause the Company to distribute cash or property to the Members, in proportion to the Members' respective Allocation Percentages, at such times and in such amounts as the Managing Members shall determine in their sole and absolute discretion.

5.2 LIQUIDATING DISTRIBUTIONS. Notwithstanding the provisions of Section 5.1, cash or property of the Company available for distribution upon the Dissolution of the Company (including cash or property received upon the sale or other disposition of assets in anticipation of or in connection with such Dissolution) shall be distributed in accordance with the provisions of Section 8.2.

5.3 LIMITATION ON DISTRIBUTIONS. No distribution shall be made to a Member pursuant to Section 5.1 if and to the extent that such distribution would: (i) create a negative balance in the Updated Capital Account of such Member or increase the amount by which such Updated Capital Account balance is negative; (ii) cause the Company to be insolvent; or (iii) render the Member liable for a return of such distribution under applicable law.

5.4 LICENSING AGREEMENT DISTRIBUTION

[*] of all payments made under the Licensing Agreement shall be distributed to AndroSolutions, Inc. within ten (10) days after the date the Company receives such payments. Notwithstanding the foregoing, no mandatory tax distributions as described in Section 5.1(a) hereof shall be made under this Section 5.4.

5.5 NO RIGHT TO DISTRIBUTIONS OF PROPERTY. Except as otherwise provided in this Agreement, a Member shall have no right to require that distributions to such Member consist of any specific item or items of property.

SECTION 6

ADMINISTRATION

6.1 MANAGEMENT POWERS AND AUTHORITY OF THE MANAGING MEMBERS. Except as otherwise specifically provided in this Agreement:

(a) The Company and its business shall be managed, controlled and operated exclusively by the Managing Members, who shall be the "managers" of the Company within the meaning of Section 18-101(10) of the Act and shall have all of the powers and authority in respect of the Company permitted to managers under the Act; and

(b) As among the Managing Members, the determination by a Majority-In-Interest of the Managing Members to take any action or make any decision (for, in respect of, or on behalf of, the Company) shall control.

6.2 MANAGING MEMBERS' POWER TO BIND THE COMPANY.

(a) Except as specifically provided for in this Agreement, a Managing Member acting alone shall not have the authority to bind the Company. A contract, agreement, deed, lease, note or other document or instrument purportedly executed on behalf of the Company by a Managing Member shall not be deemed to have been duly executed by the Company unless executed by all Managing Members. Third parties shall not be entitled to rely upon the statement or the signature of only one Managing Member on any contract, agreement, deed, lease, note or other document or instrument.

(b) Notwithstanding the provisions of Section 6.2(a), the Tax Matters Partner and the Liquidating Member shall have the exclusive authority to act for or on behalf of the Company with regard to liquidation and tax matters as described in Sections 6.8 and 8.2 (including, but without limitation, the authority to execute on behalf of the Company and to file with any governmental entity, on behalf of the Company and the Members, a certificate or similar instrument that evidences its power to bind the Company with respect to liquidation and tax matters).

6.3 OTHER VENTURES AND ACTIVITIES.

(a) The Members: (i) acknowledge that the Members and their respective Affiliates, equityholders, and other related Persons, as well as their respective clients are or may be involved in other business, financial, investment and professional activities; and (ii) agree that, except as otherwise specifically set forth in Section 6.4, each Member and its Affiliates, equityholders, and other related Persons, as well as their respective clients may engage for their own accounts and for the accounts of others in any such ventures and activities (without regard to whether the interests of such ventures and activities conflict with those of the Company). Except as specifically set forth in Section 6.4: (i) neither the Company nor any Member shall have any right by virtue of this Agreement or the existence of the Company in and to such ventures or activities or to the income or profits derived therefrom; and (ii) the Members, their Affiliates, equityholders, and other related Persons, as well as their respective clients shall have no duty or obligation to make any reports to the Members or the Company with respect to any such ventures or activities.

6.4 DUTIES TO THE COMPANY.

(a) A Member shall not utilize any assets or confidential information of the Company other than for the exclusive benefit of the Company, a purpose reasonably related to protecting such Member's Interest (in a manner not inconsistent with the interests of the Company), or to comply with the requirements of applicable law. For purposes of the preceding sentence, a business opportunity within the scope of the Business which is made available to a Managing Member solely or principally in consequence of such Person's status as such shall be deemed an asset of the Company.

(b) The Managing Members shall devote to the Company such reasonable amounts of time, effort and attention as shall be necessary to cause the Company and its business to be diligently and prudently managed.

6.5 OFFICERS. The Managing Members may, in their sole and absolute discretion, appoint, replace and remove, from time to time, Company officers to whom the Managing Members shall delegate such powers, authority and duties in respect of the Company as the Managing Members shall determine.

6.6 MEMBER EXPENSES.

(a) GENERAL. Except as otherwise provided in this Section 6.6, no Member shall be reimbursed for expenses incurred on behalf of, or otherwise in connection with, the Company. Any reimbursement paid by a third party for expenses actually reimbursed by the Company shall be retained by (or paid over by the recipient thereof to) the Company.

(b) MANAGING MEMBERS. Each Managing Member shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred by such Managing Member on behalf of the Company; provided, however, that a Managing Member shall receive more than $1,000 in respect of expenses incurred on behalf of the Company during any specific Fiscal Year only with the approval of the Managing Members.

6.7 MEMBER COMPENSATION. The Company shall not be obligated to pay a salary, bonus or similar compensation to any Member in respect of services provided to the Company by such Member in its capacity as such.

6.8 TAX MATTERS PARTNER.

(a) GENERAL. The Tax Matters Partner is hereby designated the "tax matters partner" of the Company within the meaning of Section 6231(a)(7) of the Code. Except to the extent specifically provided in the Code or the Treasury Regulations (or the laws of relevant non-Federal taxing jurisdictions), the Tax Matters Partner shall have exclusive authority to act for or on behalf of the Company with regard to tax matters, including the authority to make (or decline to make) any available tax elections.

(b) PARTNERSHIP CLASSIFICATION FOR TAX PURPOSES. Except to the extent otherwise required by applicable law (disregarding for this purpose any requirement that can be avoided through the filing of an election or similar administrative procedure), the Tax Matters Partner shall cause the Company to take the position that the Company is a "partnership" for Federal, State and local income tax purposes and shall cause to be filed with the appropriate tax authorities any elections or other documents necessary to give due legal effect to such position. A Member shall not file (and each Member hereby represents that it has not filed) any income tax election or other document that is inconsistent with the Company's position regarding its classification as a "partnership" for applicable Federal, State and local income tax purposes.

(c) NOTICE OF INCONSISTENT TREATMENT OF COMPANY ITEM. No Member shall file a notice with the United States Internal Revenue Service under Section 6222(b) of the Code in connection with such Member's intention to treat an item on such Member's Federal income tax return in a manner which is inconsistent with the treatment of such item on the Company's Federal income tax return unless such Member has, not less than 30 days prior to the filing of such notice, provided the Tax Matters Partner with a copy of the notice and thereafter in a timely manner provides such other information related thereto as the Tax Matters Partner shall reasonably request.

(d) NOTICE OF SETTLEMENT AGREEMENT. Any Member entering into a settlement agreement with the United States Department of the Treasury which concerns a Company item shall notify the Tax Matters Partner of such settlement agreement and its terms within 60 days after the date thereof.

6.9 RECORDS AND FINANCIAL STATEMENTS.

(a) The Company shall maintain true and proper books, records, reports, and accounts in which shall be entered all transactions of the Company. The Company shall also maintain all schedules to this Agreement and shall update such schedules promptly upon receipt of new information relating thereto. Copies of such books, records, reports, accounts and schedules shall be located at the Principal Office and shall be available to any Member for inspection and copying, upon at least two business days' notice, during reasonable business hours.

(b) Within 90 days after the end of each Fiscal Year, the Company shall furnish to each Member a statement, which need not be audited, of: (i) the assets and liabilities of the Company, (ii) the net Profit or Loss of the Company, and (iii) the Capital Account balance of such Member. In addition, within 90 days after the end of each Fiscal Year, the Company shall supply all information reasonably necessary to enable the Members to prepare their Federal income tax returns and (upon request therefor) to comply with other reporting requirements imposed by law.

6.10 CONFIDENTIALITY. The Members acknowledge and agree that all information provided to them by or on behalf of the Company or a Managing Member concerning the business or assets of the Company or any Member shall be deemed strictly confidential and shall not, without the prior consent of the Managing Members, be (i) disclosed to any Person (other than a Member) or (ii) used by a Member other than for a Company purpose or a purpose reasonably related to protecting such Member's Interest (in a manner not inconsistent with the interests of the Company). The Managing Members hereby consent to the disclosure by each Member of Company information to such Member's accountants, attorneys and similar advisors bound by a duty of confidentiality; moreover, the foregoing requirements of this Section 6.10 shall not apply to a Member with regard to any information that is currently or becomes: (i) required to be disclosed pursuant to applicable law (but only to the extent of such requirement); (ii) required to be disclosed in order to protect such Member's Interest (but only to the extent of such requirement and only after consultation with the Managing Members); (iii) publicly known or available in the absence of any improper or unlawful action on the part of such Member; or (iv) known or available to such Member other than through or on behalf of the Company or a Managing Member. For purposes of this Section 6.10, Company information provided by one Member to another shall be deemed to have been provided on behalf of the Company. Provided that the Company or a Managing Member may disclose any information to the extent necessary or advisable for the formation, operation, Dissolution, winding-up, or Termination of the Company (as determined by the Managing Members in their reasonable discretion), the Company and the Managing Members shall similarly refrain from disclosing any confidential information furnished by a Member pursuant to Section 6.11.

6.11 DISCLOSURES. Each Member shall furnish to the Company upon request any information with respect to such Member reasonably determined by the Managing Members to be necessary or convenient for the formation, operation, Dissolution, winding-up, or Termination of the Company.

6.12 VALUATION OF COMPANY ASSETS AND INTERESTS.

(a) GENERAL. In the event that the fair market value of a Company asset or Interest must be determined for purposes of this Agreement, such value shall be determined by the Managing Members,

acting in good faith. Within 90 days after such determination, the Managing Members shall provide notice thereof to all the Members (a "Valuation Notice").

(b) DISPUTE. In the event that, within 30 days after having been given a Valuation Notice, any Member (an "Objecting Member") provides notice to the Company asserting that the value set forth in such Valuation Notice is materially inaccurate due to manifest error (a "Dispute Notice"), the Managing Members and the Objecting Member shall undertake reasonable efforts to resolve their differences regarding such valuation through consultation and negotiation. In the event that the Managing Members and the Objecting Member agree upon a revised value, such revised value shall be set forth in a new Valuation Notice to all the Members. In the event that the Managing Members and the Objecting Member do not reach agreement within 60 days after the date of the Dispute Notice, the Objecting Member may, by notice to the Company within 30 days after the end of such 60 day period, require that the matter be submitted to arbitration pursuant to Section 10.12; provided, however, that the arbitrator shall determine a value for the asset or Interest in question only if the arbitrator first determines that the value described in the Valuation Notice is materially inaccurate due to manifest error.

(c) BINDING EFFECT. The value of any Company asset or Interest determined pursuant to this Section 6.12 shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement. Unless and until such time as the value of an asset or Interest is determined pursuant to arbitration as described in Section 6.12(b), the value determined by the Managing Members pursuant to Section 6.12(a) and 6.12(b) shall be deemed the Fair Market Value of such asset or Interest.

SECTION 7

TRANSFERS AND WITHDRAWALS

7.1 TRANSFERS OF INTERESTS.

(a) A Member shall not Transfer all or any portion of its Interest; provided, however, a Member shall have the right to transfer its entire Interest to an Affiliate or to a transferee of all, or substantially all of a Member's assets. Any permitted transferee shall be bound by and subject to all provisions of this Agreement as if a Member.

(b) Any attempted Transfer in violation of this Section 7: (i) shall be null and void as against the Company and the other Members; and (ii) shall not be recognized or permitted by, or duly reflected in the official books and records of, the Company.

7.2 WITHDRAWAL/REMOVAL OF A MEMBER.

(a) A Member shall not withdraw from the Company or otherwise cease to be a Member without the consent of the other Member, which consent may be withheld in such Member's sole and absolute discretion; provided, however, a Member shall be deemed to have withdrawn without the consent of the other Member upon such Member's Bankruptcy, Dissolution or Termination.

(b) A Member shall not be removed from the Company without its consent.

7.3 PROCEDURES FOLLOWING MEMBER WITHDRAWAL/REMOVAL. A Member that is deemed to have withdrawn from the Company in accordance with the provisions of Section 7.2(a) or otherwise ceases to be a member of the Company under the Act (each a "Withdrawal Event" and a "Withdrawn Member") shall not be relieved of any obligations arising under this Agreement. A Withdrawn Member shall not be entitled to any redemption of its Interest, distribution or payment in connection with its Withdrawal Event or otherwise in consequence of its status as a Withdrawn Member. A Withdrawal Event shall cause a Dissolution of the Company pursuant to Section 8.

SECTION 8

DISSOLUTION AND LIQUIDATION

8.1 DISSOLVING EVENTS. The Company shall be Dissolved upon the occurrence of any of the following events:

(a) Expiration of the Company's Term;

(b) Failure of the Company to have at least one Managing Member;

(c) Permanent cessation of the Company's business;

(d) An election to dissolve the Company executed by all of the Managing Members;

(e) A Withdrawal Event;

(f) Termination or cancellation of the Licensing Agreement;

(g) Any other event that results in a mandatory Dissolution of the Company under the Act.

To the maximum extent permitted by the Act, the Members hereby waive their rights to seek a judicial dissolution of the Company for reasons other than those listed in clauses (a) through (g) of this Section 8.1.

8.2 WINDING UP AND LIQUIDATION.

(a) Upon Dissolution of the Company, the Liquidating Member shall promptly wind up the affairs of, liquidate and Terminate the Company. In furtherance thereof, the Liquidating Member shall: (i) have all of the administrative and management rights and powers of the Managing Members (including the power to bind the Company); and (ii) be reimbursed for Company expenses it incurs. Following Dissolution, the Company shall sell or otherwise dispose of assets determined by the Liquidating Member to be unsuitable for distribution to the Members, but shall engage in no other business activities except as may be necessary, in the reasonable discretion of the Liquidating Member, to preserve the value of the Company's assets during the

period of winding-up and liquidation. In any event, the Liquidating Member shall use its reasonable best efforts to prevent the period of winding-up and liquidation of the Company from extending beyond the date which is two years after the Company's date of Dissolution. At the conclusion of the winding-up and liquidation of the Company, the Liquidating Member shall: (1) designate one or more Persons to hold the books and records of the Company (and to make such books and records available to the Members on a reasonable basis) for not less than six years following the termination of the Company under the Act; and (ii) execute, file and record, as necessary, a certificate of termination or similar document to effect the termination of the Company under the Act and other applicable laws.

(b) Distributions to the Members in liquidation may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Liquidating Member. Distributions in kind shall be valued at Fair Market Value as determined by the Liquidating Member in accordance with the provisions of Section 6.12 and shall be subject to such conditions and restrictions as may be necessary or advisable in the reasonable discretion of the Liquidating Member to preserve the value of the property so distributed or to comply with applicable law.

(c) The Profits and Losses of the Company during the period of winding-up and liquidation shall be allocated among the Members in accordance with the provisions of Section 4. If any property is to be distributed in kind, the Capital Accounts of the Members shall be adjusted with regard to such property in accordance with the provisions of Section 4.1(e).

(d) Except as set forth in Section 8.2(e) below, the assets of the Company (including proceeds from the sale or other disposition of any assets during the period of winding-up and liquidation) shall be applied as follows:

(i) First, to repay any indebtedness of the Company, whether to third parties or the Members, in the order of priority required by law;

(ii) Next, to any reserves which the Liquidating Member reasonably deems necessary for contingent or unforeseen liabilities or obligations of the Company (which reserves when they become unnecessary shall be distributed in accordance with the provisions of clause (iii), below); and

(iii) Next, to the Members in proportion to their respective positive Capital Account balances (after taking into account all adjustments to the Members' Capital Accounts required under Section 8.2(c)). Notwithstanding the foregoing, ASIVI Technology (as defined in the License Agreement) will be jointly owned by ASI and VI, respectively, with equal rights under the ASIVI Technology. The parties agree to cooperate in good faith and execute any documentation to effectuate such joint ownership.

(e) In the event the Company is being dissolved as a result of a Withdrawal Event, then the assets of the Company (including proceeds from the sale or other disposition of any assets during the period of winding-up and liquidation) shall be applied as follows:

(i) First, to repay any indebtedness of the Company, whether to third parties or the Members, in the order of priority required by law;

(ii) Next, to any reserves which the Liquidating Member reasonably deems necessary for contingent or unforeseen liabilities or obligations of the Company (which reserves when they become unnecessary shall be distributed in accordance with the provisions of clause (iii), below); and

(iii) Next, to the Member that is not deemed to be the Withdrawn Member.

(f) Except as otherwise specifically provided in this Agreement, a Member shall have no liability to the Company or to any other Member in respect of a negative balance in such Member's Capital Account during the term of the Company or at the conclusion of the Company's Termination.

SECTION 9

LIABILITY AND INDEMNIFICATION

9.1 LIABILITY. Except as otherwise specifically provided in this Agreement, no Indemnified Person shall be personally liable for the return of any contributions made to the capital of the Company by the Members or the distribution of Capital Account balances. Except to the extent that Material Misconduct on the part of an Indemnified Person shall have given rise to the matter at issue, such Indemnified Person shall not be liable to the Company or the Members for any act or omission concerning the Company. Without limitation on the preceding sentence, except to the extent that such action constitutes Material Misconduct, an Indemnified Person shall not be liable to the Company or to any Member in consequence of voting for, approving, or otherwise participating in the making of a distribution by the Company pursuant to Section 5 or 8. An Indemnified Person shall not be liable to the Company or the Members for losses due to the acts or omissions of any other Person serving as an independent contractor, employee or other agent of the Company unless such Indemnified Person was or should have been directly involved with the selection, engagement or supervision of such Person and the actions or omissions of such Indemnified Person in connection therewith constituted Material Misconduct.

9.2 INDEMNIFICATION. Except to the extent that Material Misconduct on the part of an Indemnified Person shall have given rise to the matter at issue, the Company shall indemnify and hold such Indemnified Person harmless from and against any loss, expense, damage or injury suffered or sustained by such Indemnified Person by reason of any actual or threatened claim, demand, action, suit or proceeding (civil, criminal, administrative or investigative) in which such Indemnified Person may be involved, as a party or otherwise, by reason of its actual or alleged management of, or involvement in, the affairs of the Company. This Indemnification shall include, but not be limited to: (i) payment as incurred of reasonable attorneys fees and other out-of-pocket expenses incurred in investigating or settling any claim or threatened action (where, in the case of a settlement, such settlement is approved by the Managing Members), or incurred in preparing for, or conducting a defense pursuant to, any proceeding up to and including a final non-appealable adjudication; (ii) payment of fines, damages or similar amounts required to be paid by an Indemnified Person; and (iii) removal of liens affecting the property of an Indemnified Person.

(b) Indemnification payments shall be made pursuant to this Section 9.2 only to the extent that the Indemnified Person is not entitled to receive (or will not in any event receive) from a third party equal or greater indemnification payments in respect of the same loss, expense, damage or injury. In the event, however, that the Managing Members determine that an Indemnified Person would be entitled to receive indemnification payments from the Company but for the operation of the preceding sentence, the Managing Members may cause the Company to advance indemnification payments to the Indemnified Person (with

repayment of such advance to be secured by the Indemnified Person's right to receive indemnification payments from the applicable third party).

(c) As a condition to receiving an indemnification payment pursuant to this Section 9.2, an Indemnified Person shall execute an undertaking in form and substance acceptable to the Managing Members providing that, in the event it is subsequently determined that such Person was not entitled to receive such payment (whether by virtue of such Person's Material Misconduct or otherwise), such Person shall return such payment to the Company promptly upon demand therefor by any Member.

(d) Notwithstanding the foregoing provisions of this Section 9.2, the Company shall be under no obligation to indemnify an Indemnified Person from and against any reduction in the value of such Person's interest in the Company that is attributable to losses, expenses, damages or injuries suffered by the Company or to any other decline in the value of the Company's assets.

(e) The indemnification provided by this Section 9.2 shall not be deemed to be exclusive of any other rights to which any Indemnified Person may be entitled under any agreement, as a matter of law, in equity or otherwise.

9.3 CONTRIBUTION. In the event that, notwithstanding the provisions of Sections 3.7 and 9.1, two or more Members share joint and several personal liability:

(a) In connection with any action, omission or situation that would entitle such Members to indemnification pursuant to the provisions of Section 9.2 but for the fact that such action, omission or situation included or constituted Material Misconduct on the part of such Members; or

(b) In connection with any action, omission or situation that entitles such Members to indemnification pursuant to the provisions of Section 9.2, but the assets of the Company are insufficient to provide for the full amount of indemnification to which such Members are entitled or their entitlement to indemnification is otherwise unenforceable; then

(c) Such Members shall share the burden of the liability in a manner that is fair and reasonable as determined by such Members or, if they are unable to agree within a reasonable period of time, by an arbitrator selected and acting in accordance with the provisions of Section 10.12(a).

SECTION 10

GENERAL PROVISIONS

10.1 MEETINGS. Meetings of the Members may be called as provided in this Agreement as well as by the Managing Members. Any such meeting shall be held in California, Tennessee, or such other location as mutually agreed to by the Managing Members. Unless otherwise agreed to, the meetings will alternate between California and Tennessee. Reasonable accommodation shall be made for any Member that elects to attend a meeting via telephone or similar means pursuant to which all Persons attending the meeting can hear one another. No action may be taken at a meeting of the Members without the consent of that number or percentage of the Members whose consent is otherwise required for such action under this Agreement. Except

as specifically provided in this Agreement, there shall be no requirement of annual or periodic meetings of the Company's members or managers within the meaning of the Act.

10.2 ACTION WITHOUT A MEETING OF ALL MEMBERS. Any action of the Members (or a subset thereof) may be taken by written consent of that number or percentage of the Members whose consent is otherwise required for such action under this Agreement. The fact that a Member has not received notice of an action taken by written consent, or taken at a meeting actually held, shall not invalidate such action so long as it was taken with the consent of that number or percentage of the Members whose consent is otherwise required for such action under this Agreement; provided, however, that no consent, election, approval or other action of any or all the Non-Managing Members that has the effect of limiting the power or authority of the Managing Members shall be effective until the Managing Members have received notice thereof.

(b) A Member may authorize another Person to vote or otherwise act on its behalf through a written proxy or power of attorney.

(c) In order to facilitate the determination of whether any action of the Members (or a subset thereof) has been taken by or with the consent of the requisite number or percentage of the Members under this Agreement, the Managing Members may adopt, from time to time upon not less than 10 days notice to the Members, reasonable procedures for establishing the Members of record entitled to vote, consent or otherwise take action on any matter; provided, however, that any date as of which Members of record is determined shall not precede the date of the related action by more than 60 days.

10.3 ENTIRE AGREEMENT. This Agreement contains the entire understanding among the Members and supersedes any prior written or oral agreement between them respecting the Company. There are no representations, agreements, arrangements, or understandings, oral or written, among the Members relating to the Company which are not fully expressed in this Agreement.

10.4 AMENDMENTS.

(a) Except as otherwise provided in this Section 10.4, this Agreement may be amended, in whole or in part, only through a written amendment executed by all of the Managing Members.

10.5 GOVERNING LAW. The interpretation and enforceability of this Agreement and the rights and liabilities of the Members as such shall be governed by the laws of the State of Delaware as such laws are applied in connection with limited liability company operating agreements entered into and wholly performed upon in Delaware by residents of Delaware. To the extent permitted by the Act and other applicable law, the provisions of this Agreement shall supersede any contrary provisions of the Act or other applicable law.

10.6 SEVERABILITY. In the event that any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be deemed severed from the remainder of this Agreement and replaced with a valid and enforceable provision as similar in intent as reasonably possible to the provision so severed, and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

10.7 COUNTERPARTS; BINDING UPON MEMBERS AND ASSIGNEES. This Agreement may be executed in any number of counterparts and, when so executed, all of such counterparts shall constitute a single instrument binding upon all parties notwithstanding the fact that all parties are not signatory to the original or to the same counterpart.

10.8 NO THIRD PARTY BENEFICIARIES. Except with regard to the Company's obligation to Indemnified Persons as set forth in Section 9 and as otherwise specifically provided in this Agreement, the provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party and shall not give rise to a right on the part of any third party to (i) enforce or demand enforcement of a Member's Capital Commitment, obligation to return distributions, or obligation to make other payments to the Company as set forth in this Agreement or (ii) demand that the Company or the Managing Members issue any capital call.

10.9 NOTICES, CONSENTS, ELECTIONS, ETC. Subject to the provisions of Section 10.7, all notices, consents, agreements, elections, amendments, and approvals provided for or permitted by this Agreement or otherwise relating to the Company shall be in writing and signed copies thereof shall be retained with the books of the Company.

(a) NOTICE TO MEMBERS. Except as otherwise specifically provided in this Agreement, notice to a Member shall be deemed duly given upon the earliest to occur of the following: (i) personal delivery to such Member, to the address set forth on Schedule A for such Member, or to any other address which such Member has provided to the Company for purposes of this Section 10.9(a); (ii) the Close of Business on the third day after being deposited in the United States mail, registered or certified, postage prepaid and addressed to such Member at the address set forth on Schedule A for such Member, or at any other address which such Member has provided to the Company for purposes of this Section 10.9(a); (iii) the Close of Business on the first business day after being deposited in the United States with a nationally recognized overnight delivery service, with delivery charges prepaid and addressed as provided in the preceding clause; or (iv) actual receipt by such Member via any other means (including public or private mail, electronic mail, facsimile, telex or telegram); provided, however, that notice sent via electronic mail shall be deemed duly given only when actually received and opened by the Member to whom it is addressed.

(b) NOTICE TO THE COMPANY. Notice to the Company shall be deemed duly given when clearly identified as such and duly given to the Managing Members in accordance with the procedures set forth in Section 10.9(a).

10.10 CERTAIN MEMBER REPRESENTATIONS AND COVENANTS.

(a) Each member hereby represents that, with respect to its Interest: (i) it is acquiring or has acquired such Interest for purposes of investment only, for its own account (or a trust account if such Member is a trustee), and not with a view to resell or distribute the same or any part thereof; and (ii) no other Person has any interest in such Interest or in the rights of such Member under this Agreement other than a spouse having a community property or similar interest under applicable law. Each Member also represents that it has the business and financial knowledge and experience necessary to acquire its Interest on the terms contemplated herein and that it has the ability to bear the risks of such investment (including the risk of sustaining a complete loss of all its capital contributions) without the need for the investor protections provided by the registration requirements of the Securities Act.

(b) Except to the extent set forth in a notice provided to the Company, each Member hereby represents that allocations, distributions and other payments to such Member by the Company are not subject to tax withholding under the Code. Each Member hereby agrees to promptly notify the Company in the event that any allocation, distribution or other payment previously exempt from such withholding becomes or is anticipated to become subject thereto.

(c) Each Member hereby acknowledges that certain provisions of this Agreement (including Sections 6.3 and 9.1) have the effect of limiting the fiduciary duties or obligations of some or all Members to the Company and the other Members under applicable law. Each Member hereby represents that it has carefully considered and fully understands each such provision and has made an informed decision to consent thereto.

10.11 AVOIDANCE OF PUBLICLY TRADED PARTNERSHIP STATUS.

(a) Except to the extent otherwise set forth in a notice provided to the Company, each Member hereby represents that at least one of the following statements with respect to such Member is true and will continue to be true throughout the period during which such Member holds an Interest;

(i) Such Member is not a partnership, grantor trust or S corporation for Federal income tax purposes;

(ii) With regard to each Beneficial Owner of such Member, the principal purposes for the establishment and/or use of such Member do not include avoidance of the 100 partner limitation set forth in Treasury Regulation Section 1.7704-l(h)(l)(ii); or

(iii) With regard to each Beneficial Owner of such Member, not more than 75 percent of the value of such Beneficial Owner's interest in such Member is attributable to such Member's Interest.

(b) In the event that a Member's representation pursuant to Section 10.11(a) shall at any time fail to be true, or the information set forth in a notice provided by such Member to the Company pursuant to Section 10.11(a) shall change, such Member shall promptly (and in any event within 10 days) notify the Company of such fact and shall promptly thereafter deliver to the Company any information regarding such Member and its Beneficial Owners reasonably requested by counsel to the Company for purposes of determining the number of the Company's "partners" within the meaning of Treasury Regulation Section. 1.7704-l(h).

(c) Each Member hereby acknowledges that the Managing Members will rely upon such Member's representations, notices and other information as set forth in this Section 10.11 for purposes of determining whether proposed Transfers of Interests may cause the Company to be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code and that failure by a Member to satisfy its obligations under this Section 10.11 may cause the Company to be treated as a corporation for Federal, State or local tax purposes.

10.12 DISPUTE RESOLUTION.

(a) FORM AND VENUE. Except as otherwise specifically provided in this Agreement, any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon an award arising in connection therewith may be entered in any court of competent jurisdiction. Any arbitration, mediation, court action, or other adjudicative proceeding arising out of or relating to this Agreement shall be held in Chicago, Illinois, or, if such proceeding cannot be lawfully held in such location, as near thereto as applicable law permits.

(b) FEES AND COSTS. The prevailing party or parties in any arbitration, mediation, court action, or other adjudicative proceeding arising out of or relating to this Agreement shall be reimbursed by the

party or parties who do not prevail for their reasonable attorneys, accountants and experts fees and related expenses (including reasonable charges for in-house legal counsel and related personnel) and for the costs of such proceeding. In the event that two or more parties are deemed liable for a specific amount payable or reimbursable under this Section 10.12(b), such parties shall be jointly and severally liable therefor.

10.13 REMEDIES FOR BREACH OF THIS AGREEMENT.

(a) GENERAL. Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a Person may be lawfully entitled.

(b) SPECIFIC PERFORMANCE. Without limiting the rights and remedies otherwise available to the Company or any Member, each Member hereby: (i) acknowledges that the remedy at law for damages resulting from its default under Section 3, 6.10, 6.11 or 10.12 is inadequate; and (ii) consents to the institution of an action for specific performance of its obligations in the event of such a default.

(c) PENALTY PROVISIONS. Each Member hereby acknowledges that certain provisions of this Agreement provide for specified penalties in the event of a breach of this Agreement by a Member. Each Member hereby agrees that the penalty provisions of this Agreement are fair and reasonable and, in light of the difficulty of determining actual damages, represent a prior agreement among the Members as to appropriate liquidated damages.

(d) EXERCISE OF DISCRETION BY THE MANAGING MEMBERS. In determining what action, if any, shall be taken against a Member in connection with such Member's breach of this Agreement, the Managing Member shall seek to obtain the best result (as determined by such Managing Member in its sole and absolute discretion) for the Company.

10.14 TIMING. All dates and times specified in this Agreement are of the essence and shall be strictly enforced. Except as otherwise specifically provided in this Agreement, all actions that occur after the Close of Business on a given day shall be deemed for purposes of this Agreement to have occurred at 9:00 a.m. on the following day. In the event that the last day for the exercise of any right or the discharge of any duty under this Agreement would otherwise be a day that is not a business day, the period for exercising such right or discharging such duty shall be extended until the Close of Business on the next succeeding business day.

10.15 STATUS UNDER THE ACT. This Agreement is the "limited liability company agreement" of the Company within the meaning of Section 18-101(7) of the Act.

10.16 PARTNERSHIP FOR TAX PURPOSES ONLY. As set forth in Section 2.1, the Members hereby form the Company as a limited liability company under the Act. The Members expressly do not intend hereby to form a partnership except insofar as the Company may be treated as a partnership solely for tax purposes.

10.17 MISCELLANEOUS. No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof; any actual waiver shall be contained in a writing signed by the party against whom enforcement of such waiver is sought. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties. Each Member hereby specifically consents to the selection of all other Members admitted to the Company pursuant to the terms of this Agreement.

SECTION 11

ADDITIONAL WARRANTIES AND OBLIGATIONS

11.1 ADDITIONAL WARRANTIES OF ANDROSOLUTIONS, INC. AndroSolutions, Inc. hereby warrants that Exhibit 3 is a list of all patents and pending patent applications owned or controlled by AndroSolutions, Inc., Dr. Gary W. Neal, their affiliates or beneficiaries that relate to the design, development, manufacturing, and use of products containing prostaglandin E and/or other vasodilators for the treatment of female sexual dysfunction, and that AndroSolutions, Inc. is the lawful owner of the inventions claimed therein.

11.2 ADDITIONAL WARRANTIES OF VIVUS, INC. VIVUS, Inc. hereby warrants that Exhibit 4 is a list of all patents and pending patent applications owned or controlled by VIVUS, Inc. or its affiliates that relate to the design, development, manufacturing, and use of products containing prostaglandin E and/or other vasodilators for the treatment of female sexual dysfunction, and that VIVUS, Inc. is the lawful owner of the inventions claimed therein.

11.3 DEFINITIVE AGREEMENTS. Nothing in this Agreement, the Licensing Agreement or the Supply Agreement (as defined below) will impair AndroSolutions, Inc.'s or VIVUS, Inc.'s right to independently acquire, license, develop for itself, or have others develop for it, intellectual property and technology performing similar functions as the Patent Rights or to market and distribute products based on such other intellectual property and technology.

11.4 PRESS RELEASE AND INITIAL PUBLICATION. The parties shall issue a joint press release within ninety (90) days of execution of this agreement. [*]

11.5 JOINT PRODUCT DEVELOPMENT COMMITTEE. Within one month of the execution of this Agreement, VIVUS, Inc. and ASI will form a Joint Product Development Committee to review the direction of the development and testing of Products through the filing of an NDA, and to make recommendations accordingly. The Joint Product Development Committee shall include one (1) representative from ASI and such representatives of VIVUS, Inc. as VIVUS, Inc. deems appropriate to comply with VIVUS, Inc.'s obligations under the License Agreement. The Joint Product Development Committee shall meet at least semi-annually, or more frequently as agreed by the Joint Product Development Committee, at such location as these parties agree, and will otherwise communicate regularly by telephone, electronic mail, facsimile or video conference. The first meeting of the Joint Product Development Committee shall occur within forty-five (45) days after the execution of this Agreement.

11.6 ROYALTY-FREE RIGHT AND LICENSE. ASIVI grants to ASI a royalty-free right and license to use the ASIVI Technology solely in connection with research, development, testing, studies, and patient care, and in the preparation of applications, registrations, amendments, supplements and other filings with the FDA, foreign health regulatory agencies or other U.S. or foreign governmental agencies, and to authorize third parties to conduct such activities on ASI's behalf. ASIVI's "grant of rights" under this Section 11.6 is not a grant of any rights to ASI under any Investigational New Drug application of ASIVI or VI and the exercise of the rights granted in this Section 11.6 will not result in any liability "of ASIVI or VI", and ASI agrees to indemnify ASIVI and VI to the extent of any such liability. The right and license set forth in this Section 11.6 is independent of the

option and conditional license grant set forth in Sections 2.1 through 2.3 of that certain Manufacture and Supply Agreement between VIVUS, Inc. and AndroSolutions, Inc. of even date herewith, and shall survive the expiration or termination of that Agreement.

11.7 INTELLECTUAL PROPERTY ANALYSIS. To the extent that VI's or ASI's "FSD" IP discloses, claims, and/or relates to subject matter other than the design, development, formulation, manufacturing and/or use of products containing prostaglandin E and/or other vasodilators for the treatment of FSD, all rights in and to such VI and ASI FSD IP shall be retained by VI or ASI, respectively. Counsel for ASI and VI and the parties will cooperate in good faith to prepare appropriate agreements and, if necessary, continuation or divisional applications to facilitate the parties' retention of such rights.

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

MANAGING MEMBERS:

VIVUS, INC.
a Delaware corporation

By:

/s/ Leland Wilson

Name: Leland Wilson
Title: President/Chief Executive Officer

ANDROSOLUTIONS, INC.,
a Tennessee Corporation

By:

/s/ Gary Neal, M.D.

Name: Gary Neal, M.D.
Title: President

NON-MANAGING MEMBERS:

None as of February 29, 2000

SCHEDULE A

MEMBER INFORMATION

NAME AND CONTACT INFORMATION	ALLOCATION PERCENTAGE	CAPITAL COMMITMENT
MANAGING MEMBERS:		
VIVUS, Inc. 1172 Castro Street Mountain View, CA 94040 Attn: Leland F. Wilson, President Telephone: (650) 934-5200 Facsimile: (650) 934-5356	50%	$2,500 and the contribution of property as described on attached Schedule A-1 and contributed pursuant to that certain Technology Assignment Agreement of even date herewith attached hereto as Exhibit 1.
AndroSolutions, Inc. 200 Fort Sanders West Blvd., Suite 309 Knoxville, TN 37922 Attn: Gary W. Neal, M.D., President Telephone: (423) 531-5991 Facsimile: (423) 531-6550	50%	$2,500 and the contribution of property as described on attached Schedule A-2 and contributed pursuant to that certain Technology Assignment Agreement of even date herewith attached hereto as Exhibit 2.

SCHEDULE A-1

DESCRIPTION OF PROPERTY CONTRIBUTED TO ASIVI, LLC BY VIVUS, INC.

- - [*]

- - [*]

- - [*]

- - [*]

SCHEDULE A-2

DESCRIPTION OF PROPERTY CONTRIBUTED TO ASIVI, LLC BY ANDROSOLUTIONS, INC.

Matter No.	Title	Ending Date	App. No.	Pat. No. Issue Date	Priority date
[*]	[*]	[*]	[*]		
[*]	[*]	[*]	[*]		[*]
[*]	[*]	[*]	[*]		[*]
[*]	[*]	[*]	[*]		

EXHIBIT 1

TECHNOLOGY ASSIGNMENT AGREEMENT

ASSIGNMENT

VIVUS, Inc., a Delaware corporation having offices at 1172 Castro Street, Mountain View, CA 94040 ("VIVUS"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, sells and transfers to ASIVI, LLC, a Delaware limited liability company, with offices at 1172 Castro Street, Mountain View, CA 94040, and its successors, assigns and legal representatives, all hereinafter referred to as the "Assignee":

1. its entire right, title and interest in and to any and all patents and pending patent applications relating to, inter alia, the design, development, manufacturing, and use of products containing prostaglandin E and/or other vasodilators for the treatment of female sexual dysfunction, as specified on Exhibit A hereto (the "FSD IP");

2. the full and complete right to file patent applications in the name of the Assignee, its designee, or in the name of VIVUS as the Assignee, or its designee's election, on the aforesaid FSD IP, in all countries of the world;

3. the entire right, title and interest in and to any Letters Patent which may issue thereon in the United States or in any country, and any renewals, revivals, reissues, reexaminations and extensions thereof, and any patents of confirmation, registration and importation of the same; and

4. the entire right, title and interest in all Convention and Treaty Rights of all kinds thereon, including without limitation all rights of priority in any country of the world, in and to the above FSD IP.

VIVUS hereby authorizes and requests the competent authorities to grant and to issue any and all such Letters Patent in the United States and throughout the world to Assignee of the entire right, title and interest therein, as fully and entirely as the same would have been held and enjoyed by VIVUS had this assignment, sale and transfer not been made.

VIVUS further agrees at any time to execute and to deliver upon request of Assignee such additional documents, if any, as are necessary or desirable to secure patent protection on said FSD IP, throughout all countries of the world, and otherwise to do the necessary acts to give full effect to and to perfect the rights of Assignee under this Assignment, including the execution, delivery and procurement of any and all further documents evidencing this assignment, transfer and sale as may be necessary or desirable.

VIVUS hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

VIVUS further covenants that it will, upon request by Assignee, provide Assignee promptly with all pertinent facts and documents relating to said FSD IP and said Letters Patent and legal equivalents as may be known and accessible to VIVUS, and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to Assignee or its legal representatives any

and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said FSD IP and said Letters Patent and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

VIVUS, INC.

Date: 2/29/00
By: /s/ Leland F. Wilson
Leland F. Wilson
President/Chief Executive Officer

ASIVI, LLC

Date: 2/29/00
By: /s/ Leland F. Wilson
VIVUS, Inc.
Managing Member
Leland F. Wilson
President/Chief Executive Officer

Date: March 1, 2000
By: /s/ Gary W. Neal
AndroSolutions, Inc.
Managing Member
Gary W. Neal, M.D.
President

EXHIBIT A

DESCRIPTION OF PROPERTY CONTRIBUTED TO ASIVI, LLC BY VIVUS, INC.

- - [*]

- - [*]

- - [*]

- - [*]

EXHIBIT 2

TECHNOLOGY ASSIGNMENT AGREEMENT

ASSIGNMENT

AndroSolutions, Inc., a Tennessee corporation with offices at Suite 309, 200 Fort Saunders West Blvd., Knoxville, TN 37922 ("AndroSolutions"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, sells and transfers to ASIVI, LLC, a Delaware limited liability company, with offices at 1172 Castro Street, Mountain View, CA 94040, and its successors, assigns and legal representatives, all hereinafter referred to as the "Assignee":

1. its entire right, title and interest in and to any and all patents and pending patent applications relating to, inter alia, the design, development, manufacturing, and use of products containing prostaglandin E and/or other vasodilators for the treatment of female sexual dysfunction, as specified on Exhibit A hereto (the "FSD IP");

2. the full and complete right to file patent applications in the name of the Assignee, its designee, or in the name of AndroSolutions, Inc. as the Assignee, or its designee's election, on the aforesaid FSD IP, in all countries of the world;

3. the entire right, title and interest in and to any Letters Patent which may issue thereon in the United States or in any country, and any renewals, revivals, reissues, reexaminations and extensions thereof, and any patents of confirmation, registration and importation of the same; and

4. the entire right, title and interest in all Convention and Treaty Rights of all kinds thereon, including without limitation all rights of priority in any country of the world, in and to the above FSD IP.

AndroSolutions hereby authorizes and requests the competent authorities to grant and to issue any and all such Letters Patent in the United States and throughout the world to Assignee of the entire right, title and interest therein, as fully and entirely as the same would have been held and enjoyed by AndroSolutions had this assignment, sale and transfer not been made.

AndroSolutions further agrees at any time to execute and to deliver upon request of Assignee such additional documents, if any, as are necessary or desirable to secure patent protection on said FSD IP, throughout all countries of the world, and otherwise to do the necessary acts to give full effect to and to perfect the rights of Assignee under this Assignment, including the execution, delivery and procurement of any and all further documents evidencing this assignment, transfer and sale as may be necessary or desirable.

AndroSolutions hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

AndroSolutions further covenants that it will, upon request by Assignee, provide Assignee promptly with all pertinent facts and documents relating to said FSD IP and said Letters Patent and legal equivalents as may be known and accessible to AndroSolutions, and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to Assignee or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain,

issue and enforce said application, said FSD IP and said Letters Patent and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

ANDROSOLUTIONS, INC.

Date: ----------

By: ----------
Gary W. Neal, M.D.
President

ASIVI, LLC

Date: 2/29/00

By: /s/ Leland F. Wilson
VIVUS, Inc.
Managing Member
Leland F. Wilson
President/Chief Executive Officer

Date: March 1, 2000

By: /s/ Gary W. Neal
AndroSolutions, Inc.
Managing Member
Gary W. Neal, M.D.
President

EXHIBIT A

DESCRIPTION OF PROPERTY CONTRIBUTED TO ASIVI, LLC BY ANDROSOLUTIONS, INC.

		(Illegible heads)		Issue Date
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	

Exhibit 10.39

[CORNISH & CAREY COMMERCIAL LETTERHEAD]

SUBLEASE

SUBLESSOR: KVO Public Relations, Inc., an Oregon corporation

SUBLEASED PREMISES: 1172 Castro Street Mountain View, CA 94040

SUBLESSEE: VIVUS, Inc., a Delaware corporation

DATE: December 21, 1999

1. PARTIES:
This Sublease is made and entered into as of December 21, 1999, by and between KVO Public Relations, Inc., an Oregon Corporation (Sublessor), and VIVUS, Inc., a Delaware corporation (Sublessee), under the Master Lease dated July 30, 1996, between DLC -- Castro Commons, a California Limited Partnership, as (Lessor) and KVO Public Relations, Inc., as (Lessee.) A copy of the Master Lease is attached hereto as Exhibit "A" and incorporated herein by this reference.

2. PROVISIONS CONSTITUTING SUBLEASE:

2.1. This Sublease is subject to all of the terms and conditions of the Master Lease. Sublessee hereby agrees to perform all of the obligations of Lessee under the Master Lease to the extent said obligations apply to the Subleased Premises and Sublessee's use of the common areas, except as specifically set forth herein. Sublessor hereby agrees to use best efforts to cause Lessor, under the Master Lease, to perform all of the obligations of Lessor thereunder to the extent said obligations apply to the Subleased Premises and Sublessee's use of the common areas. Sublessee shall not commit or permit to be committed on the Subleased Premises or on any other portion of the Project any act or omission which violates any term or condition of the Master Lease. Sublessor shall not, without Sublessee's prior written consent, terminate the Master Lease, commit any acts that would entitle Lessor to terminate the Master Lease, or amend or waive any provisions of the Master Lease or make any elections, exercise any right or remedy or give any consent or approval under the Master Lease.

2.2. All of the terms and conditions contained in the Master Lease are incorporated herein, except as specifically provided below, and shall together with the terms and conditions specifically set forth in this Sublease constitute the complete terms and conditions of this Sublease. The following paragraphs of the Master Lease SHALL NOT be included in this Sublease:

PARAGRAPH 2: First Sentence in Paragraph 5; Paragraph 6 (including Exhibit C); Subset (v) of Subsection A in paragraph 21; Paragraph 40.

3. PREMISES:
Sublessor leases to Sublessee and Sublessee leases from Sublessor the Subleased Premises upon all of the terms, covenants and conditions contained in this Sublease. The Subleased Premises consist of

approximately Fourteen Thousand Two Hundred Thirty Seven (14,237) rentable square feet located at 1172 Castro Street, Mountain View, California as shown and described in Exhibit "B".

4. RENT:

Upon execution of this Agreement, Sublessee shall pay to Sublessor the sum of Thirty Nine Thousand One Hundred Fifty One and 75/100 Dollars ($39,151.75), representing the current Base Rent for the Subleased Premises, plus Thirteen Thousand Four Hundred Eighty Two and 00/100 Dollars ($13,482.00) representing the current monthly Operating Expenses for a total monthly rental amount of Fifty Two Thousand Six Hundred Thirty Three and 75/100 Dollars ($55,633.75). Sublessee acknowledges that the Base Rent and Operating Expenses shall be adjusted on February 1, 2000 and annually thereafter, beginning February 1, 2001 in accordance with the terms set forth in the Master Lease Paragraphs 3(A), 3(B), 3(C), 3(D).

The total rental amount shall be paid to Sublessor, without deductions, offset, prior notice or demand. Such rental amounts shall be payable by Sublessee to Sublessor in consecutive monthly installments on or before the 1st day of each calendar month during the Sublease term. If the commencement date or the termination date of the Sublease occurs on a date other than the first day or the last day, respectively, of a calendar month, then the Rent for such partial month shall be prorated and the prorated Rent shall be payable on the Sublease commencement date or on the first day of the calendar month in which the Sublease termination date occurs, respectively.

5. SECURITY DEPOSIT:

Upon execution of this Agreement, Sublessee shall pay to Sublessor One Hundred Twenty Thousand and 00/100 Dollars ($120,000.00) as a noninterest bearing Security Deposit. Provided Sublessee has met all of its rental obligations and has not been in default beyond applicable notice and cure provisions for the first eighteen (18) months of the Sublease term. Sublessor shall refund Forty Thousand and 00/100 Dollars ($40,000.00) of the Security Deposit to Sublessee on or before May 31, 2001. In addition, provided Sublessee has met all of its rental obligations and has not been in default beyond applicable notice and cure provisions for the first thirty six (36) months of the Sublease term, Sublessor shall refund Twenty Thousand and 00/100 Dollars ($20,000.00) of the Security Deposit to Sublessee on or before November 30, 2002. In the event Sublessee has performed all of the terms and conditions of this Sublease during the entire Sublease term, Sublessor shall return to Sublessee, within ten (10) days after Sublessee has vacated the Subleased Premises, the remaining Security Deposit less any sums due and owing to Sublessor; provided, however that if Sublessor fails to return the remaining Security Deposit (less any sums due and owing to Sublessor) to Sublessee in accordance with this sentence, then Sublessor shall assign its own security deposit (described in Paragraph 4 of the Master Lease) to Sublessee, and any obligation Landlord has of returning such security deposit to Sublessor shall be assigned to Sublessee. This shall not be Sublessee's sole remedy should Sublessor fail to return the deposit.

6. RIGHTS OF ACCESS AND USE:

6.1 Use:
Sublessee shall use the Subleased Premises for General office purposes.

represents both parties, then Sublessor and Sublessee consent to such dual representation and waive any conflict of interest arising out of such dual agency.

11. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT:
Sublessee shall be responsible for the installation and cost of any and all improvements, alterations or other work required on or to the Subleased Premises or to any other portion of the property and/or building of which the Subleased Premises are a part, required or reasonably necessary because of: (1) Sublessee's particular use of the Subleased Premises or any portion thereof; (2) the particular use by a Sublessee by reason of assignment or sublease; or (3) both, including any improvements, alterations or other work required under the Americans With Disabilities Act of 1990. Compliance with the provisions of this Section 8 shall be a condition of Sublessor granting its consent to any assignment or Sublease of all or a portion of this Sublease and the Subleased Premises described in this Sublease.

12. COMPLIANCE WITH NONDISCRIMINATION REGULATIONS:
It is understood that it is illegal for Sublessor to refuse to display or sublease the Subleased Premises or to assign, surrender or sell the Master Lease, to any person because of race, color, religion, national origin, sex, sexual orientation, marital status or disability.

13. TOXIC CONTAMINATION DISCLOSURE:
Sublessor and Sublessee each acknowledge that Broker has no specific expertise with respect to environmental assessment or physical condition of the Subleased Premises, including, but not limited to, matters relating to: (i) problems which may be posed by the presence or disposal of hazardous or toxic substances on or from the Subleased Premises, (ii) problems which may be posed by the Subleased Premises being within the Special Studies Zone as designated under the Alquist-Priolo Special Studies Zone Act (Earthquake Zones), Section 2621-2630, inclusive of California Public Resources Code, and (iii) problems which may be posed by the Subleased Premises being within a HUD Flood Zone as set forth in the U.S. Department of Housing and Urban Development "Special Flood Zone Area Maps," as applicable.

Sublessor and Sublessee each acknowledge that Broker has not made an independent investigation or determination of the physical or environmental condition of the Subleased Premises, including, but not limited to, the existence or nonexistence of any underground tanks, sumps, piping, toxic or hazardous substances on the Subleased Premises. Neither Sublessor nor Sublessee shall rely upon Broker to determine the physical and environmental condition of the Subleased Premises or to determine whether, to what extent or in what manner, such condition must be disclosed to potential Sublessees, assignees, purchasers or other interested parties.

14. RENT ABATEMENT AND DAMAGES TO PERSONAL PROPERTY:
In the event Sublessor, pursuant to the terms of the Master Lease, is entitled to and receives rent abatement, Sublessee shall be entitled to such rent abatement. In addition, any amounts paid or credited to Sublessor under the terms of the Master Lease for damage to personal property of the Sublessee shall be credited to Sublessee.

[C&C LETTERHEAD]

S U B L E A S E

15. CONDITIONS OF PREMISES: Sublessor shall deliver the Premises to Sublessee in "As Is" condition except for the following improvements:

    a. Touch-up paint as needed
    b. Professionally clean the Premises including the carpets

16. ALTERATIONS AND ADDITIONS: Sublessee shall comply with all terms and conditions of paragraph 11 contained in Master Lease except that Sublessee shall not be required to remove any additions made to the Premises by Sublessor and/or restore the Premises to original condition if Sublessor had performed the alterations.

17. ASSIGNMENT AND SUBLETTING: Sublessee shall have the right to Subsublease/Assign all or any portion of its Premises during the term of the sublease to a qualified Subsublessee or Subsublessees, subject to Sublessor's and Lessor's approval which shall not be unreasonably withheld or delayed and subject to Paragraph 21 [excluding subparagraph (A) subset (v)] and excluding the last two sentences of the first paragraph of Paragraph 21A of the Master Lease.

18. SUBLESSORS REPRESENTATION: Sublessor hereby represents to Sublessee that (i) the Master Lease attached hereto as Exhibit A has been executed and delivered by Master Lessor and Sublessor, in full force and effect and has not been terminated, and constitutes the entire agreement of the parties, thereto relating to the Lease of the Subleased Premises, (ii) no default or breach by Sublessor or, to the best of Sublessor's knowledge, by Master Lessor exists under the Master Lease, (iii) no event has occurred that, with the passage of time, the giving of notice, or both, would constitute a default or breach by Sublessor or to the best of Sublessor's knowledge, by Master Lessor under the Master Lease, and (iv) subject to receipt of Master Lessor's written consent hereto. Sublessor has the right and power to execute and deliver this Sublease and perform its obligations hereunder.

19. MUTUAL INDEMNITY: Each party shall indemnify, defend, protect and hold harmless the other from, all losses, damages, liabilities, judgments, actions, claims, attorneys' fees, consultants' fees, payments, costs or expenses arising from the negligence or willful misconduct of the indemnifying party or its agents, contractors, licensees or invitees, or a breach of the indemnifying party's obligations or representations under the Sublease.

20. ASSIGNMENT AND SUBLETTING: Sublessee, without Sublessor's or Lessor's prior written consent and without being subject to any bonus rent provisions, may sublet the Premises or assign the Sublease to: (a) a corporation controlling, controlled by or under common control with Sublessee; (b) a corporation related to Sublessee by merger, consolidation or non-bankruptcy reorganization; or (c) a purchaser of substantially all of Sublessee's assets. A sale of Sublessee's capital stock shall not be deemed an assignment, subletting or other transfer of the Sublease or the Premises.

21. SURRENDER OF PREMISES: In no event shall Sublessee's obligation to surrender the Subleased Premises require Sublessee to repair or restore the Subleased Premises to a condition better than the condition in which the Subleased Premises existed as of the Commencement Date of the Sublease, and Sublessee shall only be responsible for repairing or restoring or paying for the repair or restoration of those elements of the Subleased Premises damaged during the Sublease Term. Additionally,

[C&C LETTERHEAD]

S U B L E A S E

Sublessee shall not be required to remove at the Sublease term or otherwise, alterations or improvements to the Premises made by or for the account of Sublessor or personal property of Sublessor.

22. QUIET ENJOYMENT: Sublessor conveys that if, and so long as, Sublessee keeps and performs each and every covenant, agreement, term, provision and condition herein contained on the part and on behalf of Sublessee to be kept and performed, Sublessee shall quietly enjoy the Premises from and against the claims of all persons.

23. AUTHORIZATION TO DIRECT SUBLEASE PAYMENTS: Sublessee shall have the right to pay all rent and other sums owing by Sublessee to Sublessor hereunder for those items which also are owed by Sublessor to Master Landlord under the Master Lease directly to Master Landlord if Sublessee reasonably believes that Sublessor has failed to make any payment required to be made by Sublessor to master Landlord under the Master Lease and Sublessor fails to provide adequate proof of payment within two (2) business days after Sublessee's written demand requesting such proof. Notwithstanding the foregoing, (i) Sublessee shall provide to Sublessor concurrently with any payment to Master Landlord reasonable evidence of such payment, and (ii) if Sublessor notifies Sublessee that it disputes any amount demanded by Master Landlord, Sublessee shall not make any such payment to Master Landlord unless Master Landlord has provided a three-day notice to pay such amount or forfeit the Master Lease.

Any sums paid directly by Sublessee to Master Landlord in accordance with this paragraph shall be credited toward the amounts payable by Sublessee to Sublessor under the Sublease. In the event Sublessee tenders payment directly to Master Landlord in accordance with this paragraph and Master Landlord refuses to accept such payment. Sublessee shall have the right to deposit such funds in an account with a national bank for the benefit of Master Landlord and Sublessor, and the deposit of said funds in such account shall discharge Sublessee's obligation under the Sublease to make the payment in question.

24. SUBLESSOR'S OBLIGATIONS: Sublessor, with respect to the obligations of Master Landlord under the Master Lease, shall use Sublessor's diligent good faith efforts to cause Master Landlord to perform such obligations for the benefit of Sublessee. Such diligent good faith efforts shall include, without limitation: (a) upon Sublessee's written request, immediately notifying Master Landlord of its nonperformance under the Master Lease, and requesting that Master Landlord perform its obligations under the Master Lease; and (b) permitting Sublessee to commence a lawsuit or other action in Sublessee's name to obtain the performance required from Master Landlord under the Master Lease; provided, however, that if Sublessee commences a lawsuit or other action. Sublessee shall pay all costs and expenses incurred in connection therewith, and Sublessee shall indemnify Sublessor against, and hold Sublessor harmless from, all reasonable costs and expenses incurred by Sublessor in connection therewith.

25. RENTAL ADJUSTMENTS: In no event shall Sublessee's obligation to pay Operating Expenses and Taxes exceed the amount of Operating Expenses and Taxes due and payable by Sublessor under the Master Lease and the Consent to Sublease. Sublessee shall pay Sublessee's share of such expenses as and

[C&C LETTERHEAD]

S U B L E A S E

when the same are due and payable to Sublessor under the Master Lease. Sublessee shall be entitled to its share of all credits, if any, given by Master Landlord to Sublessor for Sublessor's overpayment of such expenses. Notwithstanding anything to the contrary in the Sublease, Sublessee shall not be required to pay any additional rent or perform any obligation that is (i) fairly allocable to any period of time prior to the commencement date of the Sublease or following the expiration of the Sublease or (ii) payable as a result of a default by Sublessor of any of its obligations under the Master Lease.

26. DEFAULT: Sublessee shall not be deemed in default of the Sublease in the event Sublessee fails to pay rent when due unless such failure continues for five (5) days after written notice of such failure, provided that Sublessor shall not be required to give such written notice on more than one occasion during each year of the Sublease.

SUBLESSOR: KVO PUBLIC RELATIONS, INC.

By: /s/ signature illegible Date: 12/27/99

SUBLESSEE: VIVUS, INC.

By: /s/ signature illegible Date: 12-22-99

NOTICE TO SUBLESSOR AND SUBLESSEE: CORNISH & CAREY COMMERCIAL, IS NOT AUTHORIZED TO GIVE LEGAL OR TAX ADVICE; NOTHING CONTAINED IN THIS SUBLEASE OR ANY DISCUSSIONS BETWEEN CORNISH & CAREY COMMERCIAL AND SUBLESSOR AND SUBLESSEE SHALL BE DEEMED TO BE A REPRESENTATION OR RECOMMENDATION BY CORNISH & CAREY COMMERCIAL OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT OR ANY TRANSACTION RELATING THERETO. ALL PARTIES ARE ENCOURAGED TO CONSULT WITH THEIR INDEPENDENT FINANCIAL CONSULTANTS AND/OR ATTORNEYS REGARDING THE TRANSACTION CONTEMPLATED BY THIS PROPOSAL.

EXHIBIT "A" MASTER LEASE

CONSENT TO SUBLEASE

THIS AGREEMENT ("Agreement") is made as of this 7th day of January, 2000, by and among MOUNTAIN VIEW INCOME PARTNERS LLC, a California limited liability company ("Landlord"), KVO PUBLIC RELATIONS, INC. an Oregon corporation ("Sublandlord"), and VIVUS, INC., a Delaware corporation ("Subtenant").

RECITALS

A. Landlord is the landlord, as successor-in-interest to DLC-Castro Commons, a California limited partnership pursuant to that certain Assignment of Leases dated December 8, 1997, and Sublandlord is the tenant under a lease dated July 30, 1996, as amended by the First Amendment to Lease dated of even date herewith (the "Master Lease"), for approximately 14,237 rentable square feet of space (the "Premises"), located at the office building whose address is 1172 Castro Street, Mountain View, California (the "Building").

B. Sublandlord has requested that Landlord consent to the subletting by Sublandlord to Subtenant of a portion of the Premises ("Sublet Premises"), pursuant to the Sublease dated December 21, 1999 (the "Sublease"), to which this Agreement is attached.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, Landlord, Sublandlord and Subtenant hereby agree as follows:

Landlord hereby consents to the Sublease subject to and upon the following terms and conditions, as to each of which Sublandlord and Subtenant expressly agree; provided, however, that this Agreement shall not be effective until and unless Sublandlord executes and delivers to Landlord an original Amendment to Lease in the form attached hereto as EXHIBIT A:

1. Notwithstanding any provision of the Sublease to the contrary, nothing contained in this Agreement or the Sublease shall;

(a) operate as a consent to or approval or ratification by Landlord of any specific provisions of the Sublease or as a representation or warranty by Landlord, or cause Landlord to be estopped or bound in any way by any of the provisions of the Sublease; or

(b) be construed to modify, waive or affect (i) any of the provisions, covenants or conditions in the Master Lease, (ii) any of Sublandlord's obligations under the Master Lease, or (iii) any rights or remedies of Landlord under the Master Lease or otherwise; or to enlarge or increase Landlord's obligations or Sublandlord's rights under the Master Lease or otherwise; or

(c) be deemed to make Subtenant a third party beneficiary of the provisions of the Master Lease, or create or permit any direct right of action by Subtenant against Landlord for

breach of the covenant of quiet enjoyment or any other covenant of Landlord under the Master Lease; or

(d) be construed to waive any past, present or future breach or default on the part of Sublandlord under the Master Lease.

2. This consent is not assignable.

3. The Sublease shall be subject and subordinate at all times to the Master Lease and to all of its provisions, covenants and conditions. Except for rent payable under the Master Lease, Subtenant shall perform faithfully and be bound by all the terms, covenants, conditions, provisions and agreements of the Master Lease, for the period covered by the Sublease, but only to the extent applicable to the Sublet Premises. In case of any conflict between the provisions of the Master Lease and the provisions of the Sublease, the provisions of the Master Lease shall prevail unaffected by the Sublease.

4. Neither the Sublease nor this consent thereto shall release or discharge the Sublandlord from any liability under the Master Lease. Sublandlord shall remain liable and responsible for the full performance and observance of all the provisions, covenants and conditions set forth in the Master Lease to be performed and observed by Sublandlord. Any breach or violation of any provision of the Master Lease by Subtenant shall constitute a default by Sublandlord in fulfilling such provision.

5. This consent by Landlord shall not be construed as a consent by Landlord to any further subletting by Sublandlord or Subtenant or to any assignment by Sublandlord of the Master Lease or assignment by Subtenant of the Sublease, whether or not the Sublease purports to permit the same, and, without limiting the generality of the foregoing, both Sublandlord and Subtenant agree that Subtenant has no right whatsoever to assign, mortgage or encumber the Sublease nor to sublet any portion of the Sublet Premises or permit any portion of the Sublet Premises to be used or occupied by any other party; further, in connection therewith, both Sublandlord and Subtenant agree that an assignment by operation of law or a transfer of control of Subtenant (including but not limited to a transfer of the controlling interest of the stock of Subtenant, if Subtenant is a corporation) shall be deemed to be a prohibited assignment hereunder. This consent shall not be construed as a consent by Landlord to any modification, amendment, extension or renewal of the Sublease. Sublandlord and Subtenant acknowledge and agree that the attempted exercise of any option to extend the term of the Sublease or to expand the Sublet Premises by the Subtenant shall, for purposes of the Master Lease and this Agreement, constitute a further subletting subject to the provisions of this Article 5.

6. In the event of Sublandlord's default under any of the provisions of the Master Lease, the rent due from Subtenant under the Sublease shall be deemed assigned to Landlord and Landlord shall have the right, upon such default, at any time at its option, to give notice to Subtenant and Sublandlord of such assignment. Landlord shall credit Sublandlord with any rent received by Landlord under such assignment, but the acceptance of any payment on account of rent from Subtenant as the result of any such default shall in no manner whatsoever serve to release Sublandlord from any liability under the terms, covenants, conditions, provisions or agreements under the Master Lease, except to the extent of the rent so credited.

7. If the Master Lease shall terminate during the term of the Sublease due either to condemnation or to destruction by fire or other cause, the Sublease and its term shall thereupon expire and come to an end and Subtenant shall vacate the Sublet Premises on or before the effective date of such termination. If the Master Lease shall expire or terminate during the term of the Sublease for any reason other than either condemnation or destruction by fire or other cause, or if Sublandlord shall surrender the Master Lease to Landlord during the term of the Sublease, Landlord will so notify Sublandlord and Subtenant in writing and within not more than thirty (30) days after the giving of such written notice, Landlord will, in its sole discretion, either; (a) elect by written notice to all such parties to require Subtenant to vacate the Sublet Premises in not less than seventy-five (75) days after such written election, in which event the Sublease and its term shall expire and come to an end on the effective date stated in such notice; or (b) elect (by written notice to all such parties) to continue the Sublease (without any additional or further agreement of any kind on the part of Subtenant) with the same force and effect as if Landlord as landlord and Subtenant as tenant had entered into a lease as of the effective date of such expiration, termination or surrender for a term equal to the then unexpired term of the Sublease and containing the same terms and conditions as those contained in the Sublease, in which event Subtenant shall attorn to Landlord and Landlord and Subtenant shall have the same rights, obligations and remedies thereunder as were had by Sublandlord and Subtenant thereunder prior to such effective date, except that in no event shall Landlord be (1) liable for any act or omission by Sublandlord, (2) subject to any offsets or defenses which Subtenant had or might have against Sublandlord, (3) bound by any rent or additional rent or other payment paid by Subtenant to Sublandlord more than thirty (30) days in advance, or (4) bound by any amendment to the Sublease not consented to by Landlord. If Landlord fails to notify Sublandlord and Subtenant of its election hereunder within the thirty (30) day period provided above, the Sublease and its term shall automatically expire and come to an end on the date which is seventy-five (75) days after the end of such thirty (30) day period. Upon expiration of the Sublease pursuant to the provisions of this Article 7, in the event of the failure of Subtenant to vacate the Sublet Premises as herein provided, Landlord shall be entitled to all of the rights and remedies available to a landlord against a tenant holding over without consent after the expiration of a term.

8. In addition to complying with Sublandlord's obligations under the Master Lease to maintain insurance, Subtenant shall add and maintain Landlord as an additional insured under such insurance policies.

9. Both Sublandlord and Subtenant shall be and continue to be liable for the payment of (a) all bills rendered by Landlord for charges incurred by or imposed upon Subtenant for services and materials supplied to the Sublet Premises beyond that which is required by the terms of the Master Lease, and (b) any additional costs incurred by Landlord for maintenance and repair of the Sublet Premises as the result of Subtenant occupying the Sublet Premises (including, but not limited to, any excess costs to Landlord of services furnished to or for the Sublet Premises).

10. Requests for (a) any service to be supplied by Landlord to the Sublet Premises, (b) to make improvements or alterations to the Sublet premises, (c) to further sublet the Sublet Premises or assign the Sublease and (d) all other requests for Landlord's consent or approval may be made directly by Subtenant. Landlord's consent to any such requests made directly by

Subtenant shall in no way alter Sublandlord's liability under the Master Lease as set forth elsewhere herein and Sublandlord expressly acknowledges that it shall remain liable and responsible for the full performance and observance of all the provisions, covenants and conditions set forth in the Master Lease including to the extent modified by such requests by Subtenant.

11. Sublandlord and Subtenant each covenants and agrees that under no circumstances shall Landlord be liable for any brokerage commission or other charge or expense in connection with the Sublease.

12. Sublandlord and Subtenant understand and acknowledge that Landlord's consent herein is not a consent to any improvement or alteration work to be performed in the Sublet Premises (including without limitation any improvement work contemplated in the Sublease), that Landlord's consent for such work must be separately sought, and that any such work shall be subject to all the provisions of the Master Lease with respect thereto.

13. In the event of any conflict between the provisions of this Agreement and the provisions of the Sublease, the provisions of this Agreement shall prevail unaffected by the Sublease.

14. Any notice or communication that any party hereto may desire or be required to give to any other party under or with respect to this Agreement shall be given prepaid, by hand delivery, Federal Express, or other nationally recognized overnight courier service, addressed to such other party, in the case of Landlord, at Mountain View Partners LLC c/o Menlo Equities Management Company LLC, 2901 Tasman Drive, Ste. 220 Santa Clara, CA 95054, and in the case of either Sublandlord or Subtenant, at the Sublet Premises, or in any case at such other address any party may have designated by notice given in accordance with the provisions of this paragraph.

15. Sublandlord and Subtenant agree, at any time and from time to time, upon not less than fifteen (15) days' prior notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that the Sublease is unmodified and in full force and effect (or, if there have been modifications, that the Sublease is unmodified and in full force and effect as modified and stating the modification), and the dates to which the annual base rental, additional rent and other charges have been paid, and stating whether or not Sublandlord or Subtenant is in default in performance of any covenant, agreement, term, provision or condition contained in the Sublease and, if so, specifying each such default, it being intended that any such statement delivered pursuant hereto may be relied upon by Landlord and any prospective purchaser or lessee of the Building, or any trustee or beneficiary under any deed of trust affecting the Building. Sublandlord and Subtenant also agree to execute and deliver from time to time such other estoppel certificates as any lender may require with respect to the Sublease.

16. In the event of any arbitration or action proceeding at law or in equity between or among the parties to this Agreement as a consequence of any controversy, claim or dispute relating to this Agreement or the breach thereof, or to enforce any of the provisions and/or rights hereunder, the unsuccessful party or parties to such arbitration, action or proceeding shall pay to the prevailing party or parties all costs and expenses, including reasonable attorney's fees

incurred therein by such prevailing party or parties, and if such prevailing party or parties shall recover judgment in any such arbitration, action or proceeding, such costs, expenses and fees shall be included in and as part of such judgment.

17. Subtenant hereby agrees that it shall indemnify, defend and hold Landlord harmless from and against any and all claims arising out of (a) Subtenant's use of the Sublet Premises or any part thereof for the conduct of its business, or (b) any activity, work or other thing done, permitted or suffered by Subtenant in or about the Building or the Sublet Premises, or any part thereof, or (c) any breach or default in the performance of any obligation on Subtenant's part to be performed under the terms of the Sublease or this Agreement, (d) any act, omission, or negligence of Subtenant or any officer, agent, employee, contractor, servant, invitee or guest of Subtenant, or (e) any claim for brokerage commissions or other charges or expenses in connection with the Sublease; and in each case from and against any and all damages, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) arising in connection with any such claim or claims as described in clauses (a) through (e) above, or any action or proceeding brought thereon. If any such action or proceeding be brought against Landlord, Subtenant, upon notice from Landlord, shall defend such action or proceeding at Subtenant's sole expense by counsel reasonably satisfactory to Landlord. Subtenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage or loss to property or injury or death to persons, in, upon or about the Sublet Premises, from any cause, and Subtenant hereby waives all claims in respect thereof against Landlord.

18. This Agreement shall be construed in accordance with the laws of the State of California and, together with the Sublease and the Master Lease, contains the entire agreement of the parties hereto with respect to the subject matter hereof and may not be changed or terminated orally or by course of conduct.

19. Sublandlord agrees to reimburse to Landlord all reasonable costs and reasonable attorneys' fees incurred by Landlord in conjunction with the processing and documentation of the Sublease.

[The remainder of this page has been intentionally left blank.]

20. This Agreement is hereby incorporated into the Sublease and shall be attached to the Sublease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LANDLORD: MOUNTAIN VIEW INCOME PARTNERS LLC, a California limited liability company

By: Menlo Equities Associates VIII LLC, a California limited liability company

By: Menlo Equities LLC, a California limited liability company

By: Menlo Equities Inc., a California corporation

By: /s/ Henry D. Bullock

Henry D. Bullock, President

SUBLANDLORD: KVO PUBLIC RELATIONS, INC., an Oregon corporation

By: /s/ Sharon VanSickle

Name: Sharon VanSickle

Its: President/CEO

By:

Name:

Its:

SUBTENANT: VIVUS, INC., a Delaware corporation

By: /s/ Richard Walliser

Name: Richard Walliser

Its: CFO

By: /s/ Leland F. Wilson

Name: Leland F. Wilson

Its: President CEO

EXHIBIT A
FORM OF AMENDMENT TO LEASE

This AMENDMENT TO LEASE (this "Amendment") is dated as of this ____ day of January ___, 2000 by and between MOUNTAIN VIEW INCOME PARTNERS LLC, a California limited liability company ("Landlord"), and KVO PUBLIC RELATIONS, INC., an Oregon corporation ("Tenant").

RECITALS

A. DLC-Castro Commons, a California limited partnership ("DLC"), as landlord, and Tenant, entered into that certain Office Lease dated July 30, 1996 (the "Lease"), for premises (the "Premises") with a street address of 1172 Castro Street, Mountain View, California, and more particularly described in the Lease.

B. Landlord acquired the property on which the Premises are located on or about December 8, 1997, and succeeded to the interest of DLC under the Lease.

C. Landlord and Tenant now desire to amend the Lease on the terms and conditions set forth herein. Capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the Lease.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. BASIC RENT. The first paragraph of subparagraph 3.A of the Lease is deleted in its entirety and replaced with the following:

"Tenant shall pay to Landlord, as monthly rent ("Rent") for the Premises the amount ("Basic Rent") of Thirty Seven Thousand One Hundred Fifty Eight and 57/100 Dollars ($37,158.57) in lawful money of the United States of America, subject to adjustment as provided in subparagraph 3.B, below. All Rent shall be paid without deduction or offset, prior notice, abatement or demand, except as herein provided to Landlord c/o Menlo Equities Management Company LLC, 2901 Tasman Drive, Ste. 220, Santa Clara, California 95054 or at such other place as may be designated from time to time by Landlord."

2. BASIC RENT INCREASES. The first sentence of subparagraph 3.B of the Lease is deleted in its entirety and replaced with the following:

"The Basic Rent shall be subject to adjustment on each anniversary of the Commencement Date as follows:"

3. USE OF THE PREMISES. The first sentence of paragraph 5 of the Lease is deleted in its entirety and replaced with the following:

"The Premises shall be used exclusively for the purpose of general and executive offices."

4. SUBLEASE PREMIUM. Notwithstanding anything to the contrary contained in paragraph 21.A of the Lease, Tenant may retain fourteen cents ($0.14) per rentable square foot per month of all Basic Rent (or its equivalent) received by Tenant in excess of the Basic Rent provided hereunder (the "Sublease Premium") so long as (i) Vivus, Inc., a Delaware corporation is subleasing all of the Premises pursuant to that certain sublease dated _____, 1999 attached hereto as EXHIBIT A (the "Sublease"), (ii) Tenant is not in default of the Lease beyond any applicable cure and notice periods and (iii) all remaining amounts of the Sublease Premium are paid to Landlord at the same time as Basic Rent. Tenant expressly acknowledges (i) that in the event the Sublease is terminated or expires prior to the termination or earlier expiration of the Lease or Tenant is in default beyond the applicable cure and notice periods, this paragraph 4 shall be inoperative and the terms and conditions of paragraph 21.A shall govern the allocation of any Sublease Premium, and (ii) the provisions of this paragraph 4 shall apply only to the Basic Rent (or its equivalent) payable under the Sublease and not to any other rents or payments made pursuant thereto.

5. RATIFICATION. The Lease, as amended by this Amendment, is hereby ratified by Landlord and Tenant and Landlord and Tenant hereby agree that the Lease, as so amended, shall continue in full force and effect.

6. MISCELLANEOUS.

(a) VOLUNTARY AGREEMENT. The parties have read this Amendment and on the advice of counsel they have freely and voluntarily entered into this Amendment.

(b) ATTORNEY'S FEES. If either party commences an action against the other party arising out of or in connection with this Amendment, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees and costs of suit.

(c) SUCCESSORS. This Amendment shall be binding on and inure to the benefit of the parties and their successors.

(d) COUNTERPARTS. This Amendment may be signed in two or more counterparts. When at least one counterpart has been signed by each party, this Amendment shall be deemed to have been fully executed, each counterpart shall be deemed to be an original, and all counterparts shall be deemed to be one and the same agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first written above.

LANDLORD:

MOUNTAIN VIEW INCOME PARTNERS LLC,
a California limited liability company

By: Menlo Equities Associates VIII LLC, a California limited liability company

By: Menlo Equities LLC, a California limited liability company

By: Menlo Equities Inc., a California corporation

By:

Henry D. Bullock,
President

TENANT

KVO PUBLIC RELATIONS, INC., an Oregon corporation

By:

Name:

Its:

By:

Name:

Its:

AMENDMENT TO LEASE

This AMENDMENT TO LEASE (this "Amendment") is dated as of this 7th day of January , 2000 by and between MOUNTAIN VIEW INCOME PARTNERS LLC, a California limited liability company ("Landlord"), and KVO PUBLIC RELATIONS, INC., an Oregon corporation ("Tenant").

RECITALS

A. DLC-Castro Commons, a California limited partnership ("DLC"), as landlord, and Tenant, entered into that certain Office Lease dated July 30, 1996 (the "Lease"), for premises (the "Premises") with a street address of 1172 Castro Street, Mountain View, California, and more particularly described in the Lease.

B. Landlord acquired the property on which the Premises are located on or about December 8, 1997, and succeeded to the interest of DLC under the Lease.

C. Landlord and Tenant now desire to amend the Lease on the terms and conditions set forth herein. Capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the Lease.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. BASIC RENT. The first paragraph of subparagraph 3.A. of the Lease is deleted in its entirety and replaced with the following:

"Tenant shall pay to Landlord, as monthly rent ("Rent") for the Premises the amount ("Basic Rent") of Thirty Seven Thousand One Hundred Fifty Eight and 57/100 Dollars ($37,158.57) in lawful money of the United States of America, subject to adjustment as provided in subparagraph 3.B, below. All Rent shall be paid without deduction or offset, prior notice, abatement or demand, except as herein provided to Landlord c/o Menlo Equities Management Company LLC, 2901 Tasman Drive, Ste. 220, Santa Clara, California 95054 or at such other place as may be designated from time to time by Landlord."

2. BASIC RENT INCREASES. The first sentence of subparagraph 3.B of the Lease is deleted in its entirety and replaced with the following:

"The Basic Rent shall be subject to adjustment on each anniversary of the Commencement Date as follows:"

3. USE OF THE PREMISES. The first sentence of paragraph 5 of the Lease is deleted in its entirety and replaced with the following:

"The Premises shall be used exclusively for the purpose of general and executive offices."

4. SUBLEASE PREMIUM. Notwithstanding anything to the contrary contained in paragraph 21.A of the Lease, Tenant may retain fourteen cents ($0.14) per rentable square foot per month of all Basic Rent (or its equivalent) received by Tenant in excess of the Basic Rent provided hereunder (the "Sublease Premium") so long as (i) Vivus, Inc., a Delaware corporation is subleasing all of the Premises pursuant to that certain sublease dated December 21, 1999 attached hereto as EXHIBIT A (the "Sublease"), (ii) Tenant is not in default of the Lease beyond any applicable cure and notice periods and (iii) all remaining amounts of the Sublease Premium are paid to Landlord at the same time as Basic Rent. Tenant expressly acknowledges (i) that in the event the Sublease is terminated or expires prior to the termination or earlier expiration of the Lease or Tenant is in default beyond the applicable cure and notice periods, this paragraph 4 shall be inoperative and the terms and conditions of paragraph 21.A shall govern the allocation of any Sublease Premium, and (ii) the provisions of this paragraph 4 shall apply only to the Basic Rent (or its equivalent) payable under the Sublease and not to any other rents or payments made pursuant thereto.

5. RATIFICATION. The Lease, as amended by this Amendment, is hereby ratified by Landlord and Tenant and Landlord and Tenant hereby agree that the Lease, as so amended, shall continue in full force and effect.

6. MISCELLANEOUS.

(a) VOLUNTARY AGREEMENT. The parties have read this Amendment and on the advice of counsel they have freely and voluntarily entered into this Amendment.

(b) ATTORNEY'S FEES. If either party commences an action against the other party arising out of or in connection with this Amendment, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees and costs of suit.

(c) SUCCESSORS. This Amendment shall be binding on and inure to the benefit of the parties and their successors.

(d) COUNTERPARTS. This Amendment may be signed in two or more counterparts. When at least one such counterpart has been signed by each party, this Amendment shall be deemed to have been fully executed, each counterpart shall be deemed to be an original, and all counterparts shall be deemed to be one and the same agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first written above.

LANDLORD:

MOUNTAIN VIEW INCOME PARTNERS LLC,
a California limited liability company

By: Menlo Equities Associates VIII LLC, a California limited liability company

By: Menlo Equities LLC, a California limited liability company

By: Menlo Equities Inc., a California corporation

By: /s/ Henry D. Bullock

Henry D. Bullock,
President

TENANT:

KVO PUBLIC RELATIONS, INC., an Oregon corporation

By: /s/ Sharon VanSickle

Name: Sharon VanSickle
Its: President/CEO

By:

Name:
Its:

OFFICE LEASE

THIS LEASE is made on the 30th day of July, 1996 by and between DLC-Castro Commons, a California limited partnership (hereinafter called "Landlord"), and Karakas Van Sickle Ouellette, an Oregon Corporation (hereinafter called "Tenant").

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Premises. Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions herein set forth, those certain premises (the "Premises") situated at 1172 Castro Street which is part of a two building ("Complex") in the City of Mountain View County of Santa Clara, California, as outlined in Exhibit A, attached hereto and incorporated herein by this reference, and described as follows: approximately fourteen thousand two hundred thirty-seven (14,237) rentable square feet on the first and second floors as shown on Exhibit "A".

2. Term. The term of this Lease shall commence on the date ("Commencement Date") which is the earlier of the following:

   A. Ten (10) days following the date that the existing tenant (Syntex) vacates the Premises; or

   B. The date on which Tenant takes possession of the Premises.

   Landlord shall send to Tenant a notification, in the form attached hereto as Exhibit B and incorporated herein by this reference, stating the Commencement Date, when it is ascertained.

   The term of the Lease shall end ten (10) years from the Commencement Date, unless sooner terminated pursuant to any provision hereof. Should Lease not commence on the first (1st) day of the month, the Lease shall nonetheless terminate on the last day of the month of the last year of the Term as provided herein.

3. Rent.

   A. Basic Rent. Tenant shall pay to Landlord, as monthly rent ("Rent") for the Premises the amount ("Basic Rent") of Thirty-One Thousand Three Hundred Twenty-One and 40/100ths Dollars ($31,321.40) in lawful money of the United States of America, subject to adjustment as provided in subparagraph 3.B, below. All Rent shall be paid without deduction or offset, prior notice, abatement or demand, except as herein provided, to Landlord, at c/o Dewey Land Company, 999 Baker Way, Suite 300, San Mateo, CA 94404. Attention: Accounting, or at such other place as may be designated from time to time by Landlord.

   Basic Rent for the term of this Lease shall be paid, in advance, on the first (1st) day of each calendar month until the end of the term; Rent for the first month of the term is paid pursuant to Paragraph 3E below. Rent for any period during the term hereof which is for less than one (1) full month shall be a pro rata portion of the monthly Rent payment.

   Tenant acknowledges that late payment by Tenant to Landlord of Rent or any other payment due Landlord will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of Rent or other payment due from Tenant is not received by Landlord within five (5) days following the date it is due and payable, Tenant shall pay to Landlord, in addition to the Rent due, and in addition to interest thereon as provided in Paragraph 14, an additional sum of five percent (5%) of the overdue amount as a late charge. In the event Lender's late charge to Landlord as Borrower is higher, then Lender's late charge penalty shall be the percentage used for calculating such a late charge; in no event, however shall such late charge exceed ten percent (10%) of the amount delinquent. The parties agree that this late charge and interest represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord. Upon receipt of the rent, late charge, or other sums due, this monetary default shall be deemed cured.

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If the parties hereto have agreed upon a specific date for the Commencement Date and if for any reason whatsoever Landlord cannot deliver possession of the Premises on the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom; but in such event. Tenant shall not be obligated to pay Rent until possession of the Premises is tendered to Tenant, and the Commencement Date and termination date of this Lease shall be revised to conform to the date of Landlord's delivery of possession.

B. BASIC RENT INCREASE. The Basic Rent shall be subject adjustment at the commencement of the third (3rd) lease year of the term and each successive year thereafter as follows:

The base for computing the first adjustment is the Consumer Price Index. All Urban Consumers, San Francisco-Oakland-San Jose Metropolitan Area average (1982-1984-100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published most immediately preceding the Commencement Date ("Beginning Index"). The Index published most immediately preceding the adjustment date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the Basic Rent for the following year (until the next Rent adjustment) shall be set by multiplying the monthly Basic Rent set forth in Paragraph 3A by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Beginning with the commencement of the fourth lease year, the Rent applicable immediately prior to the Adjustment date shall be multiplied by a fraction, the numerator of which is the Extension Index and the denominator of which is the index used in determining the last prior adjustment in no event shall the increase in the Basic Rent be less than two percent (2%) per year nor any greater than six percent (6%) per year.

If the index is changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

C. ADDITIONAL RENT; OPERATING EXPENSES AND TAXES. For purposes of this Lease, the parties agree to the following:

(1) "Operating Expenses and Taxes" shall be the amount of the Operating Expenses and Taxes for the 1996 calendar year. Landlord's estimate for the calendar year 1996 is sixty-three cents ($0.63) per rentable square foot per month.

(2) Tenant's proportionate share of Operating Expenses and Taxes is agreed to be one hundred percent (100%) of the Building and thirty-four and three tenths percent (34.3%) of the Complex. (Tenant's share of the Complex's Operating Expenses and Taxes shall not include any costs for the 1172 Castro Building billed to and reimbursed by Tenant).

(3) "Operating Expenses" shall mean all direct costs of operating, maintaining and managing the Building and the Property (including parking areas) including, but not limited to, all charges paid or expenses incurred by Landlord for repairs; maintenance; utilities; water; capital improvements required to meet changed government regulations; cleaning and janitorial services; security services; modifications or additional capital improvements or replacement of existing building systems and equipment to reduce the Operating Expenses; replacement of capital improvements or Building sewer equipment existing as of the Commencement Date when required because of normal wear and tear; maintenance and replacement of landscaping, glazing, plumbing systems, electrical systems, heating and air conditioning systems, a fitness center including rent at the same per square foot rent that Tenant pays, automatic fire extinguishing systems, conference center including rent at the same per square foot rent that Tenant pays, roofs, down spouts, elevators, common area interiors, ceilings, and Building exterior and common area doors; rubbish removal; property and liability insurance; licenses, permits and inspections; reasonable accounting, administrative, property management equal to five percent (5%) of revenue, and legal expenses; amortization (together with interest at the rate of twelve percent (12%) per annum on the unamortized balance) on machinery and equipment used to maintain the Premises, the Building, the parking areas or the Property:

amortization (together with interest at the rate of twelve percent (12%) per annum on the unamortized balance) on other personal property used by Landlord in the Building (including but not limited to window coverings and carpeting in public corridors and common areas); costs, expenses and overhead for maintaining and operating a management or tenant relations office in the Building; and the reasonable cost of contesting the validity or applicability of any government enactments that may affect Operating Expenses. Notwithstanding anything to the contrary herein, cost for replacement to the foundation and cost for the repair/replacement of the structural element of the exterior wall, i.e., structural beam, shall not be included as an Operating Expense (and any such cost shall be borne by Landlord except that should such repair or replacement be occasioned by the act or failure to act by Tenant, then Tenant shall pay all of such cost upon demand by Landlord). For example, should a major subsidence occur in the foundation whereby twenty-five percent (25%) or more of the foundation requires replacement, Landlord shall pay for such work. For example, should a structural member of the exterior wall, i.e., structural beam, fall, Landlord shall be responsible for cost of such replacement.

(4) "Taxes" shall mean all Real Property Taxes as hereafter defined in Paragraph 7, but excluding all other taxes which are paid by Landlord and reimbursed by Tenant under this Lease.

In addition to the Base Rent, Tenant shall pay to Landlord, as Additional Rent, Tenant's pro-rata share of the Operating Expenses and Taxes (hereinafter "OPT"). For the calendar year 1998, the OPT is estimated to be sixty-three cents ($0.63) per rentable square foot.

Notwithstanding anything in this Lease to the contrary, Landlord shall calculate Tenant's proportionate share of the OPT (for purposes of both estimated and actual calculations) as if the Building were fully occupied regardless of the actual occupancy rate.

Tenant's pro rata share of OPT shall be Additional Rent and shall be paid to Landlord, except as otherwise provided in this Lease, as follows: prior to the commencement of each calendar year or within a reasonable period thereafter, Landlord shall estimate Tenant's pro rata share of such OPT for the following calendar year and Landlord shall notify Tenant of such estimate in writing. Commencing on the first day of the first month of the calendar year for which Landlord has notified Tenant of the estimated OPT, and on the first day of every month thereafter in such year, Tenant shall pay to Landlord, as Additional Rent, one-twelfth (1/12th) of Tenant's estimated pro rata share of the yearly OPT. Within ninety (90) days of the end of each calendar year for which Tenant has made estimated payments (the "Adjustment Date"), Landlord shall furnish Tenant a statement with respect to such year, showing actual charges for the past calendar year and the total payments made by Tenant on the basis of Landlord's estimate. If Tenant's actual pro rata share of the OPT exceeds the payments made by Tenant based on Landlord's estimate, Tenant shall pay the deficiency to Landlord within thirty (30) days of Tenant's receipt of Landlord's statement. If the total payments by Tenant based on Landlord's estimate exceed Tenant's actual pro rata share of the OPT, Tenant's excess payment shall be credited toward future payments by Tenant of Basic Rent and/or Additional Rent or refunded to Tenant within thirty (30) days of Landlord's statement to Tenant if no future Basic Rent or Additional Rent is to become due.

Upon request by Tenant to Landlord, Landlord shall allow Tenant to review Landlord's records, at Landlord's office in place where the records are kept, with respect to Operating Expenses at all reasonable times. Tenant shall reimburse Landlord (within ten (10) days) for any costs incurred by Landlord during such review by Tenant.

All Lease provisions with respect to late charges and interest on unpaid Rent shall be applicable to Additional Rent, as well as to Basic Rent and all other monetary amounts due from Tenant under this Lease.

D. Monetary Obligations as Rent. All monetary amounts payable by Tenant to Landlord under this Lease including but not limited to Basic and Additional Rent, and amounts paid by Landlord to cure Tenant's default(s) shall be deemed "Rent" hereunder.

E. First Month's Rent. Landlord hereby acknowledges that upon Tenant's execution of the Lease, Tenant shall have deposited Forth Thousand Two Hundred Ninety and 71/100ths Dollars ($40,290.71) which represents the First Month's Basic Rent of Thirty-One

Thousand Three Hundred Twenty-One and 40/100ths Dollars ($31,321.40) and the estimated OPT for the first month of Eight Thousand Nine Hundred Sixty-Nine and 31/100ths Dollars ($8,969.31), i.e., $0.63 per rentable sq. ft.

4. Security Deposit. Landlord acknowledges that, upon Tenant's execution of the Lease, Tenant shall have deposited with Landlord a security deposit in the sum of Forty Thousand and 00/100 Dollars ($40,000.00) to secure Tenant's full and faithful performance of each term, covenant, and condition of this Lease to be performed by Tenant. If Tenant fails to pay any Basic Rent, Additional Rent or any other monetary amount due from Tenant hereunder, or fails to keep or perform any term, covenant or condition on its part to be made or performed or kept under this Lease, then Landlord may, but shall not be obligated to, and without waiving or releasing Tenant from any obligation under this Lease, use, apply or retain the whole or any part of said security deposit (i) to the extent of any sum due to Landlord; or (ii) to make any required payment on Tenant's behalf; or (iii) to compensate Landlord for any loss, damage, attorneys' fees or expense sustained by Landlord due to Tenant's default. In such event, Tenant shall, within ten (10) days of written demand by Landlord, remit to Landlord sufficient funds to restore the security deposit to its original sum. Tenant's failure to do so shall be a material breach of this Lease. No interest shall accrue on the security deposit.

5. Use of the Premises. The Premises shall be used exclusively for the purpose of office use for public relations and advertising uses. Tenant shall not use, or permit the Premises or any part thereof to be used, for any purpose other than the purpose for which the Premises are hereby leased; and no use shall be made or permitted to be made of the Premises, nor acts done in, on or about the Premises, which will increase the existing rate of insurance upon the Building, or cause a cancellation of any insurance policy covering the Building, or any part thereof, nor shall Tenant sell or permit to be kept, used or sold,in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any public or private nuisance, or other act or thing which may injure, annoy or disturb the quiet enjoyment of any occupant of neighboring properties or other tenant in the Building or on the Property; nor, without limiting the generality of the foregoing, shall Tenant allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose. Tenant shall not place any harmful liquids in the drainage system of the Premises or of the Building. Tenant shall not place any loads upon the floors, walls, ceilings or roof which might endanger the structure, nor overload any electrical, mechanical or other systems.

No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises outside the Building except in trash containers placed inside exterior enclosures approved for that purpose by Landlord, or inside the Building proper where designated by Landlord. No materials or articles of any nature shall be stored upon or permitted to remain outside of the Building. Subject to the provisions of Paragraph 35 of this Lease, Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises (including the common areas and hallways of the Building). No loudspeaker or other device, system or apparatus which can be heard outside the Premises shall be used in or at the Premises without the prior written consent of Landlord which consent may be granted at Landlord's absolute discretion.

Tenant covenants and agrees that no diminution of light, air or view by any structure which may be hereafter erected, whether or not by Landlord, or use of the Building by any other occupants or use of neighboring buildings or areas by others, shall in any way affect this Lease, entitle Tenant to any reduction of Rent hereunder, or result in any liability of Landlord to Tenant.

Tenant shall comply with all the covenants, conditions and/or restrictions ("CC&R's") affecting the Premises, the Building and the Property, and all rules and regulations affecting the Premises, which rules and regulations shall be enforced by Landlord in a non-discriminatory and non-arbitrary manner.

The term "Hazardous Material" means 'any hazardous or toxic substance, material or waste, the storage, use or disposition of which is or becomes regulated by any local governmental authority, the State of California or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25136 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous

substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response

Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste", pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601) or (xi) listed or defined as "hazardous waste", "hazardous substance" or other similar designation by any regulatory scheme of the State of California or the United States government.

Tenant, at its sole cost, shall comply with all laws and regulations relating to the storage, use and disposal of Hazardous Materials on the premises. If Tenant does store, use or dispose of any Hazardous Materials on the Premises, Tenant shall notify Landlord, in writing, at least five (5) days prior to their first appearance on the Premises; provided, however, that Tenant shall have the right to store reasonable amounts of chemicals and/or solvents used for ordinary office equipment without notifying Landlord. Tenant shall be solely responsible for and shall defend, indemnify and hold Landlord, and Landlord's partners, officers, employees, successors, assigns and agents, harmless from and against all claims, demands, damages, costs and liabilities, including attorneys' fees and costs, arising out of or in connection with the storage, use or disposal of Hazardous Materials by Tenant, its agents, employees, contractors, or sublessees.

If the presence of Hazardous Materials on the Premises caused or permitted by Tenant, its agents, employees, contractors, or sublessees results in or is likely to result in contamination or deterioration of water or soil resulting in a level of contamination greater than the safe levels established by any governmental agency having jurisdiction over such contamination, or if any investigation of conditions, or any clean-up, remedial removal or restoration work is required by any federal, state or local governmental agency or political subdivision ("Governmental Agency") because of the level of Hazardous Material in the soil or ground water or on the Premises caused or permitted by Tenant, its agents, employees, contractors and or sublessees, then Tenant shall promptly, and at its sole cost, take any and all action necessary to investigate and clean up such contamination. Tenant shall further be solely responsible for, and shall defend, indemnify and hold Landlord and Landlord's partners, officers, employees, successors, assigns and agents harmless from and against, all claims, demands, damages, costs and liabilities, including attorneys' fees and costs, arising out of or in connection with any removal, clean-up and restoration work and materials required hereunder to return the Premises, the Property or the surrounding properties to the condition existing prior to the appearance of the Hazardous Materials caused or permitted by Tenant, its agents, employees, contractors, or sublessees.

If Landlord has good cause to believe that the Premises or the Property have or may become contaminated by Hazardous Materials, Landlord may cause tests to be performed, including wells to be installed on the Property, and may cause the soil or ground water to be tested to detect the presence of Hazardous Materials by the use of such tests as are then customarily used for such purposes. The cost of such tests of the installation, maintenance, repair and replacement of such wells shall be paid by Tenant.

The termination of the Lease shall not terminate the parties' respective rights and obligations under this Paragraph 5, and the parties hereto expressly agree that the provisions contained herein shall survive the termination of Tenant's leasehold estate.

Tenant shall abide by all laws, ordinances and statutes, as they now exist or may hereafter be enacted by legislative bodies having jurisdiction thereof, relating to its use and occupancy of the Premises.

The provisions of this Paragraph 5 are for the benefit of the Landlord only and shall not be construed to be for the benefit of any other person or occupant of the Premises.

6. Improvements. Landlord will, at its sole expense and using contractors of its choice, make improvements ("Improvements") to the Premises as specified in Exhibit C attached hereto and incorporated herein by this reference. On or before September 1, 1996, Tenant shall deliver to Landlord, for Landlord's approval, its final plans with detailed specifications and listing of finish materials, all of which have been approved by Tenant. Notwithstanding anything in this Lease to the contrary, if Tenant fails to provide Landlord with such final plans, specifications, and finish material approved by Tenant on or before the date specified for such delivery, or if Tenant changes any of the plans, specifications or finish materials

subsequent to such date, then the Commencement Date shall be the Anticipated Completion Date as hereafter set forth, or the date

of Landlord's notification to Tenant of Substantial Completion (as hereinafter defined) of the improvements, or the date on which Tenant takes possession of the Premises, whichever shall first occur.

Upon Landlord's approval (which shall not be unreasonably withheld or delayed) of such final plans and specifications including finish materials approved by Tenant, and upon Landlord's approval of the same, Landlord shall diligently undertake to construct the improvements in accordance with such final plans, specifications and finish materials as approved by Landlord and Tenant (collectively referred to as "Final Plans"). All such construction shall be performed with due diligence and in substantial accordance with the Final Plans. Landlord agrees to use all commercially reasonable efforts to substantially complete the improvements by January 1, 1997 ("Anticipated Completion Date"), but without any warranty as to when such improvements shall be substantially completed.

Landlord's obligation to construct the improvements is specifically subject to any changes or other requirements of or imposed by all applicable governmental body(ies), agency(ies) and/or utility(ies); Landlord shall notify Tenant of any such changes and/or requirements promptly after Landlord becomes aware of the same. Any improvements to the Premises not expressly shown or stated in the Final Plans shall be made by Tenant at its sole cost and expense in accordance with Paragraph 11 of this Lease; provided, however, that notwithstanding anything in this Lease to the contrary, any delay in Landlord's construction of the improvements caused in whole or in part by Tenant including, but not limited to, delays caused by additional improvements made or any changes requested by Tenant, shall not delay the Commencement Date of this Lease, and Substantial Completion, as hereinafter defined, for purposes of determining the Commencement Date of this Lease, shall be at such time as the improvements would have been Substantially Complete absent such additional improvements made or changes requested by Tenant.

It is understood that the Final Plans and the exact location of doors, walks, lighting, plumbing and all other facilities and improvements are subject to such minor changes (for example: Schlage lock set can be replaced with like kind alternate) as Landlord, or Landlord's architect or general contractor in charge of the construction of the improvements, determine to be necessary desirable in the course of construction of or to the Premises, and no such changes shall affect this Lease or constitute a breach by Landlord hereunder. Landlord agrees to not materially deviate from the final approved plans without Tenant's consent, which consent shall not be timely or unreasonably withheld.

Tenants shall have twenty (20) days from the date of Substantial Completion to provide Landlord with a list of items requiring repair or replacement. Upon Landlord's receipt of such list, Landlord shall proceed to correct such "punch list" items with due diligence.

7. Taxes and Assessments.

A. Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed upon or against Tenant's fixtures, equipment, furnishings, furniture, appliances and personal property installed or located on or within the Premises. Tenant shall cause said fixtures, equipment, furnishings, furniture, appliances and personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant within thirty (30) days after receipt of a written statement from Landlord setting forth the taxes applicable to Tenant's property.

B. All Real Property Taxes shall be paid by Landlord. The term "Real Property Taxes", as used herein, shall mean and include: (i) all taxes, assessments, levies and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including without limitation, all installments of principal and interest required to pay any general or special assessments for public improvements, and any increases resulting from reassessments caused by any change in ownership of the Premises, the Building or the Property, or otherwise) now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against, or with respect to the value, occupancy, or use of all or any portion of the Property, the Building or the Premises (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed) or Landlord's interest therein; any improvements located within the Property, the Building or the Premises (regardless of ownership); the fixtures, equipment and other property of Landlord, real or personal, that are an integral part of and located in, on or about the Property, the Building or the Premises; and landscaping areas, walkways and parking areas; and (ii) all costs and fees (including reasonable attorney's fees) incurred by

Landlord in reasonably contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax.

"Real Property Taxes" shall not include any franchise, rental, income, inheritance or profit tax, capital levy or excise tax payable by Landlord.

If at any time during the term of this Lease the taxation or assessment of the Property, the Building or the Premises prevailing as of the Commencement Date of this Lease shall be altered so that in lieu of or in addition to any Real Property Tax described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (i) on the value, use or occupancy of the Property, the Building or the Premises or Landlord's interest therein, or (ii) on or measured by the gross receipts, income or rentals from the Property, the Building or the Premises, on Landlord's business of leasing the Property, the Building or the Premises, or Landlord's interest therein, or based on parking, employment, production or the like in, on or about the Property, the Building or the Premises, or computed in any manner with respect to the operation of the Property, the Building or the Premises, then any such tax or charge, however designated, shall be included within the meaning of the term "Real Property Taxes" for purposes of this Lease. If any Real Property Tax is based in part upon property or rents unrelated to the Property, the Building or the Premises, then only that part of such Real Property Tax that is fairly allocable to the Property, the Building or the Premises shall be included within the meaning of the term "Real Property Taxes".

If, at any time during the term of this Lease, any assessments which would be deemed to be Real Property Taxes are levied against the Premises, the Building or the Property, Landlord may elect either to pay the assessment in full or to allow the assessment to go to bond and to pay it in installments. In either case, however, Tenant shall only be obligated to pay to Landlord, with regard to any such assessment, each time payment of Real Property Taxes is made, a sum equal to that which would have been payable by Tenant as its pro rata percentage of the installments of principal and interest which would have become due during the term of this Lease had Landlord allowed the assessment to go to bond.

8. Insurance.

A. Indemnity. Except for Landlord's gross negligence or willful misconduct, Tenant agrees to indemnify and defend (with counsel acceptable to Landlord) Landlord against the hold Landlord and Landlord's partners, employees, officers, assigns and successors harmless from any and all demands, claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorney's fees), on account of, or arising out of, the use or occupancy of the Premises. This Lease is made on the express condition that Landlord shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause, in any way connected with the use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of Tenant, its agents, officers, employees, licensees and invitees.

B. Liability and Worker's Compensation Insurance. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of worker's compensation insurance and a policy of comprehensive public liability insurance insuring Landlord and Tenant, with cross-liability endorsements, against any liability arising out of the use or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount satisfactory to Landlord of not less than $1,000,000 combined single limit for bodily injury or death as a result of any one occurrence, and $1,000,000 for damage to property as a result of any one occurrence. The insurance shall be with companies admitted to do business in the State of California and companies of Best's Rating Guide of A+9 or better. Tenant shall deliver to Landlord, prior to taking possession of the Premises, a certificate of insurance evidencing the existence of the policy required hereunder, and such certificate shall certify that the policy (i) names Landlord as an additional insured; (ii) shall not be cancelled or altered without thirty (30) days prior written notice to Landlord; and (iii) the coverage is primary and any coverage carried or obtained by Landlord is in excess thereto.

Landlord shall, at all times during the term hereof, maintain in effect a policy of public liability and property damage insurance insuring against any liability (including bodily injury or property damage) arising on or about the Property with policy limits determined

by Landlord in its sole discretion. Such insurance costs shall be included in Operating Expenses described in Paragraph 3 above.

C. Insurance of Personal Property, Fixtures and Equipment. Tenant shall at all times during the term hereof, and at its sole cost and expense, maintain in effect policies of insurance covering: (i) its personal property, inventory, alterations, fixtures and equipment located on the Premises, in an amount not less than one hundred percent (100%) of their actual replacement value, providing protection against any peril included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage, vandalism and malicious mischief; and (ii) all plate glass on the Premises. The proceeds of such insurance, so long as this Lease remains in effect, shall be used to repair or replace the personal property, inventory, alterations, fixtures, equipment and plate glass so insured. In addition, Tenant shall obtain and keep in force, at all times during the term of this Lease, a policy of business interruption insurance coverage, insuring that one hundred percent (100%) of the monthly Basic Rent, and all Additional Rent due hereunder, will be paid to Landlord for a period of not less than one (1) year, if the Premises are damaged or destroyed or rendered unfit for occupancy by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism, sprinkler damage and malicious mischief endorsements.

D. Property Insurance. Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance coverage including fire and extended coverage (and, at Landlord's sole and absolute discretion, earthquake and flood), for loss or damage to the Premises and to the Building, in the amount of the full replacement value thereof. Such insurance costs and deductibles shall be included in Operating Expenses described in Paragraph 3 above.

E. Mutual Waiver of Subrogation. The parties hereto release each other and their respective authorized representatives, partners, officers, agents, employees and servants, from any and all claims, demands, loss, expense or injury to any person, or to the Premises or Building, or to the furnishings, fixtures or equipment located therein, caused by or resulting from perils, events or happenings which are the subject of insurance in force at the time of such loss. Each party shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy in effect as required by this Lease.

9. Operation, Management, Services and Utilities. All expenses of operation and management of the Premises and the Building or the Property, including, but not limited to, water, gas, light, heat, power, electricity, telephone, trash pick-up, property management services, landscaping, janitorial services, sewer charges, pest control, security charges, and all other services supplied to or consumed on the Premises or the Building or the Property shall be controlled by Landlord and be included in Operating Expenses described in Paragraph 3 above, except to the extent such charges are directly billed to Tenant. Landlord agrees to manage the Property in a first class manner similar to other comparable buildings in the El Camino Hospital/Mountain View marketplace. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of Rent by reason of any interruption or failure of utility or other services to the Premises during the Lease term. Utilities and services shall be provided in accordance with the Standards for Utilities and Services set forth in Exhibit D attached hereto and incorporated herein. The parties agree to the terms and provisions set forth in the Standards and to any modifications or additions thereto.

10. Repair and Maintenance.

A. Subject to provisions of Paragraph 15 of this Lease, below, Landlord shall keep and maintain the roof, paving, structural elements, landscaping, irrigation systems and exterior walls of the Building and the Property in good order and repair. Landlord shall also keep and maintain in good order and repair the windows, window frames, doors, hardware, interior walls, and the electrical, plumbing, lighting, heating and air conditioning systems. Landlord agrees to make such repairs as necessary as promptly as possible. Such expenses shall be included in Operating Expenses for purposes of Paragraph 3 above. If, however, any repairs or maintenance are required because of an act or omission of Tenant, or its agents, employees or invitees, then Tenant shall pay to Landlord upon demand one hundred percent (100%) of the costs of such repair or maintenance. Notwithstanding anything in this Lease to the contrary, after the initial construction of the improvements in the Premises by Landlord pursuant to the provisions of Paragraph 6 of this Lease, Landlord shall have no obligation to alter, remodel, improve, decorate, or paint the Premises or any part thereof.

B. Except as expressly provided in subparagraph 10.A above, Tenant shall, at its sole cost, keep and maintain the interior of the Premises in

good and sanitary order, condition and repair.

Should Tenant fail to maintain the Premises as required hereunder forthwith upon notice from Landlord, then Landlord, in addition to all other remedies available hereunder or by law, and without waiving any alternative remedies, may make or do the same, and in that event, Tenant shall reimburse Landlord for the cost of such maintenance or repairs as Additional Rent, at Landlord's election on demand or on the next date upon which Basic Rent becomes due.

Tenant hereby expressly waives the provisions of Subsection 1 of Section 1932, and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of Landlord, as provided in Section 1942 of said Civil Code.

Alterations and Additions. Tenant shall not make, or suffer to be made, any alterations, improvements or additions in, on or about, or to the Premises or any part thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, and without a valid building permit issued by the appropriate governmental authority. Such alterations, improvements and additions shall then be performed by Landlord's contractors.

As a condition to giving such consent, Landlord may require that Tenant agree to remove any such alterations, improvements or additions at the termination of this Lease, and to restore the Premises to their prior condition. Any alteration, addition or improvements to the Premises, except movable furniture and trade fixtures not affixed to the Premises, shall become the property of Landlord upon installation, and shall (subject to the provisions of the immediately preceding sentence) remain upon and be surrendered with the Premises at the termination of this Lease. Landlord can elect, however, within thirty (30) days before expiration of the term or within five (5) days after termination of the term, to require Tenant to remove any alterations, additions or improvements that Tenant has made to the Premises. If Landlord so elects, Tenant shall restore the Premises to the condition designated by Landlord in its election, before the last day of the term, or within thirty (30) days after notice of election is given, whichever is later.

Alterations, additions and improvements which are not to be deemed trade fixtures include heating, lighting and electrical systems, air conditioning, partitioning, window coverings, carpeting, or any other installation which has become an integral part of the Premises.

If Landlord consents to Tenant's making any alterations, improvements or additions in the Premises, Tenant shall be responsible for the timely posting of notices of non-responsibility on Landlord's behalf, which shall remain posted until completion of the alterations, additions or improvements, and Tenant shall provide Landlord with a copy of such notice of non-responsibility prior to commencement of any such construction. Tenant's failure to post notices of non-responsibility as required hereunder shall be a breach of this Lease and Tenant shall indemnify Landlord from and against all claims, losses, damages, and/or liability resulting therefrom, including reasonable attorney's fees.

If, during the term hereof, any alteration, addition or change of any sort through all or any portion of the Premises is required, due to Tenant's particular use of the Premises, by law, regulation, ordinance or order of any public agency. Tenant, at its sole cost and expense, shall promptly make the same.

12. Acceptance of the Premises and Covenant to Surrender. By entry and taking possession of the Premises pursuant to this Lease, upon Substantial Completion of the Improvements, Tenant, subject to Landlord's obligation to correct so-called "punch list" items, as provided in Paragraph 6, above, accepts the Premises as being in good and sanitary order, condition and repair, and accepts the Building and the Improvements included in the Premises in their condition existing as of the date of such entry and without representation or warranty by Landlord as to the condition of the Building or the Premises, or as to the use or occupancy which may be made thereof. Tenant further accepts any Improvements to be constructed by Landlord as being completed in accordance with the Final Plans for such improvements, except for items specified in writing as punch list items pursuant to Paragraph 6.

Tenant agrees, on the last day of the term hereof, or on any sooner termination of this Lease, to surrender the Premises, together with all alterations, additions and improvements which may have been made in, to or on the Premises by Landlord or Tenant, to Landlord, broom clean, in good and sanitary order, condition and repair, except for such wear and tear as would be normal for the period of Tenant's occupancy. Tenant further agrees that at the end of the term of this Lease or upon any sooner termination of this Lease, Tenant, at its sole expense, shall have damage interior walls and columns patched and repainted as necessary, any damaged ceiling tile replaced, light lenses and ballasts restored to good order and repair, the drapes/blinds cleaned, any damaged doors and cabinetry replaced or repaired and the carpet steam cleaned and, if damaged, replaced to match the

existing carpet.

Tenant, on or before the end of the term of this Lease or on any sooner termination of this Lease, shall remove all its personal property and trade fixtures from the Premises, and all property not so

removed shall be deemed to be abandoned by Tenant and title to the same shall thereupon pass to Landlord without compensation to Tenant. Landlord may, upon termination of this Lease, remove, store and/or sell all moveable personal property and trade fixtures so abandoned by Tenant, at Tenant's sole cost, and repair any damage caused by such removal at Tenant's sole cost.

If the Premises are not so surrendered at the end of the term or sooner termination of this Lease, then Tenant shall indemnify Landlord against loss or liability resulting from the delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenant founded on such delay.

No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises or otherwise, shall be deemed to be or to constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the term hereof, and such acceptance of any surrender by Tenant shall only be evidenced by a written acknowledgement of acceptance of surrender signed by Landlord. The voluntary or other surrender of the Premises by Tenant or a mutual cancellation of this Lease shall not work as a merger and, at the option of Landlord, shall either terminate all existing subleases or operate as an assignment to Landlord of all such subleases.

After the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company, licensed to operate in the State of California, to remove the cloud or encumbrance created by this Lease from the Property.

13. Events of Default. The occurrence of any of one or more of the following events shall constitute a default hereunder by Tenant:

A. The abandonment of the Premises by Tenant. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) days or longer.

B. The failure by Tenant to make any payment of Rent, or other payment required to be made by Tenant hereunder, when due.

C. The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than monetary or as specified in subparagraphs 13.A or 13.B, above, where such failure continues for a period of twenty (20) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161; provided further, that if the nature of Tenant's default is such that more than twenty (20) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said twenty (20) day period and thereafter diligently prosecute such cure to completion.

D. Any assignment or subletting of this Lease without the consent of Landlord, including, without limitation, an involuntary assignment as defined in Paragraph 21, below.

E. Chronic delinquency by Tenant in the payment of Rent or any other periodic payments required to be paid by Tenant under this Lease. "Chronic delinquency" shall mean failure by Tenant to pay Rent, or any other payments required to be paid by Tenant under this Lease, within three (3) days after written notice thereof for any three (3) months (consecutive or nonconsecutive) during any twelve (12) month period. In the event of a chronic delinquency, at Landlord's option, Landlord shall have the right, in addition to all other remedies under this Lease and at law, to require that Rent be paid by Tenant quarterly, in advance. This provision shall not limit in any way nor be construed as a waiver of the rights and remedies of Landlord provided herein or by law in the event of even one instance of delinquency.

14. Remedies for Default.

A. In the event of any breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, Landlord has the option of (i) removing all persons and property from the Premises and repossessing the Premises, in which case any of Tenant's property which Landlord removes from the Premises may be stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, or (ii) allowing Tenant to remain in full possession and control of the Premises. If Landlord chooses to repossess the Premises, then this Lease will automatically terminate in accordance with the provisions of California Civil Code Section 1951.2. In the event of such termination of this Lease, Landlord may recover from Tenant: (a) the worth at the time of award of the unpaid Rent which had

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been earned at the time of termination, including interest at the maximum rate an individual is permitted by law to charge; (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, including interest at the maximum rate an individual is permitted by law to charge; (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom. "The worth at the time of the award", as used in (a) and (b) of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth at the time of the award", as referred to in (c) of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

B. If Landlord chooses not to repossess the Premises, but allows Tenant to remain in full possession and control of the Premises, in accordance with provisions of California Civil Code Section 1951.4, then Landlord may treat this Lease as being in full force and effect, and may collect from Tenant all Rents as they become due through the termination date of this Lease, as specified in this Lease. For the purpose of this Paragraph 14, the following shall not constitute a termination of Tenant's right to possession:

(1) Acts of maintenance or preservation, or efforts to relet the Premises;

(2) The appointment of a receiver on the initiative of Landlord to protect its interest under this Lease.

C. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the Rent due under the new lease, on the dates the Rent is due, less the Rent Landlord receives from this Lease, unless Landlord notifies Tenant that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign its Interest in this Lease, or sublet all or a portion of the Premises, but Tenant shall not be released from liability and obligations under this Lease. Landlord's consent to a proposed assignment or subletting shall be as required in Paragraph 21.

D. If Landlord elects to relet the Premises as provided in this Paragraph 14, then any Rent that Landlord receives from reletting shall be applied to the payment of:

(1) First, any indebtedness from Tenant to Landlord other than Rent due from Tenant;

(2) Second, all costs, including for maintenance, incurred by Landlord in reletting; and

(3) Third, Rent due and unpaid under this Lease.

E. After deducting the payments referred to in this Paragraph 14, any sum remaining from any Rent which Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess Rent received by Landlord. If, on the date Rent is due under this Lease, the Rent received from any reletting is less than the Rent due on that date, then Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs which Landlord incurred in reletting, including without limitation maintenance, that remain after applying the Rent received from the reletting, as provided in this Paragraph 14.

F. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, then the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid and, if paid at a later date, shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be Additional Rent.

G. Any Rent not paid when due shall bear interest at the maximum rate an individual is permitted by law to charge from the date due until paid and shall be subject to the late charge set forth in subparagraph 3.A above.

15. Destruction.

A. In the event the Premises or the Building are damaged by any casualty which is covered under insurance carried by Tenant or Landlord, then Landlord or Tenant, whichever receives such insurance proceeds, shall restore such damage to the extent that the insurance proceeds are available provided such restoration can be completed within ninety (90) days after the commencement of the work. In such event, this Lease shall continue in full force and effect except that Tenant shall be entitled to proportionate reduction of Rent while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with the Tenant's business in the Premises. Landlord shall, at all times during the Term of this Lease, procure and continue the force insurance coverage to cover an amount equal to at least ninety (90%) replacement value of the building. Notwithstanding the foregoing, if any such damage or destruction occurs during the last six (6) months of the term of this Lease and Tenant has not previously exercised its option to renew pursuant to Section 39 hereof, Landlord shall not be obligated to repair such damage.

B. If the Premises, the Building or common areas are damaged by risks not covered by such insurance or the insurance proceeds available to Landlord are less than ninety percent (90%) of the cost of restoration, or if the restoration cannot be completed within six (6) months after the commencement of work in the opinion of the architect or engineer appointed by Landlord, then Landlord shall have the option to (i) repair or restore such damage, this Lease continuing in full force and effect so long as the Premises can be used by Tenant but the Base Rent and Additional Rent to be equitably reduced, or (ii) give notice to Tenant at any time within ninety (90) days after such damage terminating this Lease as of the date to be specified in such notice, which date shall not be less than thirty (30) and no more than sixty (60) days after giving of such notice. Notwithstanding the foregoing, if any such uninsured damage or destruction occurs during the last six (6) months of the term of this Lease, and Tenant has not previously exercised its option to renew pursuant to Section 39 hereof, Landlord shall not be obligated to repair such damage.

C. If the Premises are destroyed ("Destroyed" shall mean more than fifty percent (50%) of the Premises), in whole or in part, from any cause, Landlord shall, at its option, either:

(1) Rebuild or restore the Premises to their condition prior to the damage or destruction; or

(2) Terminate this Lease.

If Landlord does not give Tenant notice in writing within sixty (60) days from the destruction of the Premises of its election to either rebuild and restore the Premises, or to terminate this Lease, and provided that insurance proceeds actually available to Landlord for the purpose of restoring the complex or the Premises are sufficient to rebuild or restore the Premises, then Landlord shall be deemed to have elected to rebuild or restore the Premises, in which event Landlord agrees, at its expense, promptly to rebuild or restore the Premises to the condition existent as of the date of Substantial Completion.

If Landlord does not complete the re-building or restoration within one hundred eighty (180) days following the date of destruction (such period of time to be extended for delays as provided in Paragraph 36, then Tenant shall have the right to terminate this Lease by giving written notice to Landlord within fifteen (15) days of the expiration of such period.

Landlord's obligation to rebuild or restore the Premises shall not include restoration of Tenant's trade fixtures, equipment or merchandise, or any improvements, alterations or additions made by Tenant to the Premises. Unless this Lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect. Tenant hereby expressly waives the provisions of Section 1932, Subdivision 2, and Sections 1933, Subdivision 4, of the California Civil Code.

In case of destruction or damage caused by a risk not covered by business interruption insurance described in Paragraph 8, there shall be an abatement or reduction of Rent between the date of destruction and the date of substantial completion of restoration, based on the extent to which the destruction interferes with Tenant's use of the Premises.

If the Complex is damaged or destroyed to the extent of not less than thirty three and one third percent (33 1/3%) of the replacement cost thereof, then Landlord may elect to terminate this Lease, whether the Premises are injured or not, provided that Landlord terminates the leases

of all other tenants in the Complex similarly situated in terms of damage or destruction to their respective premises.

16. Condemnation. If any part of the Premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain, or private purchase in lieu thereof, and a part thereof remains which is susceptible of occupancy hereunder, then this Lease shall, as to the part so taken, terminate as of the date title vests in the condemnor or purchaser, and the Rent payable hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term only such portion of the Rent as the value of the part remaining after such taking bears to the value of the entire Premises prior to such taking. Landlord shall have the right to terminate this Lease in the event that such taking causes a reduction in Rent payable hereunder by twenty-five percent (25%) or more. If all of the Premises or such part thereof is taken so that there does not remain a portion susceptible for occupancy hereunder, as reasonably necessary for Tenant's conduct of its business as contemplated in this Lease, then this Lease shall thereupon terminate. If a part or all of the Premises is taken, then all compensation awarded upon such taking shall go to Landlord and Tenant shall have no claim thereto, and Tenant hereby irrevocably assigns and transfers to Landlord any right to compensation or damages to which Tenant may become entitled during the term hereof by reason of the purchase or condemnation of all or a part of the Premises. Tenant shall have the right to separately petition and to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business, including without limitation the loss of goodwill by reason of any appropriation, and for or on account of any cost or loss to which Tenant might be put in removing and relocating Tenant's merchandise, furniture, movable trade fixtures and equipment. In no event, however, shall the loss of goodwill include any diminution in the value of the leasehold or the bonus value of this Lease. Each party waives the provisions of Code of Civil Procedure, Section 1265.130, allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

17. Free from Liens. Tenant shall (i) pay for all labor and services performed or materials used by or furnished to Tenant or any contractor employed by Tenant with respect to the Premises, and (ii) indemnify, defend and hold Landlord and the Premises harmless and free from any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed or materials used by or furnished by Tenant or any contractor employed by Tenant with respect to the Premises.

18. Compliance with Laws. Tenant shall, at its own cost, comply with and observe all requirements of all municipal, county, state and federal authority now in force, or which may hereafter be in force, pertaining to the use and occupancy of the Premises.

19. Subordination. Tenant agrees that this Lease shall, at the option of Landlord, be subject and subordinate to any mortgage, deed of trust or other instrument of security which has been or shall be placed on the Property and the Building, and this subordination is hereby made effective without any further act of Tenant or Landlord. Tenant shall, at any time hereinafter, on demand, execute any instruments, releases or other documents that may be required by a mortgagee, mortgagor, trustor or beneficiary under any deed of trust, for the purpose of subjecting or subordinating this Lease to the lien of any such mortgage, deed of trust or other instrument of security. If Tenant fails to execute and deliver any such documents or instruments, such failure shall, at Landlord's option, constitute a default by Tenant under this Lease.

    If this Lease is or becomes subordinate to any encumbrance now of record or any encumbrance recorded after this date affecting the Premises, then Tenant agrees to attorn to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed given in lieu of foreclosure. In such event, Tenant shall execute, at Landlord's or the lender's request, such recognition and attornment agreement as the lender, at its option, may require. Landlord agrees to use its best efforts and negotiate in good faith with any Lender to obtain quiet enjoyment of the Premises provided that Tenant is in conformance with the terms and conditions of the Lease.

20. Abandonment. Tenant shall not vacate nor abandon the Premises at any time during the term of this Lease; and if Tenant shall abandon, vacate or surrender said Premises, or be dispossessed by process of law, or otherwise, then any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be mortgaged to Landlord.

21. Assignment and Subletting.

    A. Landlord's Consent Required. Tenant shall not, either voluntarily or by operation of law, sell, encumber, pledge or otherwise transfer all or any part of Tenant's leasehold estate hereunder or permit the Premises to be occupied by anyone other than Tenant or Tenant's employees, or sublet the Premises or any portion thereof, without Landlord's prior written consent in each instance, which consent may not unreasonably be withheld by Landlord. In exercising its reasonable

discretion, Landlord may consider all commercially relevant factors involved in the leasing, subleasing or assignment of the space, including but not limited to, the following: (i) the creditworthiness and financial

stability of the prospective assignee or sublessee; (ii) the compatibility of the prospective assignee or sublessee with other tenants in the Building; (iii) the references from prior landlords of such prospective sublessee or assignee; (iv) the past history of such sublessee or assignee with respect to involvement in litigation and bankruptcy proceedings; (v) whether the proposed use of the Premises by the prospective sublessee or assignee falls within the use permitted under Paragraph 5; (vi) whether the proposed use is suitable and in keeping with the ambiance and tone of the Building; (vii) the impact of said sublessee or assignee and the proposed use of the Premises on pedestrian and vehicular traffic and parking facilities; and (viii) the anticipated use, storage, generation, treatment and disposal of Hazardous Materials by such prospective sublessee or assignee. The presence of one negative factor enumerated above shall be deemed reasonable justification for Landlord's withholding consent. Tenant shall provide Landlord with prior notice of any proposed assignment or sublease as provided in subparagraph 21.B, below. Consent by Landlord to one or more assignments of this Lease or to one or more subletting of the Premises shall not operate to exhaust Landlord's rights under this Paragraph 21. If Tenant is a corporation, unincorporated association, or partnership, the transfer, assignment, or hypothecation of any stock or ownership interest in such corporation, unincorporated association or partnership in excess of forty-nine percent (49%) shall be deemed an assignment within the meaning and provision of this Paragraph 21. If in excess of forty-nine percent (49%) of the ownership of Tenant's stock is transferred, or all or substantially all of its assets are transferred or Tenant merges with another corporation, then such transferee of the stock shall promptly execute a guarantee ("Guarantee") of the Lease as attached hereto in Exhibit "F" and in the case of a transfer of assets or a merger, such transferee or merged corporation shall assume this Lease without modification.

As a condition of Landlord's consent to an assumption of the Lease by the transferee after such a stock transfer, asset sale or merger, which condition Tenant agrees is reasonable, the proposed transferee shall have a minimum net worth equal to Ten Million and No/100ths U.S. Dollars ($10,000,000.00) at the time of the transfer of Tenant's stock or assets. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation hereof shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies. All Rent received by Tenant from its subtenants in excess of the Rent payable by Tenant to Landlord under this Lease shall be paid to Landlord, and any sums to be paid by an assignee to Tenant in consideration of the assignment of this Lease shall be paid to Landlord. However, from the sublease rent in excess of the Base and Additional Rent hereunder, Tenant may recover its direct documented third-party expenses of subleasing of reasonable legal fees, reasonable brokerage commissions, and reasonable tenant improvement costs. Any sublease or assignment permitted herein, shall, at Landlord's election, automatically terminate Tenant's option(s), if any, to extend the term of this Lease and, in such event, any such options shall not be available to any sublessee or other transferee.

B. Notice to Landlord. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord (i) the name of the proposed sublessee or assignee; (ii) the nature of the proposed sublessee's or assignee's business to be carried on in the Premises; (iii) the material business terms of the proposed sublease or assignment; and (iv) such reasonable financial information concerning the proposed sublessee or assignee as Landlord may need to make a prudent and considered decision. Tenant shall also provide to Landlord a copy of the sublease or assignment after such document has been fully executed.

C. Tenant Not Released. No subletting or assignment, even with the written consent of Landlord, shall relieve Tenant of its obligation to pay the Rent and perform all of the other obligations to be performed by Tenant hereunder. Tenant shall indemnify and hold Landlord harmless from any and all claims, damages, liability and expenses, including reasonable attorneys' fees and costs, arising out of any claims by brokers or others for commissions or finder's fees with respect to any subletting or assignment by Tenant. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment or subletting. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all Rent from any subletting, and Landlord, as assignee and attorney in fact for Tenant, or any receiver for Tenant appointed on Landlord's application, may collect such Rent and apply it toward Tenant's obligations under this Lease, except that, until the occurrence of any act of default by Tenant. Tenant shall have the right to collect such Rent.

D. Involuntary Assignment. No interest of Tenant in this Lease shall be assignable by operation of law. Without limiting the foregoing, each of the following acts shall be considered an involuntary assignment:

(i) Transfer of this Lease by testacy or intestacy;

(ii) If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one person or entity, if any general partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(iii) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interests in this Lease, where possession is not restored to Tenant within thirty (30) days; or

(iv) The attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where seizure is not discharged within thirty (30) days.

An involuntary assignment shall constitute a default by Tenant under this Lease, and in such event Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

E. Tenant to Reimburse Landlord for Expenses. Tenant agrees to reimburse Landlord, as Additional Rent, upon demand, for Landlord's reasonable costs and attorney's fees, incurred in conjunction with the processing, investigation and documentation of any requested assignment, subletting, transfer, change of ownership or hypothecation of this Lease or Tenant's interest in and to the Premises, regardless of whether any request actually results in a permitted assignment, sublease or other transfer.

22. Parking. Any parking charges, surcharges or any other cost hereafter levied or assessed by local, state or federal governmental agencies in connection with the use of the parking facilities serving the Premises, including, without limitation, any parking surcharge imposed by or under the authority of the Federal Environmental Protection Agency, shall be included in Operating Expenses as defined in Paragraph 3, above.

Each tenant, its agents, officers, employees and invitees, shall have the non-exclusive right (in conjunction with the use of the part of the Building leased to such tenant) to make reasonable use of any driveways, sidewalks and parking area located on the Property, except such parking areas as may from time to time be leased for exclusive use by other tenant(s). Tenant's reasonable use of the parking area shall not exceed that percent of the total parking area which is equal to Tenant's proportionate share of Operating Expenses and Taxes set forth in subparagraph 3.C. above. Notwithstanding anything in this Lease to the contrary, Landlord reserves the right, at any time during the Lease term, to convert the parking area to a pay-for-parking lot with charges for parking determined by Landlord in its sole discretion. However, Landlord agrees not to charge Tenant or its employees for parking during the initial ten (10) years of the lease term.

23. Insolvency or Bankruptcy. Any of (i) the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, and such possession is not fully restored to Tenant within thirty (30) days, or (ii) a general assignment by Tenant for the benefit of creditors, or (iii) any action taken or suffered by Tenant under any insolvency or bankruptcy act shall constitute a breach of this Lease by Tenant. Upon the happening of any such event, this Lease shall terminate ten (10) days after written notice of termination from Landlord to Tenant. The provisions of this Paragraph 23 are to be applied consistent with applicable state and federal law in effect at the time such event occurs.

24. Landlord Loan or Sale. Tenant agrees, promptly following request by Landlord, to execute and deliver to Landlord any documents, including estoppel certificates presented to Tenant by Landlord, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder (or, if there are any such uncured defaults, stating the nature of any such default[s]; and (iii) evidencing the status of the Lease

as may be required either by a lender making a loan to Landlord, to be secured by deed of trust or mortgage covering the Premises, or a purchase of the Property, the Building or the Premises from Landlord. Tenant's failure to deliver an estoppel certificate with three (3) days following such request shall constitute a default under this Lease and shall be conclusive upon Tenant that this Lease is in full force and effect and has

not been modified except as may be represented by Landlord, and that there are no uncured defaults in Landlord's performance. In addition, if requested by Landlord, Tenant shall deliver to any prospective lender or purchaser of the Property and/or the Building, audited financial statements of Tenant covering the two (2) fiscal years immediately preceding the request, certified by an independent certified public accountant (or, if such statements are not normally prepared, audited and certified by an independent public accountant, then certified by the chief financial officer or a principal of Tenant).

25. Surrender of Lease. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger nor relieve Tenant of any of Tenant's obligations under this Lease, and shall, at the option of Landlord, either terminate all or any existing subleases or subtenancies, or operate as an assignment to Landlord of any or all such subleases or subtenancies.

26. Attorneys' Fees. If, for any reason, any action or other proceeding is initiated to enforce or interpret any provision of this Lease, the prevailing party shall be entitled to legal costs, expert witnesses expenses and reasonable attorneys' fees as fixed by the court.

27. Notices. All notices to be given to either party shall be given in writing, personally or by depositing the same in the United States mail, postage prepaid, or by commercial overnight courier, and addressed to Tenant at the said Premises, whether or not Tenant has departed from, abandoned or vacated the Premises, as well as to the address set forth below, or to such other address as Tenant may specify by notice given in accordance with the provisions of this Paragraph 27. Any notice Lease to be given to Landlord shall be addressed to Landlord at the address set forth below, or at such other address as it may have theretofore specified by notice delivered in accordance herewith:

Landlord: DLC-CASTRO COMMONS
c/o Dewey Land Company, Inc.
999 Baker Way, Suite 300
San Mateo, CA 94404
(415) 571-1010 Fax (415) 571-1019

Tenant: BEFORE COMMENCEMENT:
Karakas Van Sickle Ouellette
200 SW Market Street
Suite 1400
Portland, OR 97201-5741
503/221-1551 (Fax) 503/221-0564

After Commencement:
At the Premises

28. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

29. Holding Over. Any holding over by Tenant after the expiration of the term of this Lease or any extension hereof, with the consent of Landlord, shall be construed to be a tenancy from month-to-month, at a Basic Rent of one and one-half (1-1/2) times the monthly Basic Rent in effect during the last month of the Lease term, of any extension thereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

30. Covenants, Conditions and Restrictions. The parties by this reference incorporate herein as if set out in full, all Covenants, Conditions and Restrictions ("CC&R's") pertaining to the Building and/or to the Property. As a condition to this Lease, Tenant agrees to abide by all of said CC&R's. Moreover, such reasonable rules and regulations as may be hereafter adopted by Landlord for the safety, care and cleanliness of the Building and/or Premises and the preservation of good order thereon, are hereby expressly made a part hereof, and Tenant agrees to obey all such rules and regulations.

31. Limitation on Landlord's Liability. If Landlord is in default of this Lease, and as a consequence Tenant recovers a money judgment against Landlord, any such judgment shall be satisfied only out of the proceeds of sale received on execution of the judgement and levy against the right, title and interest of Landlord in the Premises, or in the Building, other improvements and the Property, and out of Rent or other income from such real property receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Premises or in the Building, other improvements and the Property. Neither Landlord nor any of the partners comprising the partnership or officers of the corporation

designated as Landlord shall be personally liable for any deficiency.

32. Sale or Transfer of Premises. If Landlord sells or transfers all or any portion of the Premises, the Building or the Property, then Landlord, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this Lease. If any security deposit or prepaid Rent has been paid by Tenant, Landlord agrees to transfer the security deposit or prepaid Rent to Landlord's successor, other than any portion of the security deposit applied or retained to compensate Landlord for any loss or damage which Landlord may have suffered as a result of Tenant's default, and thereupon Landlord shall be discharged from any further liability in reference thereto.

33. Landlord's Right to Perform. All terms, covenants and conditions of this Lease to be performed or observed by Tenant shall be performed or observed by Tenant, at Tenant's sole cost and expense, and without any reduction of Rent. If Tenant fails to pay any sum of money required to be paid by it hereunder or fails to perform or observe any other term hereunder on its part to be performed or observed, then Landlord may, at its option, without waiving or releasing Tenant from any obligation of Tenant hereunder, make any such payment, or perform or observe any such other term or act on Tenant's part to be performed or observed. All sums so paid by Landlord and all reasonably necessary costs of such performance or observation by Landlord together with interest thereon from the date incurred at the maximum rate an individual is permitted by law to charge, shall be paid by Tenant to Landlord as Additional Rent, on demand, in which event and as to the same Landlord shall have the rights and remedies against Tenant as in the case of nonpayment of Rent hereunder.

34. Landlord's Right of Entry. Landlord (and/or its representatives) shall have the right, at all reasonable times, to enter the Premises in order to post notices; to improve, or alter the Building; to inspect or repair the Premises or the Building; and to erect scaffolding and other necessary structures in or near the Premises (provided the same do not unreasonably impair access to the Premises), the Building and the Property; and to post "For Sale" signs with respect to the Building or the Property. During the last six (6) months of the then current term of this Lease, Landlord (and/or its representatives) shall have the right, at all reasonable times, to enter the Premises to place "For Lease" signs on the Premises. Landlord and any purchaser, lessee or encumbrancer may enter the Premises, at all reasonable times, with respect to any existing or prospective sale, lease or encumbrance. Landlord shall also have the right to enter the Premises at any time, without prior notice, in those emergency situations which could involve potential injury to persons or loss of property. All of the above shall be without abatement of Rent and any such entry shall not be construed as a forcible or unlawful entry, or a detainer, or an actual or constructive eviction of Tenant from the Premises.

35. Signs. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed or affixed on or to any part of the outside of the Premises, or any exterior windows of the Premises, or any interior windows visible from common areas of the Building, without the prior written consent of Landlord (which consent may be granted in Landlord's absolute discretion) and Landlord shall have the right to remove the same without notice to and at the expense of Tenant. If Tenant is allowed to display a sign on or about the Premises, then, at Landlord's option, upon expiration or other sooner termination of this Lease, Tenant shall, at Tenant's sole cost, remove such sign, repair all damage caused thereby and restore the appearance of the Premises to its condition prior to the placement of said sign. All approved signs (or lettering on outside doors) shall be done at the expense of Tenant by a person contracted by Landlord.

36. Force Majeure. Subject to the provisions of Paragraphs 15 and 16 of this Lease, neither Landlord nor Tenant shall be deemed in default of their respective obligations under this Lease if performance thereof is delayed or becomes impossible because the fault or neglect of the other party, or because acts of God, war (whether declared or undeclared), earthquake, fire, labor dispute, strike, acts of public agencies, embargoes, rainy, stormy or other adverse weather, riot, civil commotion, insurrection, blockade, inability to obtain materials, supplies or fuels, acts and delays of subcontractors or contractors, and such other contingencies beyond the control of the performing party. Upon such an event, the time for performance shall be reasonably extended, but in no event shall such extension be longer than sixty (60) days beyond the original date for performance, in which case the party to whom the obligation is owned may terminate this Lease by giving notice to the other party. This Paragraph 36 shall not be applicable to the payment of Rent or other monetary sums under this Lease.

37. Exercise Facility. By its execution of this Lease, Tenant acknowledges that it is aware that the Building may, in the future, contain an exercise facility. Tenant and its employees over the age of eighteen (18) years may reasonably use the exercise facility and its equipment; provided, however, that no person shall use the exercise facility or its equipment unless he/she has signed a waiver and release in the form attached hereto as Exhibit E and made a part hereof, and the original of such executed waiver and release has been delivered to Landlord. In consideration for the right

to use the exercise facility, Tenant agrees to faithfully enforce the provision of this Paragraph 37, and to indemnify and hold Landlord harmless from any claims or damages, including attorney's fees, incurred as a result of the use of the exercise facility and its equipment

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pursuant to this Paragraph 37. Use of the exercise facility in violation of the provisions of this Paragraph 37 or any other unauthorized use of the exercise facility shall constitute a material breach of this Lease.

38. Quiet Enjoyment. Landlord covenants that if, and so long as, Tenant keeps and performs each and every covenant, agreement, term, provision and condition herein contained on the part and on behalf of Tenant to be kept and performed, Tenant shall quietly enjoy the Premises from and against the claims of all persons.

39. Miscellaneous.

A. Time is of the essence of this Lease, and each and all of its provisions.

B. The term "Building" shall mean the building in which the Premises are situated; the term "Complex" shall mean both buildings at the Property.

C. The term "Property" shall mean the real property on which the Building is situated.

D. The term "assign" shall include the term "transfer".

E. The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of the remainder of this Lease.

F. The headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part thereof.

G. Landlord has made no representation(s) whatsoever to Tenant (express or implied) except as may be expressly stated in writing in this Lease.

H. This instrument contains all of the agreements and conditions between the parties hereto with respect to the Premises, and may not be modified orally or in any other manner than by agreement in writing, signed by all of the parties hereto or their respective successors in Interest.

I. It is understood and agreed that the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy by Landlord shall not be to the exclusion of any other remedy.

J. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

K. This Lease has been negotiated jointly by the parties hereto, and the language hereof shall not be construed for or against either party.

L. All exhibits to which reference is made in this Lease are deemed incorporated into this Lease, whether or not actually attached.

M. All provisions of this Lease, whether covenants or conditions, applicable to Tenant shall be deemed to be both covenants and conditions.

N. This Lease shall in all respects be governed by, and construed and enforced in accordance with the laws of the State of California.

O. As used in this Lease, the term "Effective Date" shall mean the latest date when executed by Landlord and Tenant.

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P. Tenant hereby warrants that each individual executing this Lease has been duly authorized to execute and deliver this Lease by all necessary corporate action. Tenant warrants that it is qualified to do business in and is in good standing in the State of California.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the date first above written.

LANDLORD
DLC-CASTRO COMMONS,
a California limited partnership

By MIRAMONTE CASTRO CORPORATION
A California corporation
its General Partner

By /s/ Richard R. Dewey, Jr.

Richard R. Dewey, Jr.
President

Date 8/6/96

TENANT

Karakas Van Sickle Ouellette
an Oregon Corporation

By /s/ Sharon Van Sickle

Date 7/31/96

ADDENDUM

TO THAT CERTAIN LEASE DATED July 30, 1996, BY AND BETWEEN DLC-CASTRO COMMONS A CALIFORNIA LIMITED PARTNERSHIP ("LANDLORD") AND KARAKAS VAN SICKLE OUELLETTE AN OREGON CORPORATION ("TENANT").

39. Option to Extend. Tenant shall have the option to renew the term of this Lease for one (1) additional seven (7) year term the "Extended Term". The option rent shall be Fair Market Rent including annual increases as reflected in the determination of Fair Market Rent as provided herein. Fair Market Rent shall be defined to be rent for first class well maintained mid-rise office projects located proximate to the Property, including the most recent comparable leases Landlord has consummated with other tenants at the Complex. Should Landlord and Tenant be unable to agree upon the Fair Market Rent within twenty-one (21) days of Landlord's timely receipt of Tenant's written notice as required herein, then Tenant may elect to either (i) revoke its written notice and have the lease expire at the end of the lease term as provided in this Lease or (ii) notify Landlord within five (5) days that it elects to set the Fair Market Rent by appraisal.

Following such election to set the Fair Market Rent by appraisal, each party, within fifteen (15) days at its cost and by giving notice to the other party, shall appoint a licensed real estate appraiser (MAJ) with at least five (5) years' full-time commercial appraisal experience in the area in which the Premises are located to determine the Fair Market Rental as specified above. If a party does not appoint an appraiser within fifteen (15) days, the single appraiser appointed shall be the sole appraiser and shall set the Fair Market Rent for the extended Term. If the two appraisers are appointed by the parties as stated in this paragraph, they shall meet promptly and attempt to set the Fair Market Rent for the extended term. If they are unable to agree within twenty (20) days after the second appraiser has been appointed, they shall elect a third appraiser meeting the qualifications stated in this paragraph within ten (10) days after the last day the two appraisers are given to set the Fair Market Rent. The cost of said third appraiser shall be borne equally by Landlord and Tenant.

Within five (5) days after the selection of the third appraiser, a majority of the appraisers shall set the Fair Market Rent for the Extended Term. If a majority of the appraisers are unable to set the Fair Market Rent within the stipulated period of time, then the two (2) closest appraisals shall be added together and their total divided by two (2); the resulting quotient shall be the Base Rent for the Premises during the Extended Term. In no event shall Fair Market Rent be less than the Basic Rent paid in the last month of the primary term of the Lease. Said minimum monthly rental as set by the appraisers shall be binding upon the parties hereto and the Lease shall remain in effect through the Extended Term. Tenant shall have no other right to extend the term beyond the Extended Term herein granted.

Tenant shall notify Landlord of its desire to exercise such option within a minimum of nine (9) months and a maximum of twelve (12) months prior to the expiration date of the primary lease term. This option shall be void, at Landlord's option, if Tenant has been chronically delinquent as defined in Section 13 of this Lease, or is in default at the time of exercise or at any time subsequent to Tenant giving timely notice up to commencement of the Extended Term. This option is personal to Tenant and may not be assigned or transferred without Landlord's expressed written consent which may be withheld in Landlord's sole and absolute discretion. TIME IS OF THE ESSENCE.

Except for adjustments to the Rent, any extended term shall be at the same terms and conditions as the Primary Term of the Lease.

40. Right to Terminate. Tenant shall have the right to terminate this Lease effective at the first day of the eighth (8th) lease year of the term by providing Landlord with:

(i) Advance written notice so stating that Tenant is electing to terminate this Lease effective of the first day of the eighth year of the Lease Term; said notice must be received by Landlord on or before the expiration of the third (3rd) month of the seventh (7th) year of the Lease Term ("Notice Date"). For example, if the Lease Term commences on January 1, 1997, then Tenant must tender its written notice to Landlord on or before March 31, 2003 to be effective as of January 1, 2004.

(ii) Pay to Landlord as a cancellation penalty the sum of Seventy Thousand and No/100ths Dollars ($70,000.00) on or before the Notice Date.

TIME IS OF THE ESSENCE.

AGREED AND ACCEPTED:

LANDLORD

DLC-CASTRO COMMONS
a California limited partnership

by MIRAMONTE CASTRO CORPORATION
a California corporation
Its General Partner

By: /s/ Richard R. Dewey, Jr. Date: 8/6/96
Richard R. Dewey, Jr.
President

AGREED AND ACCEPTED:

TENANT

KARAKAS VAN SICKLE OUELLETTE
an Oregon corporation

By: /s/ Sharon Van Sickle Date: 7/31/96
Authorized Officer
Its: Treasurer

EXHIBIT A

Description of Premises, including description of Property on which the Premises are located:

[LEGEND]

COMMON

CONFERENCE
CENTER

OCTOBER ?, 199?
CASTRO COMMONS
PROFESSIONAL
CENTER

[GRAPHIC OF FLOOR PLAN]

1172 CASTRO
BUILDING 1
FIRST FLOOR

- ------------

DEWEY
LAND COMPANY

- ------------

ARCHITOPIA

EXHIBIT "A"

[ARROW LEFT] NORTH
[LEGEND]

[FLOOR PLAN GRAPHIC]

FEBRUARY ?, 199?
CASTRO
COMMONS
PROFESSION
CENTER

1172 CASTRO
BUILDING 1
SECOND FLOOR

DEWEY
LAND
COMPANY

ARCHITOPIA

EXHIBIT "A"

EXHIBIT B

[Date]

Karakas Van Sickle Ouellette
200 SW Market Street
Suite 1400
Portland, OR 97201-5741

Re: Commencement Date under Lease dated July 30, 1996 Between DLC-Castro Commons, a California limited partnership, as Landlord, and Karakas Van Sickle Ouellette an Oregon Corporation as Tenant

Dear _____:

Pursuant to Paragraph 2 of the above-mentioned Lease, you are hereby informed of the following:

Commencement Date of the term of the Lease;

Expiration Date of the term of the Lease:

Very truly yours,

DLC-CASTRO COMMONS,
a California limited partnership

By MIRAMONTE CASTRO CORPORATION
A California corporation
Its General Partner

Richard R. Dewey, Jr.
President

RD/vc

EXHIBIT C

Improvements
- ------------

Landlord shall provide a Tenant improvement allowance of thirty five thousand dollars and No/100ths Dollars ($35,000.00) ("Base Allowance") in order to assist in the recarpeting and re-painting of the Premises (or towards any other modifications to the Premises). It is understood that Landlord's general contractor will complete all improvements done at the Premises. Landlord shall provide Tenant with its written cost summary of the improvements (construction costs, city fees, architectural/structural fees, etc.) plus a contingency of five percent (5%). Should the estimated cost of the improvements exceed the Base Allowance, then, within ten (10) days from receipt of Landlord's written estimate, Tenant shall deposit such estimated amount in excess of the Base Allowance with Landlord. Tenant's failure to so timely forward said excess amount shall be deemed a default under the Lease as well as a delay caused by Tenant. During construction, any additional costs in excess of the Base Allowance, shall be paid by Tenant to Landlord within ten (10) days of Tenant's receipt of Landlord's invoice. Tenant's failure to timely pay as required herein shall be a default under the Lease as well as a delay as caused by Tenant. At the end of the construction of the improvements, Landlord shall provide Tenant with a cost summary of the actual costs of the improvements. Should the actual cost of the improvements be in excess of the Base Allowance plus the cost so paid by Tenant, Tenant shall pay this difference (i.e. actual cost of the improvements less Base Allowance, less amount paid by Tenant) to Landlord within ten (10) days of receipt of written invoice.

EXHIBIT "D"

STANDARDS FOR UTILITIES AND SERVICES

The following Standards for Utilities and Services shall apply to the Building. Landlord reserves the right to adopt nondiscriminatory modifications and additions hereto at any time as Landlord, in its sole discretion, deems advisable.

A. On the Commencement Date through the date the Lease terminates, during usual business hours (and at other times for a reasonable additional charge to be fixed by Landlord), Landlord shall ventilate the Premises and furnish air-conditioning or heating on such days and hours, when in the judgment of Landlord it may be required for the comfortable occupancy of the Premises. The air-conditioning system achieves maximum cooling when the window coverings are closed. Landlord shall not be responsible for room temperatures if Tenant does not keep all window coverings in the Premises closed whenever the system is in operation. Tenant agrees to cooperate fully at all times with Landlord, and to abide by all regulations and requirements which Landlord may prescribe for the proper functioning and projection of said air-conditioning system. Tenant agrees not to connect any apparatus, device, conduit or pipe to the Building air-conditioning supply lines. Tenant further agrees that neither Tenant nor its servants, employees, agents, visitors, licensees or contractors shall at any time enter mechanical installations or facilities of the Building or adjust, tamper with, touch or otherwise in any manner affect said installations or facilities.

B. The Landlord shall furnish to the Premises during the usual business hours, electric current as required by the Building's standard office lighting and fractional horsepower office lighting and fractional horsepower office business machines in the amount of approximately three (3) watts per square foot. The Tenant agrees, should its electrical installation or electrical consumption be in excess of the aforesaid quantity or extend beyond usual business hours, to reimburse Landlord monthly on the date Basic Rent is due for the measured consumption at the terms, classifications and rates charged similar consumers by said public utility serving the neighborhood in which the Building is located. If a separate meter is not installed at Tenant's cost, such excess cost will be established by an estimate agreed upon by Landlord and Tenant, and if the parties fail to agree, as established by an independent licensed engineer, selected by Landlord and approved by Tenant, Tenant agrees not to use any apparatus or device in, or upon, or about the Premises which may in any way increase the amount of such services usually furnished or supplied to said Premises, and Tenant further agrees not to connect any apparatus or device with wires, conduits or pipes, or other means by which such services are supplied, for the purpose of using additional or unusual amounts of such services without the prior written consent of Landlord. Should Tenant use the same to excess, Tenant shall pay to Landlord, upon demand, the amount established by Landlord for such excess usage. At all times Tenant's use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installation and Tenant shall not install or use or permit the installation or use of any computer or electronic data processing equipment in the Premises without the prior written consent of Landlord.

C. Water will be available in public areas for drinking and lavatory purposes only, but if, in Landlord's sole determination, Tenant requires, uses or consumes water for any purpose in addition to ordinary drinking and lavatory purposes, Landlord may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Landlord, upon demand, for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. If Tenant is in default of its obligations to keep the meter and equipment in good repair, then Landlord, in addition to all other remedies for breach in this Lease and at law, may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant. Tenant agrees to pay for water consumed, as shown on said meter, as and when bills are rendered, and on default in making such payment, Landlord may, in addition to all other remedies for breach in this Lease and at law, pay such charges and collect the same from Tenant.

D. The Landlord shall provide janitorial services on the Premises, provided the same are used exclusively as offices and are kept reasonably in order by Tenant. If the Premises are not used exclusively as offices, they shall be kept clean and in order by Tenant, at Tenant's expense, and to the satisfaction of Landlord, and by persons approved by Landlord. Tenant shall pay to Landlord, upon demand, the cost of removal of Tenant's refuse and rubbish, to the extent that the same exceeds the refuse and rubbish usually attendant upon the use of the Premises as offices

E. "Holidays" for purposes of this Lease, shall be defined as holidays observed by the United States Post Office. "Usual business hours" for purposes of this Lease, are from 8:00 a.m. until 6:00 p.m., Monday through Friday, except holidays.

Tenant may operate its business at hours other than usual business hours provided that Tenant acknowledges that it shall pay the cost of operation of HVAC and electricity for power and lighting on a monthly basis as invoiced by Landlord and payable by Tenant to landlord within fifteen (15) days of invoice for Landlord to Tenant.

Landlord reserves the right to stop service of the elevator, plumbing, ventilation, air-conditioning and electric systems, when necessary, by reason of accident or emergency or for repairs, alterations or improvements, in the judgment of Landlord desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed. Landlord's obligations to provide utilities and services hereunder shall also be subject to and limited by the Force Majeure provisions of the Lease. Any failure to supply utilities or services, whether caused by a Force Majeure described in the Lease or by reason of accident, emergency, repair, alteration or improvement, shall not be construed as an eviction of Tenant, whether actual or constructive, and shall not cause an abatement of Rent, either in whole or in part.

Landlord shall have no obligation whatsoever to supply utilities and services to the Premises if Tenant is in default of any term, covenant, or condition of this Lease.

Any costs or expenses incurred by Landlord with respect to Tenant's default hereunder as well as all payments to be made by Tenant to Landlord pursuant to the above provisions, as stated herein or as may be later modified, shall be deemed to be Additional Rent under the Lease and Landlord shall have all its rights and remedies under the Lease and at law with respect to the same including but not limited to the right to late fees and interest upon default.

The cost for operating the HVAC at times other than usual business hours is forty and No/100ths Dollars ($40.00) per hour. This cost shall be adjusted to reflect increases in the Index as provided in Paragraph 3B of the Lease.

The cost for operating the lighting systems at times other than usual business hours is twelve and No/100ths Dollars ($12.00) per hour. This cost shall be adjusted to reflect increases in the Index as provided in Paragraph 3B of the Lease.

EXHIBIT "E"

WAIVER AND RELEASE

In consideration for being authorized to use the Exercise Facility, I, the undersigned, for myself, my heirs, executors, administrators and assigns waive and release all rights and claims for damages for death, personal injury or loss of property which I may have as a result of my utilization of the Exercise Facility and its equipment located at _____.

I, the undersigned, for myself, my heirs, executors, administrators and assigns release and forever discharge the building owners, lessees of the building, and management of the building and their respective agents, directors, partners, officers, employees and representative from any and all liability, losses, claims, and damages arising out of or connected in any way with my use of the Exercise Facility. I understand that exercise entails risk of personal injury and my participation is voluntary and done entirely at my own risk. I attest that I have no medical condition which would increase the usual risks of physical exercise.

I have read and fully understand everything written above.

Dated: _____

Signature: _____

Printed Name: _____

EXHIBIT "F"

LEASE GUARANTEE

WHEREAS, Karakas, Vansickle, Ouellete an Oregon Corporation (the "Tenant"), has entered into a lease agreement dated July 30, 1996 as Tenant, with DLC-Castro Commons, a California limited partnership ("Landlord") concerning real property commonly known as 1172 Castro Street, Mountain View, California (the "Lease"); and

WHEREAS, Tenant has entered into or desires to enter into a transaction which is defined as an assignment of the Lease according to the provisions thereof; and

WHEREAS, the undersigned Guarantor is willing to execute and deliver this Lease Guarantee for the express and intended purpose of inducing Landlord to consent to the assignment of the Lease.

NOW, THEREFORE, the Guarantor, in order to induce Landlord to consent to the assignment of Lease with Tenant, does hereby absolutely and unconditionally guarantee to Landlord the full and prompt payment of all amounts which Tenant, any sublessee and/or any assignee of the Lease (collectively, "Obligors"), may at any time owe under the Lease, any extensions, renewals or modifications thereof, and further guarantees to Landlord and shall be liable to Landlord for the full, prompt and faithful performance of the Obligors of each and all of the covenants, terms, and conditions of the Lease, or any extensions, modifications or renewals thereof, to be hereafter performed and kept by the lessee of the Lease, or any Obligor.

The Guarantor's obligations hereunder are independent of the obligations of the Obligors, and a separate action or actions may be brought and prosecuted against the Guarantor whether or not action is brought against the Obligors or whether or not the Obligors be joined in any such action or actions. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all indebtedness and obligations, the payment and performance of which are hereby guaranteed, have been paid and fully performed.

The Guarantor authorizes Landlord, without notice or demand and without affecting the liability of Guarantor hereunder, from time to time to (a) consent to any extensions, accelerations or other changes in the time for any payment provided for in the Lease, or consent to any other alteration of any covenant, term or condition of the Lease in any respect so long as Tenant consents thereto, and to consent to any assignment, subletting or reassignment of the Lease; (b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term or condition of the Lease, or exchange, waive or release any such security; (c) apply such security and direct the order or manner of sale thereof as Landlord in its discretion may determine. Landlord may, without notice, assign this Guarantee to any party who assumes the obligations of lessor under the Lease. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guarantee shall continue until all of the covenants, terms and conditions on the part of the Obligors to be performed have been fully and completely performed by the Obligors, and the Guarantor shall not be released of any obligation or liability hereunder so long as there is any claim against the Obligors arising out of the Lease that has not been settled or discharged in full.

Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to guarantors and agrees not to assert or take advantage of any such rights or remedies including but not limited to: (a) any right to require Landlord to

proceed against any Obligor or any other person or to proceed against or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor; (b) the defense of the statute of limitations in any action hereunder or in any action for the collection of any obligation or indebtedness or the performance of any obligation hereby guaranteed; (c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) or any other person or persons; (d) demand, protest and notice of any kind, including but not limited to notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Landlord, any Obligor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation hereby guaranteed; (e) any defense based upon an election of remedies by Landlord, which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Tenant and/or the Obligors for reimbursement or both; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (g) any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that the Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of non-performance of any obligation of the lessee under the Lease; (h) any defense arising because of Landlord's election, in any proceeding instituted under the federal Bankruptcy Code, of the application of Section 1111(b)(2) of the federal Bankruptcy Code; (i) any defense based on any borrowing or grant of a security interest under Section 364 of the federal Bankruptcy Code; and (j) any defense based on the assumption or rejection of the Lease by any Obligor or any bankruptcy trustee under Section 365(a) of the federal Bankruptcy Code. Without limiting the generality of the foregoing or any other provision hereof, Guarantor hereby expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433.

The Guarantor shall have no right of subrogation and waives, any right to proceed against any Obligor for reimbursement, as well as any right to enforce any remedy which Landlord now has or may hereafter have against any Obligor, and waives any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

The Guarantor waives all demands upon and notices to Guarantor or to any Obligor, including demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guarantee.

Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Landlord in the enforcement of this Guarantee.

No right or power of Landlord shall be deemed to have been waived by any act or conduct on the part of Landlord, or by any neglect to exercise such right or power, or by any delay in so doing; and every right and power of Landlord shall continue in full

force and effect until such right or power is specifically waived by an instrument in writing executed by Landlord.

This Guarantee shall bind the Guarantor, its successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns.

This Guarantee and each and every term and provision thereof shall be construed in accordance with the laws of the State of California. Venue for an action on this Guarantee shall be in the proper courts for the County of San Mateo, State of California, and the undersigned consents to the jurisdiction of said courts.

If any provision or portion thereof of this Guarantee is declared unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Notwithstanding the above to the contrary, provided Tenant has timely performed each and every covenant of the Lease, including the payment of Rent when due, and no default under the lease has occurred, this Guarantee shall expire at the expiration of the fifth (5th) year of this Lease.

IN WITNESS WHEREOF, Guarantor has executed this instrument on this day ___ of _____.

"GUARANTOR"

_____

EXHIBIT 21.2

LIST OF SUBSIDIARIES

The following is a list of subsidiaries of VIVUS, Inc.

1. VIVUS International Limited a wholly owned subsidiary of VIVUS, Inc.
2. VIVUS UK Limited, a wholly owned subsidiary of VIVUS International Limited
3. VIVUS BV Limited, a wholly owned subsidiary of VIVUS International Limited
4. VIVUS Ireland Limited, a wholly owned subsidiary of VIVUS International Limited

EXHIBIT 23.1

CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent accountants, we hereby consent to the incorporation of our report dated January 21, 2000 included in this Form 10-K, into the Company's previously filed Registration Statement (File No. 333-06486 and 333-299939) on Form S-8.

ARTHUR ANDERSEN LLP

San Jose, California
March 30, 2000

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1,000

12-MOS
DEC-31-1999
JAN-01-1999
DEC-31-1999
8,785
31,607
4,579
147
3,527
48,131
36,630
20,559
68,760
21,515
0
0
0
32
41,464
68,760
41,164
43,188
12,369
25,392
0
0
0
19,790
989
18,801
0
0
0
18,801
0.59
0.58

For Purposes of this Exhibit, Primary Means Basic.