

**VIVUS, INC.**  
**CORPORATE DEVELOPMENT COMMITTEE CHARTER**

**I. Purpose**

The purpose of the Corporate Development Committee (the “**CDC**”) of the Board of Directors (the “**Board**”) of VIVUS, Inc. (the “**Company**”) is to review and provide guidance to the Company’s management and to serve as a conduit between management and the Board with respect to the ongoing development and implementation of the Company’s business strategies and long-term initiatives, including strategic considerations in the allocation of corporate resources to identify and acquire clinical development programs and/or commercial products.

In addition to the powers and responsibilities expressly delegated to the CDC in this charter (the “**Charter**”), the CDC may exercise any other powers and carry out any other responsibilities delegated to it by the Board from time to time consistent with the bylaws of the Company (as may be amended from time to time, the “**Bylaws**”) and applicable law. The powers and responsibilities delegated by the Board to the CDC in this Charter or otherwise shall be exercised and carried out by the CDC as it deems appropriate without the requirement of Board approval, and any decision made by the CDC (including any decision to exercise or refrain from exercising any of the powers delegated to the CDC hereunder) shall be at the CDC’s sole discretion. While acting within the scope of the powers and responsibilities delegated to it, the CDC shall have and may exercise all the powers and authority of the Board. To the fullest extent permitted by law, the CDC shall have the power to determine which matters are within the scope of the powers and responsibilities delegated to it.

**II. Membership**

The CDC shall be comprised of two (2) or more independent directors of the Board, with the exact number determined by the Board. A director shall qualify as independent if the Board has affirmatively determined that such director is independent, consistent with the basic independence criteria set forth in the Company’s Corporate Governance Guidelines, Rule 10C-1 of the 1934 Act and the Nasdaq rules. In addition, each member of the CDC will:

- be a “non-employee director,” as defined in Rule 16b-3 under Section 16 of the 1934 Act;
- be an “outside director” under Regulation Section 1.162-27 promulgated under Section 162(m) of the Internal Revenue Code of 1986, as amended (the “**Code**”);
- not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company or any of its subsidiaries, except (a) fees received as a member of the CDC, the Board or any other Board committee, or (b) fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company; provided that such compensation is not contingent in any way on continued service;
- be free from any relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment as a CDC member; and

- meet any other requirements imposed by applicable law, regulations or rules, subject to any applicable exemptions and transition provisions.

The members of the CDC, including the chairperson (the “**Chair**”) of the CDC, shall be appointed by the Board. CDC members shall serve for such term or terms as the Board may determine or until earlier resignation or death. CDC members may be removed from the CDC, with or without cause, by the Board at any time.

### **III. Meetings and Procedures**

1. The CDC shall meet as often as it deems necessary, but in no event less than quarterly. A majority of the members of the CDC shall constitute a quorum.
2. Any member of the CDC or the Chairman of the Board may call a meeting of the CDC.
3. The Chair will set the agenda for CDC meetings and conduct the proceedings of those meetings.
4. The CDC may delegate authority to one or more members of the CDC where appropriate.
5. The CDC may request that any directors, officers or employees of the Company, or other persons whose advice and counsel are sought by the CDC, attend any meeting to provide such information as the CDC requests.
6. The CDC shall fix its own rules of procedure, which shall be consistent with the Bylaws and this Charter.
7. The CDC is governed by the same rules regarding meetings (including meetings in person or by telephone or other similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board.

### **IV. Duties and Responsibilities**

The principal duties and responsibilities of the CDC in serving the purposes outlined in Section I of this Charter are set forth below. These duties are set forth as a guide, with the understanding that the CDC will carry them out in a manner that is appropriate given the Company’s needs and circumstances. The CDC may supplement them as appropriate and may establish policies and procedures from time to time that it deems necessary or advisable in fulfilling its responsibilities.

The CDC will:

1. Review and make recommendations with respect to the Company’s long-term business goals and strategic plans developed by management, including identifying and acquiring new clinical development programs or new commercial products.
2. Assist management in the review, evaluation and conclusion of transactions not in the ordinary course of business, which require Board approval, including but not limited to, acquisitions or partnerships relating to new clinical development

- programs or new commercial products and dispositions of businesses and capital assets (the “**Transactions**”) and the financing thereof.
3. Review activities in connection with Transactions and make appropriate recommendations to the Board with respect to Transactions.
  4. Assist management and the Board in evaluating proposed terms for Transactions and, as appropriate, recommend solutions or amendments to such terms and conditions.
  5. Assist management and the Board in assessing the specific risks and issues involved in Transactions.
  6. Assist management in developing effective and complete disclosures to the Board of the appropriate business, financial and technical and other information to enable a fully informed review and evaluation of any proposed Transaction by the Board.
  7. Review the Company’s integration plans for proposed Transactions, as applicable.
  8. Conduct, as appropriate, periodic evaluations of the success of Transactions previously completed by the Company.
  9. Carry out any other duties and responsibilities delegated to it by the Board from time to time.

## **V. Studies and Advisers**

The CDC, in discharging its responsibilities, may conduct, direct, supervise or authorize studies of, or investigations into, matters within the CDC’s scope of responsibility, with full access to all books, records, facilities and personnel of the Company. The CDC has the right, at the expense of the Company and prior approval of the Board, to retain legal counsel, consultants, accountants, experts and advisers of its choice to assist the CDC in connection with its functions. The CDC shall oversee the work of such legal counsel, consultants, accountants, experts and advisers. The Company will provide for appropriate funding, as determined by the CDC and approved by the Board, for:

- payment of reasonable compensation to any legal counsel, consultants, accountants, experts and advisers retained by the CDC; and
- ordinary administrative expenses of the CDC that are necessary or appropriate in carrying out its functions.

The CDC is not required to implement or act consistently with the advice or recommendation of such advisers, and the CDC’s ability or obligation to exercise its own judgment in fulfillment of its duties shall not be affected by such advisers.

In connection with the retention of such advisers, the CDC shall consider the factors related to the independence of such advisers, including with respect to each such adviser (a) the provision of other services to the Company by such adviser (or their employer), (b) the amount of fees received from the Company by such adviser (or their employer), as a percentage of the total revenue of such adviser (or their employer), (c) the policies and procedures of such adviser (or their employer) that are designed to prevent conflicts of interest, (d) any business or personal relationship of such adviser (or their employer) with a member of the CDC, (e) any stock of the

Company owned by such adviser (or their employer), (f) any business or personal relationship of such adviser (or their employer) with an executive officer of the Company, and (g) such other factors as required by SEC rules.

Notwithstanding the foregoing, the CDC is not required to conduct an independence assessment for an adviser that acts in a role limited to providing information that either is not customized for the Company or that is customized based on parameters that are not developed by such adviser, and about which such adviser does not provide advice.

## **VI. Minutes and Reports**

The CDC will maintain written minutes of its meetings and copies of its actions by written consent and will cause such minutes and copies of written consents to be filed with the minutes of the meetings of the Board. The CDC shall report regularly to the Board regarding its actions and make recommendations to the Board as appropriate.

## **VII. Delegation of Duties**

In fulfilling its responsibilities, the CDC shall be entitled to delegate any or all of its responsibilities to a subcommittee of the CDC, but only to the extent consistent with the Company's certificate of incorporation, Bylaws, Section 162(m) of the Code, Nasdaq rules and other applicable law.

## **VIII. Review of CDC Composition, Performance and Charter**

The CDC will evaluate its own composition and performance on an annual basis, including its compliance with this Charter, and submit a report to the Board, including any recommendations for changes in procedures or policies governing the CDC. The CDC shall conduct this evaluation in such manner as it deems appropriate. Additionally, the CDC will also review and reassess the adequacy of this Charter at least once every two years and recommend to the Board any changes the CDC determines are appropriate.

## **IX. Publication**

The Company shall make this Charter freely available to stockholders on request and, provided that the Company is subject to the period reporting requirements of the 1934 Act, shall publish it on the Company's website.

**As adopted January 2, 2018.  
Effective January 2, 2018.**