UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10–Q

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2002

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____ .

COMMISSION FILE NUMBER: 0–23490

VIVUS, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	94–3136179
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)
1172 CASTRO STREET MOUNTAIN VIEW, CA (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	94040 (ZIP CODE)

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

N/A
(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR, IF CHANGED SINCE LAST REPORT)

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. [X] Yes [ ] No

At November 4, 2002, 33,006,069 shares of common stock were outstanding.

PART I: FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

VIVUS, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)

ASSETS

	September 30, 2002	DECEMBER 31, 2001*
	(UNAUDITED)	
Current assets:		
Cash and cash equivalents	$ 6,180	$ 11,545
Available–for–sale securities	12,497	7,835
Accounts receivable, net	3,099	2,314
Inventories, net	2,733	3,100
Prepaid expenses and other assets	1,271	780

Total current assets	25,780	25,574
Property and equipment, net	10,718	12,378
Restricted cash	3,324	3,324
Available–for–sale securities, non–current	11,237	17,298
Total assets	$ 51,059	$ 58,574
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 842	$ 1,241
Accrued and other liabilities	9,867	9,435
Total current liabilities	10,709	10,676
Accrued and other long–term liabilities	4,359	3,923
Total liabilities	15,068	14,599
Stockholders' equity:		
Common stock; $.001 par value; shares authorized 200,000; shares outstanding — September 30, 2002, 32,950; December 31, 2001, 32,693	33	33
Paid in capital	134,843	133,988
Accumulated other comprehensive income	403	322
Accumulated deficit	(99,288)	(90,368)
Total stockholders' equity	35,991	43,975
Total liabilities and stockholders' equity	$ 51,059	$ 58,574

* The Condensed Consolidated Balance Sheet at December 31, 2001 has been derived from the Company's audited financial statements at that date.

See accompanying notes to the Condensed Consolidated Financial Statements

VIVUS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	SEPTEMBER 30, 2002	SEPTEMBER 30, 2001	SEPTEMBER 30, 2002	SEPTEMBER 30, 2001
	(UNAUDITED)	(UNAUDITED)	(UNAUDITED)	(UNAUDITED)
Revenue				
US product	$ 3,683	$ 5,146	$ 14,920	$15,415
International product	155	708	1,024	3,759
Returns	(308)	(301)	(1,484)	(892)
Total net revenue	3,530	5,553	14,460	18,282
Cost of goods sold	2,292	3,286	7,196	10,083
Gross profit	1,238	2,267	7,264	8,199
Operating expenses:				
Research and development	2,707	2,002	9,460	9,943
Selling, general and administrative	2,607	2,429	8,007	7,378
Total operating expenses	5,314	4,431	17,467	17,321
Loss from operations	(4,076)	(2,164)	(10,203)	(9,122)
Interest and other income	354	550	1,015	1,710
Loss before benefit for income taxes	(3,722)	(1,614)	(9,188)	(7,412)
Benefit for income taxes	—	492	268	492
Net loss	$ (3,722)	$ (1,122)	$ (8,920)	$ (6,920)
Net loss per share:				
Basic	$ (0.11)	$ (0.03)	$ (0.27)	$ (0.21)
Diluted	$ (0.11)	$ (0.03)	$ (0.27)	$ (0.21)

Shares used in per share computation:				
Basic	32,950	32,609	32,882	32,538
Diluted	32,950	32,609	32,882	32,538

See accompanying notes to the Condensed Consolidated Financial Statements

VIVUS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS)
(In thousands)

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	SEPTEMBER 30, 2002	SEPTEMBER 30, 2001	SEPTEMBER 30, 2002	SEPTEMBER 30, 2001
	(UNAUDITED)	(UNAUDITED)	(UNAUDITED)	(UNAUDITED)
Net loss	$(3,722)	$(1,122)	$(8,920)	$(6,920)
Other comprehensive income:				
Unrealized gain on securities	33	258	81	253
Comprehensive loss	$(3,689)	$ (864)	$(8,839)	$(6,667)

See accompanying notes to the Condensed Consolidated Financial Statements

VIVUS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	NINE MONTHS ENDED SEPTEMBER 30,	
	2002	2001
	(UNAUDITED)	(UNAUDITED)
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (8,920)	$ (6,920)
Adjustments to reconcile net loss to net cash used for operating activities:		
Depreciation and amortization	1,648	1,684
Stock compensation costs	78	—
Changes in assets and liabilities:		
Accounts receivable, net	(785)	851
Inventories, net	367	1,591
Prepaid expenses and other assets	(491)	(208)
Accounts payable	(399)	(339)
Accrued and other liabilities	868	(2,196)
Net cash used for operating activities	(7,634)	(5,537)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Property and equipment purchases, net	12	(305)
Investment purchases	(8,432)	(28,019)
Proceeds from sale/maturity of securities	9,911	18,060
Net cash provided by (used for) investing activities	1,491	(10,264)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Exercise of common stock options	624	315
Sale of common stock through employee stock purchase plan	154	160
Net cash provided by financing activities	778	475
NET DECREASE IN CASH	(5,365)	(15,326)
CASH:		
Beginning of period	11,545	29,236

End of period	$ 6,180	$ 13,910
NON–CASH INVESTING AND FINANCING ACTIVITIES:		
Unrealized gain on securities	$ 81	$ 253
SUPPLEMENTAL CASH FLOW DISCLOSURE:		
Income taxes paid	$ 32	$ 151

See accompanying notes to the Condensed Consolidated Financial Statements

VIVUS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2002

1. BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10–Q and Article 10 of Regulations S–X. Accordingly, they do not include all of the information and notes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the nine-month period ended September 30, 2002 are not necessarily indicative of the results that may be expected for the year ending December 31, 2002. These financial statements and notes should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10–K for the year ended December 31, 2001.

2. INVENTORIES

Inventories are recorded net of reserves of $7.2 million and $7.5 million as of September 30, 2002 and December 31, 2001, respectively, and consist of (in thousands):

	SEPTEMBER 30, 2002	DECEMBER 31, 2001
Raw materials	$ 537	$1,845
Work in process	67	44
Finished goods	2,129	1,211
Inventory, net	$2,733	$3,100

As noted above, the Company has recorded significant reserves against the carrying value of its inventories. The reserves relate primarily to raw materials inventory that the Company previously estimated would not be used. The Company estimates that at least some portion of the fully reserved inventory will now be used in production. The Company currently includes in cost of goods sold the standard cost of raw materials inventory. In the third quarter of 2002, the Company used $144 thousand of its fully reserved raw materials inventory. The fully reserved used raw materials were charged to cost of goods sold at a zero basis, which had a favorable impact on gross profit.

3. ACCRUED AND OTHER LIABILITIES

Accrued and other liabilities as of September 30, 2002 and December 31, 2001 consist of (in thousands):

	SEPTEMBER 30, 2002	DECEMBER 31, 2001
Restructuring	$ 3,021	$ 3,923
Product returns	2,007	1,523
Income taxes	1,652	1,952
Research and clinical expenses	1,551	1,118
Royalties	361	473
Unearned revenue	3,526	2,151
Employee compensation and benefits	1,373	1,485
Other	735	733
	14,226	13,358
Amount classified as short–term	(9,867)	(9,435)
Amount classified as long–term	$ 4,359	$ 3,923

4. RESTRUCTURING RESERVE

During 1998, VIVUS, Inc. experienced a significant decline in market demand for MUSE® due to the market launch of sildenafil, the first oral treatment for erectile dysfunction. 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. (See Notes 1 and 6 to the Consolidated Financial Statements for the year ended December 31, 2001 included in the Company's Annual Report on Form 10–K.) The restructuring reserve balance at September 30, 2002 was $3.0 million, down from $3.9 million at December 31, 2001.

The activity in the restructuring reserve for the nine months ended September 30, 2002 is summarized as follows (in thousands):

	INVENTORY AND RELATED COMMITMENTS	PROPERTY AND RELATED COMMITMENTS	TOTAL
Balance at December 31, 2001	$ 902	$3,021	$3,923
Activity in first quarter 2002	—	—	—
Activity in second quarter 2002 (1)	(608)	—	(608)
Activity in third quarter 2002 (2)	(294)	—	(294)
Balance at September 30, 2002	$ —	$3,021	$3,021

(1) During the second quarter of 2002, the Company paid $100 thousand and reversed $508 thousand of the restructuring reserve related to inventory purchase commitments that were not required based on the outcome of negotiations with a supplier.

(2) During the third quarter of 2002, the Company reversed $294 thousand of the restructuring reserve as a result of settlements of liability for alprostadil purchase commitments.

The Company expects that the remaining $3.0 million in cash payments will occur in later periods.

5. CONCENTRATION OF CUSTOMERS AND SUPPLIERS

During the first nine months of 2002 and 2001, sales to significant customers as a percentage of total revenues were as follows:

	2002	2001
Customer A	22%	16%
Customer B	22%	16%
Customer C	19%	22%
Customer D	19%	11%

The Company did not have any suppliers making up more than 10% of operating costs.

6. INTERNATIONAL SUPPLY AGREEMENT

In September 2002, the Company entered into an international supply agreement for MUSE covering all Member States of the European Union and certain other countries with Meda, AB, which has replaced Abbott Laboratories, Inc. as the distributor in these geographies. Under the terms of the agreement, Meda will pay the Company $1.5 million in October 2002, as well as future amounts based on sales. This $1.5 million amount is included in accounts receivable as of September 30, 2002. The Company also recorded $1.5 million of unearned revenue, and is recognizing this amount as income ratably over the term of the supply agreement.

7. LEGAL MATTERS

On November 3, 1999, the Company 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 on January 22, 1997. The Company sought compensation for inventory manufactured in 1998 in reliance on contractual forecasts and orders submitted by Janssen. The Company also sought compensation for forecasts and order shortfalls attributed to Janssen in 1998, pursuant to the terms of the Distribution Agreement. The Company amended its arbitration demand in August 2000 to include claims for lost profits due to Janssen's failure to use the requisite diligence and reasonable efforts to gain regulatory approval for and launch MUSE in China. A full hearing on the merits was conducted before a three–member arbitration panel in Chicago on March 18 – 20, 2002. On July 17, 2002, an Interim Award was issued awarding the Company the purchase price of 332,880 units manufactured for Janssen and lost profits on an additional 421,704 forecasted units. The Panel denied any relief on claims related to diligence in China. The dollar value of the claim will be determined by an audit of VIVUS' cost of goods sold by an independent accountant. Fieldwork for the audit was completed in mid – August 2002 and a final report is expected shortly. In the meantime, a Second Interim Award denied the Company interest on the amounts that will be owed, but awarded $231,711 for reimbursement of attorney's fees and $91,738 for reimbursement of costs and expenses related to the arbitration.

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

This Management's Discussion and Analysis of Financial Condition and Results of Operations and other parts of this Form 10–Q contain forward–looking statements that involve risks and uncertainties. These statements typically may be identified by the use of forward–looking words or phrases such as "believe," "expect," "intend," "anticipate," "should," "planned," "estimated," and "potential," among others. All forward–looking statements included in this document are

based on our current expectations, and we assume no obligation to update any such forward–looking statements. The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for such forward–looking statements. In order to comply with the terms of the safe harbor, we note that a variety of factors could cause actual results and experiences to differ materially from the anticipated results or other expectations expressed in such forward–looking statements. The risks and uncertainties that may affect the operations, performance, development, and results of our business include but are not limited to: (1) our history of losses and variable quarterly results; (2) substantial competition; (3) risks related to the failure to protect our intellectual property and litigation in which we may become involved; (4) our reliance on sole source suppliers; (5) our limited sales and marketing efforts and our reliance on third parties; (6) failure to continue to develop innovative products; (7) risks related to noncompliance with FDA regulations; and (8) other factors that are described from time to time in our periodic filings with the Securities and Exchange Commission ("SEC"), including those set forth in this filing as "Risk Factors Affecting Operations and Future Results."

All percentage amounts and ratios were calculated using the underlying data in thousands. Operating results for the three and nine month periods ended September 30, 2002, are not necessarily indicative of the results that may be expected for the full fiscal year or any future period.

OVERVIEW

VIVUS, Inc. ("VIVUS," also referred to herein as "we," "us," and "our") is a pharmaceutical company developing innovative products to improve quality of life disorders in men and women, with a focus on sexual dysfunction. We developed and market in the United States ("U.S.") MUSE® (alprostadil) and ACTIS®, two innovations in the treatment of erectile dysfunction ("ED"), and have entered into a supply agreement with Meda AB ("Meda") (Stockholm:MEDAa.ST) for the international marketing and distribution of our male transurethral ED products. In Canada, we have entered into a distribution and supply agreement with Paladin Labs, Inc. ("Paladin") (TSE:PLB) by which Paladin markets and distributes MUSE. We have ongoing research and development ("R&D") programs in male ED, female sexual dysfunction ("FSD"), and premature ejaculation ("PE").

In recent years we have invested in a number of R&D projects. The current status of certain R&D projects is depicted in the table below.

Indication	Product Candidate	Progress
Erectile Dysfunction	ALIBRA	Regulatory Review
	TA-1790 (oral)	Phase I Efficacy—Completed
	TA–1790 (transurethral)	Pre–clinical
Female Sexual Dysfunction	ALISTA (topical PGE1)	Phase II
	TA–1790	Pre–clinical
Premature Ejaculation	VI–0134	Phase I
	TA–1790 (oral)	Proof–of–concept trial

We anticipate that our R&D expenses will continue to increase as we further the development of our current R&D pipeline, target acquisitions of new technologies and pursue the development of patentable uses of known pharmacologic agents for which significant safety data already exists.

Recent progress and current plans in our R&D projects include:

- **ALISTA**™– A proprietary formulation of alprostadil applied locally to the female genitalia to treat female sexual arousal disorder ("FSAD").

  — Our first Phase II clinical study, which was an in–clinic, multi–center trial designed to evaluate the safety of and response to ALISTA in subjects with FSAD, was completed. The study demonstrated a significant increase in ALISTA–treated women with FSAD versus placebo and baseline in sexual response associated with visual sexual stimulation. ALISTA was associated with a rapid and sustained improvement in sexual response.

— An expanded Phase II study, designed to evaluate the efficacy and safety of ALISTA when used by women with FSAD at–home with their partner, began in the first quarter of 2002. Dosing is continuing to progress well.

- **TA–1790** – A relatively fast–acting, highly selective, potent phosphodiesterase type 5 (PDE5) inhibitor for the oral and local treatments of ED and FSD and as an on–demand, oral treatment for PE.

  — We successfully filed an Investigational New Drug ("IND") application with the U.S. Food & Drug Administration ("FDA") in December 2001 to initiate a clinical study to evaluate the safety of and erectile response to oral TA–1790 in men with ED. This single–dose trial began in the first quarter of 2002. Subjects with mild–to–moderate ED were treated with placebo, TA–1790, and Viagra prior to video sexual stimulation, and their penile rigidity response was measured over a two-hour period. Dosing was completed during the third quarter 2002 and demonstrated that TA–1790 caused a rapid increase in penile rigidity that was statistically significantly greater than placebo. TA–1790 was safe and well tolerated in this trial. Thus, clinical data from this study demonstrated that TA–1790 is capable of restoring penile function in men with erectile dysfunction.

  — We began pre–clinical development work on the transurethral administration of TA–1790, alone and in combination with alprostadil, for the treatment of ED. Our goal for the local administration of TA–1790 is to provide an effective therapy for patients who do not have success with, or cannot use oral treatments.

  — The Company plans to conduct a proof–of–concept clinical trial to evaluate the efficacy and safety of oral TA–1790 as an on–demand treatment for PE. This will be an at–home study to assess the ability of TA–1790 to increase the ejaculatory latency period in men with primary PE. The protocol has been finalized, clinical sites have been evaluated, and screening of patients has been initiated. Dosing is scheduled to begin within the next few weeks.

- **VI–0134** – An on demand, oral treatment for PE.

  — During the fourth quarter of 2001, we initiated a clinical trial to evaluate the pharmacokinetic (blood levels in relation to time) profile of our new oral formulation of VI–0134. This study was completed during the second quarter of 2002. In light of the recently issued patent covering the use of PDE inhibitors for the treatment of PE, we are currently evaluating our strategic options for VI–0134 and our PDE5 inhibitor for this indication. Further development of VI–0134 would be dependent on the outcome of the studies involving TA–1790 as discussed above.

We continue to place significant emphasis on securing global intellectual property rights and we are pursuing new patents to expand upon our foundation for commercializing products in development. In the U.S., patents and patent applications licensed to and developed by VIVUS currently include 22 in ED, 14 in FSD and 7 in PE.

FISCAL 2002 HIGHLIGHTS

FIRST QUARTER

The Company reported a net loss of $1.9 million, for a $0.06 net loss per share. Spending for R&D and lower international product revenue contributed to the loss.

We began our expanded Phase II study with ALISTA, which is a trial designed to evaluate the safety and efficacy of the product when used by women with FSAD at-home with their partner.

After successfully filing an IND with the FDA in December 2001, we began a clinical study to evaluate the safety of and erectile response to oral TA-1790 in men with ED.

SECOND QUARTER

The Company reported a net loss of $3.3 million, for a $0.10 net loss per share. Spending for R&D and lower product revenue contributed to the loss.

VIVUS was awarded a new patent by the U.S. Patent & Trademark office for the use of phosphodiesterase inhibitors to treat PE.

THIRD QUARTER

The Company reported a net loss of $3.7 million, for a $0.11 net loss per share. Lower product revenue and spending for R&D contributed to the loss.

VIVUS was added to the list of companies in the Russell 2000® Small-Cap U.S. Equity Index, which is widely used as a benchmark for both passive and active investment strategies.

The Company signed an international supply agreement granting Meda, a Swedish specialty pharmaceutical company, the right to market, sell and distribute MUSE in all Member States of the European Union, the Baltic States, the Czech Republic, Hungary, Iceland, Norway, Poland, Switzerland and Turkey.

The Company and Abbott Laboratories (“Abbott”) agreed to terminate the license and supply agreement for MUSE entered into in 2000.

RESULTS OF OPERATIONS

Three Months Ended September 30, 2002 and 2001

U.S. net product revenue for the quarter ended September 30, 2002 was $3.4 million, compared to $4.8 million for the quarter ended September 30, 2001. In the first quarter of 2002, net sales units were the highest of any three-month period since mid-1998. We believe inventory levels were built up in the wholesale channel during that time period in anticipation of a price increase in MUSE that took place at the end of March 2002. We anticipate wholesaler orders to increase from current levels during the fourth quarter of 2002.

International product revenue was $155 thousand for the third quarter of 2002, a decrease of $553 thousand compared to the same period last year. Lower revenue in 2002 was due to a decrease in product demand by Abbott.

Cost of goods sold was $2.3 million for the third quarter of 2002, compared to $3.3 million for the third quarter of 2001. The cost of goods sold for the quarter ended September 30, 2002 was favorably impacted by a $294 thousand reduction made as a result of settlements of liability for alprostadil purchase commitments. In addition, the cost of goods sold for the current quarter was also favorably impacted by the usage of $144 thousand of the fully reserved raw materials discussed in footnote 2 of this quarterly report on page 6. The remainder of the decrease is due to lower sales volumes in the third quarter of 2002 versus 2001.

Research and development expenses for the third quarter of 2002 were $2.7 million, as compared to $2.0 million for the three months ended September 30, 2001. The increase is due primarily to pre-clinical and clinical expenses for our three current R&D projects: ALISTA, TA-1790 and VI-0134.

Selling, general and administrative expenses in the third quarter of 2002 of $2.6 million were $178 thousand higher than the same period last year due to increased investment in U.S. sales and marketing efforts.

During the third quarter of 2002 we did not record a tax provision due to the net loss recorded for the quarter. During the third quarter of 2001, the Company recorded a tax benefit of $492 thousand based on an updated estimate of our net tax liabilities.

Nine Months Ended September 30, 2002 and 2001

U.S. net product revenue for the nine months ended September 30, 2002 was $13.4 million compared to $14.5 million for the same period last year, a decrease of 7.6%. Underlying demand for MUSE as measured by retail and government prescriptions has declined through the first nine months of 2002 as compared to the same period in 2001.

Product return data through the first quarter of 2002 indicated an increase to the returns provision was warranted. Approximately $403 thousand of the $1.5 million recorded for the returns provision during the first nine months of 2002 reflects the required increase to the product returns liability for sales made from January 2000 through December 2001. The charge for actual and anticipated returns has been increased to seven percent (7%) of U.S. gross sales as of January 2002.

For the nine months ended September 30, 2002, international product revenue was $1.0 million, a decrease of $2.7 million compared to the same period last year. Lower revenue in 2002 was due to a decrease in product demand by Abbott. We anticipate international product revenue to increase over the next several

quarters as a result of entering into a supply agreement with Meda in September 2002.

Cost of goods sold was $7.2 million for the nine months ended September 30, 2002, as compared to $10.1 million for the nine months ended September 30, 2001. Cost of goods sold for the first nine months of 2002 was favorably impacted by a total of $802 thousand of reductions made as a result of settlements of liability for alprostadil purchase commitments. Additionally, the cost of goods sold for the same period was also favorably impacted by the usage of $144 thousand of the fully reserved raw materials as discussed in detail in note 2 of this quarterly report on page 6. The remainder of the decrease is due to lower sales volumes in 2002 versus 2001.

For the nine months ended September 30, 2002, R&D expenses were $9.5 million, $0.5 million lower than the same period last year, which included a $5.0 million payment made during the first quarter of 2001 to Tanabe for licensing the proprietary compound TA-1790. If not for this $5.0 million expense, R&D costs in the first nine months of 2002 would have been $4.5 million higher than the same period last year due to increased expenditures for development of our current pipeline.

Selling, general and administrative expenses were $8.0 million for the nine months ended September 30, 2002, $629 thousand higher than the same period last year due to increased investment in U.S. sales and marketing efforts and legal expenses relating to the Janssen arbitration hearing that was held in mid-March 2002 and is discussed on page 21 of this report.

Based on updated estimates of our net tax liabilities, the Company recorded tax benefits during the nine months ended September 30, 2002 and 2001 of $268 and $492 thousand, respectively.

LIQUIDITY AND CAPITAL RESOURCES

Unrestricted cash, cash equivalents and available-for-sale securities totaled $29.9 million at September 30, 2002, a decrease of $6.8 million from December 31, 2001. This decrease is due to lower sales revenue and increased development expenses for TA-1790, clinical expenses for ALISTA, and development and clinical expenses for VI-0134.

Since its inception, the Company has financed operations primarily from the sale of preferred stock and common stock. Through September 30, 2002, VIVUS raised $155.9 million from financing activities and has an accumulated deficit of $99.3 million.

Our operating activities used $7.6 million and $5.5 million of cash during the nine months ended September 30, 2002 and 2001, respectively. In both 2002 and 2001, operating expenses were higher than revenues from product sales accounting for the use of cash.

Net cash provided by investing activities was $1.5 million during the nine months ended September 30, 2002 and net cash used for investing activities was $10.3 million for the same period in 2001. The fluctuations from period to period are due primarily to the timing of purchases, sales and maturity of investment securities.

Financing activities provided cash of $778 thousand and $475 thousand during the nine months ended September 30, 2002 and 2001, respectively. These amounts are primarily the proceeds from the exercise of stock options and the sale of stock under the Employee Stock Purchase Plan in both 2002 and 2001.

We anticipate that our existing capital resources combined with anticipated future cash flows will be sufficient to support our operating needs throughout the next fifteen to eighteen months. However, we anticipate that we will be required to obtain additional financing to fund the development of our R&D pipeline in future periods as well as to support the possible launch of any future products. In particular, other substantial payments will be made in accordance with our agreement with Tanabe for licensing TA-1790. These payments are based on certain development, regulatory and sales milestones. In addition, royalty payments are required to be made by the Company to Tanabe on any future product sales.

We expect to evaluate potential financing sources, including, but not limited to, the issuance of additional equity or debt securities, corporate alliances, joint ventures, and licensing agreements to fund the development and possible commercial launch of any future products. The sale of additional equity securities would result in additional dilution to VIVUS' stockholders. Our working capital and additional funding requirements will depend upon numerous factors, including: (i) the progress of our R&D projects; (ii) the timing and results of pre-clinical testing and clinical trials; (iii) results of operations; (iv) demand for MUSE; (v) technological advances; (vi) the level of resources that we devote to our sales and marketing capabilities; and (vii) the activities of competitors. However, there can be no assurance that funding will be available on favorable terms, if at all, when needed. If we are unable to obtain additional capital, management may be required to explore alternatives to reduce cash used by operating activities.

RISK FACTORS AFFECTING OPERATIONS AND FUTURE RESULTS

Set forth below and elsewhere in this Quarterly Report and in other documents we file with the SEC are risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements contained in this Quarterly Report. These are not the only risks and uncertainties facing VIVUS. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

If we are unable to continue to develop, market and obtain regulatory approval for our products, our business would be harmed.

Our future operating results may be adversely affected if we are unable to continue to develop, manufacture and bring to market new drug products in a timely manner. The process of developing new drugs and/or therapeutic products is inherently complex and uncertain. We must make long-term investments and commit significant resources before knowing whether our development programs will eventually result in products that will receive regulatory approval and achieve market acceptance.

As with any pharmaceutical product under development, there are significant risks in development, regulatory approval and commercialization of new compounds. During the product development phase, there is no assurance that the FDA will approve our clinical trial protocols. There is no guarantee that future clinical studies, if performed, will demonstrate the safety and efficacy of any product in development or that we will receive regulatory approval for such products.

Further, the FDA can suspend clinical studies at any time if the agency believes that the subjects participating in such studies are being exposed to unacceptable health risks.

We cannot predict with certainty if or when we might submit for regulatory review those products currently under development. Once we submit our potential products for review, we cannot assure you that the FDA or other regulatory agencies will grant approvals for any of our proposed products on a timely basis or at all. Further, even if we receive regulatory approval for a product, there can be no assurance that such product will prove to be commercially successful or profitable.

Sales of our products both inside and outside the United States will be subject to regulatory requirements governing marketing approval. These requirements vary widely from country to country and could delay the introduction of our proposed products in those countries. After the FDA and international regulatory authorities approve a product, we must manufacture sufficient volumes to meet market demand. This is a process that requires accurate forecasting of market demand. There is no guarantee that there will be market demand for any future products or that we will be able to successfully manufacture or adequately support sales of any future products.

We are developing TA-1790 as potential oral and local treatments for male and female sexual dysfunction. In January 2001, we licensed TA-1790, a proprietary phosphodiesterase type 5 (PDE5) inhibitor compound from Tanabe, a Japanese pharmaceutical company. Tanabe completed a Phase I clinical trial evaluating the safety of orally administered TA-1790 for male erectile dysfunction. We are currently conducting additional pre-clinical safety studies and have recently completed an in-clinic efficacy study in patients with erectile dysfunction. Based on the results of these studies, we intend to initiate additional clinical studies that would be required to obtain regulatory approval. However, there are no guarantees that TA-1790 will prove to be safe and effective or receive regulatory approval for any indication. Further, even if we were to receive regulatory approval for a product, there can be no assurance that such a product would prove to be commercially successful or profitable.

We are developing ALISTA for the potential treatment of female sexual dysfunction. We completed dosing for our first Phase II clinical study for topical ALISTA during the third quarter of 2001. Our current ALISTA clinical trial, which is a multi-center, double-blind, at-home efficacy and safety study, began in the first quarter of 2002. There are no guarantees that ALISTA will prove to be safe and effective or receive regulatory approval for the treatment of female sexual dysfunction or any other indication. Even if ALISTA eventually becomes an approved product, there can be no assurance that this treatment for female sexual dysfunction will be successful in the marketplace.

We are developing VI-0134 and TA-1790 for the potential treatment of premature ejaculation. We have recently completed a clinical trial to evaluate the pharmacokinetics (blood levels in relation to time) of VI-0134, our re-formulated oral, on-demand treatment for premature ejaculation. We plan to conduct a proof-of-concept clinical trial to evaluate the safety and efficacy of oral TA-1790 as an on-demand treatment for PE. However, there can be no assurance that these studies or future clinical studies, if performed, will be successful or that a product for the treatment of premature ejaculation, if approved, will prove to be commercially successful.

In December 1999, we submitted a New Drug Application (“NDA”) to the FDA to market ALIBRA®, our second-generation product for the treatment of ED, which we subsequently withdrew in October 2000. We met with the FDA in December 2000 and continue to communicate with the agency to determine what additional data is required to obtain marketing clearance for ALIBRA. There can be no assurance that we will re-file an NDA for ALIBRA. Even if we re-file an NDA for ALIBRA, there can be no assurance that it will be approved or that ALIBRA will be successful in the marketplace.

If we require additional capital for our future operating plans, we may not be able to secure the requisite additional funding on acceptable terms, if at all.

Capital resources from operating activities are expected to continue to decline over the next several quarters as the result of increased spending for research and development projects, including clinical trials. We expect that our existing capital resources combined with future cash flows will be sufficient to support operating needs throughout the next fifteen to eighteen months. Financing in future periods will most likely be required to fund development of our research and development pipeline and the possible launch of any future products. Our future capital requirements will depend upon numerous factors, including: (i) the progress of our research and development programs; (ii) the scope, timing and results of pre-clinical testing and clinical trials; (iii) the results of operations; (iv) the cost, timing and outcome of regulatory reviews; (v) the rate of technological advances; (vi) ongoing determinations of the potential commercial success of our products under development; (vii) the level of resources devoted to sales and marketing capabilities; and (viii) the activities of competitors.

To obtain additional capital when needed, we will evaluate alternative financing sources, including, but not limited to, the issuance of equity or debt securities, corporate alliances, joint ventures, and licensing agreements. However, there can be no assurance that funding will be available on favorable terms, if at all, when needed. If we are unable to obtain additional capital, management may be required to explore alternatives to reduce cash used by operating activities.

We have limited sales and marketing efforts in the United States.

We support MUSE sales in the United States through a small sales support group targeting major accounts that include the top prescribers of MUSE. Additionally, telephone marketers focus on additional urologists who prescribe MUSE. Physician and patient information/help telephone lines are available to answer additional questions that may arise after reading the inserts or after actual use of the product. The sales force actively participates 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. There can be no assurance that our sales programs will effectively maintain or potentially increase current sales levels. There can be no assurance that demand for MUSE will continue or that we will be able to adequately support sales of MUSE in the United States in the future.

We rely on third parties to conduct clinical trials for our products in development and those third parties may not perform satisfactorily.

We do not have the ability to independently conduct clinical studies for any of our products currently in development, and we rely on third parties to perform this function. If third parties do not successfully carry out their contractual duties or meet expected timelines, we may not be able to obtain regulatory approvals for our proposed products and may not be able to successfully commercialize these proposed products. If third parties do not perform satisfactorily, we may not be able to locate acceptable replacements or enter into favorable agreements with them, if at all.

If the results of future clinical testing indicate that our proposed products are not safe or effective for human use, our business will suffer.

All of the drug products that we are currently developing require extensive pre-clinical and clinical testing before we can submit any application for regulatory approval. Before obtaining regulatory approvals for the commercial sale of any of our proposed drug products, we must demonstrate through pre-clinical testing and

clinical trials that our product candidates are safe and effective in humans. Conducting clinical trials is a lengthy, expensive and uncertain process. Completion of clinical trials may take several years or more. Our commencement and rate of completion of clinical trials may be delayed by many factors, including:

- ineffectiveness of the study compound, or perceptions by physicians that the compound is not effective for a particular indication;
- inability to manufacture sufficient quantities of compounds for use in clinical trials;
- failure of the FDA to approve our clinical trial protocols;
- slower than expected rate of patient recruitment;

- inability to adequately follow patients after treatment;
- unforeseen safety issues; or
- government or regulatory delays.

The clinical results we have obtained to date do not necessarily predict that the results of further testing, including later stage controlled human clinical testing, will be successful. If our trials are not successful or are perceived as not successful by the FDA or physicians, our business, financial condition and results of operations will be harmed.

The markets in which we operate are highly competitive and we may be unable to compete successfully against new entrants or established companies with greater resources.

Competition in the pharmaceutical and medical products industries is intense and is characterized by extensive research efforts and rapid technological progress. Certain treatments for erectile dysfunction 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 an oral medication marketed by Pfizer under the name Viagra®, which received regulatory approvals in the United States in March 1998 and in the European Union in September 1998. The commercial launch of Viagra in the United States in April 1998 significantly decreased demand for MUSE. Another oral medication under the name Uprima® was approved and launched in Europe by Abbott Laboratories in May 2001.

Additional competitive products in the erectile dysfunction market include needle injection therapy products from Pharmacia 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 erectile dysfunction. These companies have substantially greater research and development capabilities as well as substantially greater marketing, financial and human resources abilities than VIVUS. In addition, many of these companies have significantly greater experience than us in undertaking pre-clinical testing, human clinical trials and other regulatory approval procedures. Lilly ICOS LLC and Bayer AG filed NDAs with the FDA in June and September 2001, respectively, for their oral erectile dysfunction medications. These companies may market commercial products either on their own or through collaborative efforts, such as Bayer AG, which signed a worldwide co-promotion agreement with GlaxoSmithKline plc for its product. Our competitors may develop technologies and products that are more effective than those we are currently marketing or developing. Such developments could render our products less competitive or possibly obsolete. We are also competing with respect to marketing capabilities and manufacturing efficiency, areas in which we have limited experience.

Our success depends in large part on the strength of our current and future patent positions for the treatment of sexual dysfunction.

VIVUS holds various patents and patent applications in three major areas of sexual dysfunction: male erectile dysfunction, female sexual dysfunction and premature ejaculation. We are the exclusive licensee of United States and Canadian patents originally filed in the name of Dr. Gene Voss. These patents claim methods of treating erectile dysfunction with a vasodilator-containing ointment that is administered either topically or transurethrally.

We are 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 been issued directed to methods and compositions for treating erectile dysfunction 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 United States patents, are directed to the treatment of erectile dysfunction by transurethral administration of certain active substances including alpha-receptor blockers, vasoactive polypeptides, prostaglandins or nitroglycerin dispersed in a hydrophilic vehicle.

VIVUS' license and assignment agreements for the patents and patent applications identified above are royalty bearing and do not expire until the licensed and assigned patents expire. These license and assignment agreements generally provide that we assume responsibility for the maintenance and prosecution of the patents and patent applications and may bring infringement actions.

We are the sole assignee of five United States patents deriving from patent applications originally filed by ALZA Corporation ("ALZA"), covering inventions Dr. Virgil Place made while he was an employee of ALZA. The patents 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. With one exception, the patents derive from patent applications that were filed in the United States prior to June 8, 1995, and therefore have a seventeen-year patent term calculated from the date of patent grant. Foreign patents have been granted in Australia, Canada, Europe (including Austria, Belgium, Denmark, France, Germany, Great Britain, Greece, Italy, Luxembourg, the Netherlands, Spain, Sweden and Switzerland), Finland, Ireland, Mexico, New Zealand, Norway, Portugal, South Africa and South Korea, and foreign applications are pending in Canada and Japan.

We are the sole assignee of patent applications filed in the name of Dr. Gary W. Neal and AndroSolutions, Inc. in the United States and internationally that are complementary to our patents and applications directed to the treatment of female sexual dysfunction.

In addition to the Voss, Kock, Place and Neal patents and applications identified above, we have numerous issued and pending United States and foreign patents. Many of these patents and applications further address the prevention, treatment and diagnosis of erectile dysfunction, while others are directed to prevention and/or treatment of other types of sexual dysfunction, including premature ejaculation and female sexual dysfunction. One of our issued patents covers VIVUS' venous flow control device, ACTIS.

Our strategy is to expand our existing patent portfolio through internal development of new intellectual property as well as through licensing and acquiring patents and patent applications that would increase our ability to succeed in the fields of erectile dysfunction, female sexual dysfunction and premature ejaculation. Our success will depend in large part on the strength of our current and future patent position for the treatments of these therapeutic indications. Our patent position, like that of other pharmaceutical companies, is highly uncertain and involves complex legal and factual questions. The claims of a United States or foreign patent application may be denied or significantly narrowed, and patents that are ultimately issued may not provide significant commercial protection to us. We 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 our licensed or assigned inventions. There can be no assurance that our patents will not be successfully challenged or designed around by others.

We were involved in an opposition proceeding that was instigated by the Pharmedic Company against a European patent, inventors Nils G. Kock et al., which is exclusively licensed to VIVUS. As a result of the opposition proceeding, the Opposition Division of the EPO confirmed all claims of the patent with the exception of certain pharmaceutical composition claims. In February 2002, we met with the EPO Appeals Board, which ruled that the pharmaceutical composition claims deemed unpatentable by the Opposition Division were indeed unpatentable. There can be no assurance that further challenges to the European patent that we license will not occur should we try to enforce the patent in the various European courts.

If either of our two raw material suppliers fail to supply us with alprostadil, for which availability is limited, we may experience delays in our product development and commercialization.

We are required to initially receive regulatory approval for suppliers and we obtained our current supply of alprostadil from two approved sources. The first is Nera Pharm, formerly Spolana Chemical Works a.s. in Neratovice, Czech Republic. The second is CHINOIN Pharmaceutical and Chemical Works Co., Ltd. ("Chinoin"). Chinoin is the Hungarian subsidiary of the French pharmaceutical company Sanofi Synthelabo. From July 2000 until March 2002, Nera Pharm was the sole source of supply of alprostadil approved for use in the manufacture of product for distribution in Europe, of which we have a limited supply. Certain restrictions were put in place by the European regulatory authorities that required a variation to be approved before VIVUS could use the Chinoin alprostadil supply for European manufacture. After transferring marketing licenses in Europe to Abbott, Abbott filed a variation on September 26, 2001. The variation was approved in March 2002 and allows us to use a portion of our Chinoin supply of alprostadil for European manufacture. In the second quarter of 2002, we ended our contractual relationship with Nera Pharm, which leaves Chinoin as our sole qualified supplier of alprostadil. We are currently in the process of investigating additional sources for our future alprostadil supplies. However, there can be no assurance that we will be able to identify and qualify additional suppliers of alprostadil, in a timely manner, if at all.

Furthermore, alprostadil is subject to periodic re-testing to ensure it continues to meet specifications. There can be no guarantees the material will pass these re-testing procedures and continue to be usable material. There is a long lead-time for manufacturing alprostadil. A short supply of alprostadil to be used in the manufacture of MUSE would have a material adverse effect on our business, financial condition and results of operations.

We outsource several key parts of our operations and any interruption in the services provided could harm our business.

We entered into a distribution agreement with CORD Logistics, Inc. ("CORD"), a wholly owned subsidiary of Cardinal Health, Inc. Under this agreement, CORD (i) warehouses our finished goods for United States distribution; (ii) takes customer orders; (iii) picks, packs and ships our products; (iv) invoices customers; and (v) collects related receivables. As a result of this distribution agreement, we are heavily dependent on CORD's efforts to fulfill orders and warehouse our products effectively in the United States. There can be no assurance that such efforts will continue to be successful.

Gibraltar Laboratories ("Gibraltar") performs sterility testing on finished product manufactured by us to ensure that it complies with product specifications. Gibraltar also performs microbial testing on water and compressed gases used in the manufacturing process and microbial testing on environmental samples to ensure that the manufacturing environment meets appropriate current Good Manufacturing Practice, ("cGMP") regulations and cleanliness standards. As a result of this testing agreement, we are dependent on Gibraltar to perform testing and issue reports on finished product and the manufacturing environment in a manner that meets cGMP regulations. There can be no assurance that such efforts will be successful.

We have an agreement with WRB Communications ("WRB") to handle patient and healthcare professional hotlines for us. WRB maintains a staff of healthcare professionals to answer questions and inquiries about MUSE and ACTIS. These calls may include complaints about our products due to efficacy or quality, as well as the reporting of adverse events. As a result of this agreement, we are dependent on WRB to effectively handle these calls and inquiries. There can be no assurance that such efforts will be successful.

We 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 United States marketing and sales efforts. As a result of this distribution agreement, we are dependent on ICS's efforts to distribute product samples effectively. There can be no assurance that such efforts will be successful.

We currently depend on a single source for the supply of plastic applicator components, and an interruption to this supply source could harm our business.

We rely on a single injection molding company, Porex Medical Products, Inc. ("Porex") (formerly The Kipp Group), for our supply of plastic applicator components. In turn, Porex obtains its supply of resin, a key ingredient of the applicator, from a single source, Huntsman Corporation. There can be no assurance that we will be able to identify and qualify additional sources of plastic components. We are required to initially receive FDA approval for suppliers. Until we secure and qualify additional sources of plastic components, we are entirely dependent upon Porex. If interruptions in this supply occur for any reason, including a decision by Porex to discontinue manufacturing, political unrest, labor disputes or a failure of Porex to follow regulations, the development and commercial marketing of MUSE and other potential products could be delayed or prevented. An extended interruption in the supply of plastic components could have a material adverse effect on our business, financial condition and results of operations.

We currently depend on a single source to sterilize MUSE, and an interruption to this source could harm our business.

We rely on a single company, E-Beam Services, Inc. ("E-Beam"), for the sterilization of MUSE. There can be no assurance that we will be able to identify and qualify additional sterilization companies. We are required to receive prior FDA approval for any sterilization company. Until we secure and qualify an additional sterilization company, we are entirely dependent upon E-Beam. If interruptions in these services occur for any reason, including a decision by E-Beam to discontinue manufacturing or services, political unrest, labor disputes or a failure of E-Beam to follow regulations, the development and commercial marketing of MUSE and other potential products could be delayed or prevented. An extended interruption in sterilization services would have a material adverse effect on our business, financial condition and results of operations.

All of our manufacturing operations are currently conducted at a single location, and a prolonged interruption to our manufacturing operations could harm our business.

We lease 90,000 square feet of space in Lakewood, New Jersey, in which we constructed manufacturing, warehousing and testing facilities. The FDA and the Medicines Control Agency, or MCA, the regulatory authority in the United Kingdom, authorized us to begin commercial production and shipment of MUSE from this facility in June and March 1998, respectively. MUSE is manufactured in this facility and we have no immediate plans to construct another manufacturing site. Since MUSE is produced with custom-made equipment under specific manufacturing conditions, the inability of our manufacturing facility to produce MUSE for whatever reason could have a material adverse effect on our business, financial condition and results of operations.

If we, or our suppliers, fail to comply with FDA and other government regulations, our manufacturing operations could be interrupted, and our product sales and profitability could suffer.

All new drugs, including our products under development, are subject to extensive and rigorous regulation by the FDA and comparable foreign authorities. These regulations govern, among other things, the development, pre-clinical and clinical testing, manufacturing, labeling, storage, pre-market approval, advertising, promotion, sale and distribution of our products. To date, MUSE has received marketing approval in more than 40 countries worldwide.

After regulatory approval is obtained, our products are subject to continual review. Manufacturing, labeling and promotional activities are continually regulated by the FDA and equivalent foreign regulatory agencies, and we must also report certain adverse events involving our products 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. 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 could have a material adverse effect on our business, financial condition and results of operations.

Failure to comply with the applicable regulatory requirements can result in, among other things, civil penalties, 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/or 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 could have a material adverse effect on our business, financial condition and results of operations.

Failure of our third-party manufacturers to maintain satisfactory compliance with cGMPs could have a material adverse effect on our ability to continue to market and distribute our products and, in the most serious cases, could result in the issuance of warning letters, seizure or recall of products, civil penalties or closure of our manufacturing facility until such cGMP compliance is achieved.

We obtain the necessary raw materials and components for the manufacture of MUSE as well as certain services, such as testing and sterilization, from third parties. We currently contract with suppliers and service providers, including foreign manufacturers that are required to comply with strict standards established by us. Certain suppliers and service providers are required to follow cGMP requirements and are subject to routine unannounced periodic inspections by the FDA and by certain state and foreign regulatory agencies for compliance with cGMP requirements and other applicable regulations. Certain of our 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 requirements and other regulations.

Failure to achieve satisfactory cGMP compliance as confirmed by routine unannounced inspections could have a material adverse effect on our ability to continue to manufacture and distribute our 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 penalties or closure of our manufacturing facility until cGMP compliance is achieved.

We depend exclusively on third-party distributors outside of the United States and we have very limited control over their activities.

We entered into an agreement granting Paladin exclusive marketing and distribution rights for MUSE in Canada. This agreement does not have minimum purchase commitments and we are entirely dependent on Paladin's efforts to distribute and sell our product effectively in Canada. There can be no assurance that such efforts will be successful or that Paladin will continue to support the product.

We entered into an agreement granting Meda exclusive marketing and distribution rights for MUSE in all Members States of the European Union, the Baltic States, the Czech Republic, Hungary, Iceland, Norway, Poland, Switzerland and Turkey. This agreement does not have minimum purchase commitments and we are entirely dependent on Meda's efforts to distribute and sell our product effectively in all these markets. There can be no assurance that such efforts will be successful or that Meda will continue to support the product.

We have an accumulated deficit of $99.3 million at September 30, 2002 and expect to continue to incur substantial operating losses for the foreseeable future.

We have generated a cumulative net loss of $99.3 million for the period from our inception through September 30, 2002 and we anticipate losses for the next several quarters due to increased investment in our research and development programs and limited revenues. We are subject to a number of risks, including our ability to develop and successfully commercialize products in our research and development pipeline, our ability to market, distribute and sell our products in the United States, our reliance on others to market and distribute MUSE in countries other than the United States, intense competition, and our reliance on a single

therapeutic approach to erectile dysfunction. There can be no assurance that we will be able to achieve profitability on a sustained basis. Accordingly, there can be no assurance of our future success.

We are dependent upon a single therapeutic approach to treat erectile dysfunction.

MUSE, a drug product developed by us to treat erectile dysfunction, relies on a single therapeutic approach, a transurethral system for erection. The existence of side effects or dissatisfaction with this product may impact a patient's decision to use or continue to use, or a physician's decision to recommend, this therapeutic approach as a therapy for the treatment of erectile dysfunction, thereby affecting the commercial viability of MUSE. In addition, technological changes or medical advancements could diminish or eliminate the commercial viability of our product, the results of which could have a material effect on our business operations and results since MUSE is the only transurethral product we currently produce and sell.

We may be sued for infringing on the intellectual property rights of others.

There can be no assurance that our products do not or will not infringe on the patent or proprietary rights of others. We 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 will be made available on terms acceptable to us, if at all. If we do not obtain such licenses, we could encounter delays in product introductions while we attempt to design around such patents, or the development, manufacture or sale of products requiring such licenses could be precluded. We believe there will continue to be significant litigation in the pharmaceutical industry regarding patent and other intellectual property rights.

The rights and measures that we rely upon to protect our intellectual property may not be adequate and could reduce our ability to compete in the market.

We rely on patent protection, as well as a combination of copyright, trade secret and trademark laws, and nondisclosure, confidentiality agreements and other contractual restrictions to protect our proprietary technology. However, these legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep any competitive advantage. For example, our patents may be challenged, invalidated or circumvented by third parties. Our patent applications, including those already allowed, may not be issued as patents in a form that will be advantageous to us. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by employees. Furthermore, the laws of foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States. Even if our intellectual property rights are adequately protected, litigation may be necessary to enforce our intellectual property rights, which could result in substantial costs to us and result in a substantial diversion of management attention. If our intellectual property is not adequately protected, our competitors could use our intellectual property to enhance their products. This would harm our competitive position, decrease our market share or otherwise harm our business.

If we fail to retain our key personnel and hire, train and retain qualified employees, we may not be able to compete effectively, which could result in reduced revenues.

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

We are subject to additional risks associated with our international operations.

MUSE 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 an adverse effect on our business, financial condition and results of operations. The international nature of our business is also expected to subject us and our representatives, agents and distributors to laws and regulations of the foreign jurisdictions in which we operate or where our products are 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 our business, financial condition and results of operations. In addition, the laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the United States.

Any adverse changes in reimbursement procedures by Medicare and other third-party payors may limit our ability to market and sell our products.

In the United States 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. While a large percentage of prescriptions in the United States for MUSE have been reimbursed by third party payors since our commercial launch in January 1997, there can be no assurance that our products will be considered cost effective and that reimbursement to the consumer will continue to be available or sufficient to allow us to sell our 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. We hope to further qualify MUSE for reimbursement in the managed care environment. However, we are 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.

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, we cannot predict which, if any, of the reform proposals will be adopted or the effect such adoption may have on us. 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 us. Healthcare reform is also under consideration in some other countries.

If we become subject to product liability claims, we may be required to pay damages that exceed our insurance coverage.

The commercial sale of MUSE exposes us 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. We detail potential side effects in the patient package insert and the physician package insert, both of which are distributed with MUSE. While we believe that we are reasonably insured against these risks, we may not be able to obtain insurance in amounts or scope sufficient to provide us with adequate coverage against all potential liabilities. A product liability claim in excess of our insurance coverage would have to be paid out of cash reserves and could have a material adverse effect upon our business, financial condition and results of operations. Product liability insurance is expensive, difficult to maintain, and current or increased coverage may not be available on acceptable terms, if at all.

Our stock price is volatile.

The stock market has experienced significant price and volume fluctuations unrelated to the operating performance of particular companies. In addition, the market price of our common stock has been highly volatile and is likely to continue to be so. The market price of our common stock may fluctuate due to factors including, but not limited to: (i) announcements of technological innovations or new products by us or our competitors; (ii) our ability to increase demand for our products in the United States; (iii) our ability to successfully sell our products in the United States and internationally; (iv) actual or anticipated fluctuations in our financial results; (v) our ability to obtain needed financing; (vi) economic conditions in the United States and abroad; (vii) comments by or changes in Company assessments or financial estimates by security analysts; (viii) adverse regulatory actions or decisions; (ix) any loss of key management; (x) the results of our clinical trials or those of our competitors; (xi) changing governmental regulations, patents or other proprietary rights; (xii) developments or disputes concerning patents or other proprietary rights; (xiii) product or patent litigation; or (xiv) public concern as to the safety of products developed by us.

Anti-takeover provisions contained in our Charter, Bylaws and Preferred Shares Rights Plan could impair a takeover attempt and could also limit the market price of our stock.

In February 1996, our Board of Directors adopted a Preferred Shares Rights Plan. The Preferred Shares Rights Plan provides for a dividend distribution of one Preferred Shares Purchase Right (a “Right”) on each outstanding share of our common stock. The Rights will become exercisable following the tenth day after a person or group announces acquisition of twenty percent (20%) or more of our common stock, or announces commencement of a tender offer, the consummation of which would result in ownership by the person or group of twenty percent (20%) or more of our common stock. We 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 twenty percent (20%) or more of our common stock.

The Preferred Shares Rights Plan and certain provisions of our Amended and Restated Certificate of Incorporation and Bylaws contain provisions that could delay or prevent a change in control of our company. Some of these provisions:

- authorize the issuance of preferred stock by the Board of Directors without prior stockholder approval, commonly referred to as “blank check” preferred stock, with rights senior to those of common stock;
- prohibit stockholder actions by written consent;
- 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.

In addition, we are governed by the provisions of Section 203 of Delaware General Corporate Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us. These and other provisions in our Amended and Restated Certificate of Incorporation and Bylaws and under Delaware law could reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than it would be without these provisions.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The SEC’s rule related to market risk disclosure requires that we describe and quantify our potential losses from market risk sensitive instruments attributable to reasonably possible market changes. Market risk sensitive instruments include all financial or commodity instruments and other financial instruments that are sensitive to future changes in interest rates, currency exchange rates, commodity prices or other market factors. VIVUS is not exposed to market risks from changes in foreign currency exchange rates or commodity prices. We do not hold derivative financial instruments nor do we hold securities for trading or speculative purposes. At December 31, 2001 and September 30, 2002, we had no debt outstanding, and consequently VIVUS currently has no risk exposure associated with increasing interest rates. VIVUS, however, is exposed to changes in interest rates on our investments in cash equivalents and available-for-sale securities. Substantially all of our investments in cash equivalents and available-for-sale securities are in money market funds that hold short-term investment grade commercial paper, treasury bills or other U.S. government obligations. Currently, this reduces our exposure to long-term interest rate changes.

ITEM 4. CONTROLS AND PROCEDURES

Within the 90 days prior to the date of this report, we carried out an evaluation, under the supervision and with the participation of the Company’s management, including the Company’s President and Chief Executive Officer along with Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-14. Based upon that evaluation, the Company’s President and Chief Executive Officer along with the Chief Financial Officer concluded that our disclosure controls and procedures are effective in timely alerting them to material information relating to the Company (including its consolidated subsidiaries) required to be included in our periodic SEC filings.

There have been no significant changes in our internal controls or in other factors that could significantly affect internal controls subsequent to the date we carried out this evaluation.

PART II: OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On November 3, 1999, the Company 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 on January 22, 1997. The Company sought compensation for inventory manufactured in 1998 in reliance on contractual forecasts and orders submitted by Janssen. The Company also sought compensation for forecasts and order shortfalls attributed to Janssen in 1998, pursuant to the terms of the Distribution Agreement. The Company amended its arbitration demand in August 2000 to include claims for lost profits due to Janssen's failure to use the requisite diligence and reasonable efforts to gain regulatory approval for and launch MUSE in China. A full hearing on the merits was conducted before a three-member arbitration panel in Chicago on March 18 – 20, 2002. On July 17, 2002, an Interim Award was issued awarding the Company the purchase price of 332,880 units manufactured for Janssen and lost profits on an additional 421,704 forecasted units. The Panel denied any relief on claims related to diligence in China. The dollar value of the claim will be determined by an audit of VIVUS' cost of goods sold by an independent accountant. Fieldwork for the audit was completed in mid — August 2002 and a final report is expected shortly. In the meantime, a Second Interim Award denied the Company interest on the amounts that will be owed, but awarded it $231,711 for reimbursement of attorney's fees and $91,738 for reimbursement of costs and expenses related to the arbitration.

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 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

None

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None

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

None

ITEM 5. OTHER INFORMATION

None

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS (IN ACCORDANCE WITH ITEM 601 OF REGULATION S-K)

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

EXHIBIT NUMBER	DESCRIPTION
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
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
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

EXHIBIT NUMBER	DESCRIPTION
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
10.40(15)+	License and Supply Agreement made as of May 23, 2000 between the Registrant and Abbott Laboratories, Inc.
10.41(16)+	License and Supply Agreement made as of November 20, 2000 between the Registrant and Paladin Labs, Inc.
10.42(16)+	Development, License and Supply Agreement made as of January 22, 2001 between the Registrant and TANABE SEIYAKU CO., LTD.
10.43(17)+	Settlement and Modification Agreement made as of July 12, 2001 between ASIVI, LLC, AndroSolutions, Inc. Gary W. Neal and the Registrant.
10.44(18)	2001 Stock Option Plan and Form of Agreement.
10.45++	Supply Agreement made as of September 3, 2002 between the Registrant and Meda AB.
99.1	Certification of Chief Executive Officer and Chief Financial Officer.

+ 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.
(15) 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, 2000.
(16) 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, 2000.
(17) 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, 2001.
(18) Incorporated by reference to the same numbered exhibit filed with the Registrant's Registration Statement on Form S-8 filed with the Commission on November 15, 2001.

(b) REPORTS ON FORM 8-K

On July 10, 2002 and on July 11, 2002, VIVUS filed reports on Form 8-K and Form 8-K/A relating to its Board of Director's decision to no longer engage Arthur Andersen LLP as VIVUS' independent auditor, effective as of July 8, 2002. The Board of Directors also authorized the engagement of KPMG LLP effective as of July 8, 2002 to serve as VIVUS' independent auditors for the current fiscal year ending December 31, 2002.

SIGNATURES

Pursuant to the requirements 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.

Date: November 8, 2002

VIVUS, Inc.

/s/ RICHARD WALLISER

Richard Walliser
Vice President and Chief Financial Officer

/s/ LELAND F. WILSON

Leland F. Wilson
President and Chief Executive Officer

VIVUS, INC.
INDEX TO EXHIBITS*

EXHIBIT	DESCRIPTION
10.45	Supply Agreement made as of September 3, 2002 between the Registrant and Meda AB.
99.1	Certification of Chief Executive Officer and Chief Financial Officer.

* Exhibits incorporated by reference are set forth in the exhibit listing included in Item 6 of the Quarterly Report on Form 10–Q.

EXHIBIT 10.45

SUPPLY AGREEMENT

This Supply Agreement is made as of this 3rd day of September, 2002 ("Effective Date") ("Agreement"), by and between MEDA AB (publ), a company organized under the laws of Sweden, with its principal offices at Box 3051 S-18303 Taby, Sweden ("MEDA"), and VIVUS International, Ltd., a company organized under the laws of Bermuda, with its principal offices at Clarendon House, Church Street, Hamilton, Bermuda ("VIVUS").

RECITALS

WHEREAS, VIVUS has developed a product for the treatment of erectile dysfunction (further defined below as, the "Product"); and

WHEREAS, MEDA is interested in obtaining certain exclusive rights to market and distribute such Product in the Territory (as defined below) and VIVUS is interested in granting such rights to MEDA in the Territory; and

WHEREAS, VIVUS is a wholly-owned subsidiary of VIVUS, Inc., a Delaware corporation, ("VIVUS INC."), with its offices at 1172 Castro Street, Mountain View, CA 94040, which has guaranteed the performance by VIVUS of this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations and promises as set forth herein, the parties do hereby agree as follows:

ARTICLE 1 - DEFINITIONS

For purposes of this Agreement, the following terms shall have the following respective meanings:

1.1 "AFFILIATE" means any corporation, firm, partnership or other entity, whether DE JURE or DE FACTO, which directly or indirectly owns, is owned by or is under common ownership with a party to the extent of in excess of fifty percent (50%), of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of the entity and any person, firm, partnership, corporation or other entity actually controlled by, controlling by or under common control with such party.

1.2 "AUTHORIZED SUBDISTRIBUTOR" shall have the meaning set forth in Section 2.1.

1.3 "CONFIDENTIAL INFORMATION" means any information, data, know-how or business plans relating to the Product or otherwise relating to the subject matter of this Agreement, including but not limited to data related to VIVUS' clinical trials, which a party discloses to the

other party, directly or indirectly, in writing, orally or by inspection of objects and identifies as "Confidential," "Proprietary" or some similar designation or which the recipient knows or should have reason to know is confidential. Notwithstanding the foregoing, information shall not be Confidential Information if it:

(a) is known to the receiving party at the time of disclosure and documented by the receiving party's written records made prior to the date of this Agreement;

(b) is disclosed to the receiving party by a third person who has a right to make such disclosure;

(c) becomes publicly known and made generally available through no action or inaction of the receiving party; or

(d) is independently developed by the receiving party without use of the disclosing party's Confidential Information as evidenced by the receiving party's written records.

1.4 "FIRST COMMERCIAL SALE" with respect to the Product in each country in the Territory means the first bona fide, arm's length sale of the Product in the Territory by MEDA, a MEDA Affiliate or Authorized Subdistributor to any unaffiliated third party following Regulatory Approval of the Product, as evidenced by the selling party's invoice to such third party.

1.5 "REGULATORY APPROVAL" means a fully completed marketing authorization , including all supporting documentation and data filed by VIVUS or VIVUS, INC. with the requisite health regulatory authorities of any country of the Territory requesting approval for commercialization of a Product for a particular

indication in such country. It is understood that Marketing Authorization does not include applications for pricing or reimbursement approval.

1.6 "NET SALES" means the gross revenues from sales of the Product shipped by MEDA, its Affiliates or Authorized Subdistributors to third parties in the Territory less deductions allowed to the final buyer against invoiced amounts for:

(a) trade, discounts allowed and actually taken;

(b) cash and quantity discounts allowed and actually taken;

(c) transportation charges (including insurance costs and handling charges);

(d) sales, excise, value added and similar taxes and duties and any similar governmental charges imposed upon the production, importation, use or sale of Product;

(e) allowances or credits to customers due to rejection or return of Product or retroactive price reductions imposed by government authorities;

(f) wholesaler charge backs earned or granted; and

(g) rebates and management fees earned by or granted to third parties.

1.7 "PRODUCT" means the product for the transurethral delivery of alprostadil and which VIVUS and/or VIVUS INC. sells outside the Territory, as of the Effective Date, under the trademark MUSE(R).

1.8 "REGULATORY APPROVAL" with respect to each country in the Territory for a particular Product means approval of the Marketing Authorization filed in such country by the health regulatory authority in such country that is the counterpart of the U.S. FDA. It is understood that, as used herein, Regulatory Approval does not include pricing or reimbursement approval.

1.9 "SALES QUARTER" means for the first Sales Quarter, the period commencing on the date of MEDA's First Commercial Sale and ending on the last day of that calendar quarter; and for subsequent Sales Quarters, the successive calendar quarters thereafter.

1.10 "SALES YEAR" means for the first Sales Year, the period commencing on the date of MEDA's First Commercial Sale and ending on December 31st of the following year; and for subsequent Sales Years, the successive calendar years thereafter.

1.11 "SPECIFICATIONS" means the written manufacturing release specifications and stability specifications for the Product that are set forth in Exhibit 1.11 attached hereto or as amended pursuant to Section 6.5 below.
1.12 "SPC" means a right based upon a VIVUS Patent to exclude others from making, using or selling the Product, such as a Supplementary Protection Certificate.

1.13 "SUPPLY PRICE" shall have the meaning set forth in Section 4.2.

1.14 "TRANSFER PRICE" shall have the meaning set forth in Section 4.2(a).

1.15 "TERRITORY" means Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Spain, Sweden, Switzerland, The Netherlands, Turkey and the United Kingdom.

1.16 "VALID CLAIM" means any claim of an issued and unexpired patent in the VIVUS Patents that (a) has not been held unenforceable, unpatentable or invalid by a decision of a court or government agency of competent jurisdiction, which decision is unappealable or was unappealed within the time allowed for appeal, or (b) has not been admitted by the owner of the patent to be invalid or unenforceable through reissue, disclaimer or otherwise.

1.17 "VIVUS TRADEMARKS" means the trademarks MUSE(R) and BONDIL(R). The MUSE(R) Trademark is registered or has pending registration applications throughout the Territory as of the Effective Date and BONDIL is registered only in Sweden, Norway, Finland and Iceland.

1.18 "VIVUS PATENTS" means all patents and patent applications (including without limitation continuations, continuations-in-part, divisionals, patents of addition, extensions, reissues, reexaminations, renewals, or SPCs) which are or become owned by VIVUS or VIVUS, INC., or which VIVUS or VIVUS, INC. has, now or in the future, the right to grant licenses

(without payment of an additional fee or royalty) during the term of this Agreement, and which generically or specifically claim Product, a process for manufacturing Product, an intermediate used in such process, or a use of Product. With respect to such patents or applications that VIVUS or VIVUS INC. licenses or acquires or has licensed or acquired from a third party, the same shall be included within "VIVUS Patents" hereunder solely to the extent that VIVUS or VIVUS INC. has the right to license or sublicense the same hereunder. Exhibit 1.18 attached to this Agreement lists all VIVUS Patents pertaining to Product as of the Effective Date.

ARTICLE 2 - APPOINTMENT

2.1 APPOINTMENT OF MEDA. VIVUS hereby appoints MEDA as the exclusive marketer and distributor of the Products in the Territory. MEDA may distribute the Product through its Affiliates and may distribute the Product through third party subdistributors with VIVUS' prior written consent, such consent not to be unreasonably withheld ("Authorized Subdistributors"). MEDA's rights under this Section 2.1 shall be subject to the rights of Abbott International, Ltd. under the License and Supply Agreement between Abbott International Ltd. and VIVUS, and any other agreement or amendment between Abbott International Ltd. and VIVUS relating to the Product. VIVUS reserves all rights not expressly granted herein (collectively the "Abbott Rights").

2.2 REGULATORY APPROVALS. Subject to the Abbott Rights, VIVUS shall transfer the Regulatory Approvals for the Product in the Territory to MEDA. Subject to the Abbott Rights, VIVUS hereby grants MEDA the exclusive right and authority during the term of this Agreement to use the Regulatory Approvals and to market the Product pursuant to such Regulatory Approvals in the Territory. After transfer of the Regulatory Approvals by VIVUS to MEDA, MEDA shall be responsible for maintaining such Regulatory Approvals during the term of the Agreement. Promptly after termination or expiration of this Agreement for any reason, MEDA shall return such Regulatory Approvals to VIVUS.

2.3 EXCLUSIVITY OF EFFORTS. As from termination of the Abbott Rights, MEDA agrees that neither MEDA nor its Affiliates or Authorized Distributors will market or distribute any locally applied, vasoactive agent-containing products in the Territory for the treatment of erectile dysfunction other than Product. In addition, MEDA agrees not to market or distribute in the Territory any other products with respect to which the main indication is the treatment of male erectile dysfunction without first conferring with VIVUS in good faith in an effort to find a mutually acceptable solution.

2.4 SALES OUTSIDE THE TERRITORY. MEDA agrees that neither MEDA, its Affiliates nor its Authorized Subdistributors will actively seek customers outside the Territory or establish any branch or maintain any distribution depot outside of the Territory.

ARTICLE 3 - MILESTONES

3.1 As partial consideration for the rights granted under this Agreement, MEDA shall pay to VIVUS the following one-time, non-refundable milestone fees within forty-five (45) days after the event specified:

(a) One Million Five Hundred Thousand United States Dollars ($1,500,000), on the Effective Date;

(b) (***), upon the first occasion on which MEDA achieves annual Net Sales of the Product (***) in the Territory; and

(c) (***), upon the first occasion on which MEDA achieves annual Net Sales of the Product of (***) in the Territory.

ARTICLE 4 - PURCHASE AND SALE

4.1 PURCHASES AND SALE OF PRODUCT. Subject to the terms and conditions of this Agreement, VIVUS shall sell the Product exclusively to MEDA in the Territory and MEDA shall purchase its requirements of Product exclusively from VIVUS at the Supply Price.

4.2 SUPPLY PRICE. The Supply Price for Product shall equal (***) of MEDA's Net Sales calculated as provided in Section 4.2(b) subject to the provisions of Section 4.3:

(a) TRANSFER PRICE. In order to enable VIVUS to sell and MEDA to purchase the Product prior to the time in which MEDA's Net Sales for a Sales Quarter are determined, MEDA shall pay for Product ordered and delivered pursuant to Article 5 below based upon an interim "Transfer Price." The "Transfer Price" shall be equal to (***) of MEDA's estimated weighted average Net Sales price per unit of Product for the Sales Year for the Product in the Territory ("Estimated Average Unit Price"). MEDA shall advise VIVUS in writing no later than forty-five (45) days prior to the start of each Sales Year of MEDA's Estimated Average Unit Price for the coming Sales Year and the Transfer Price for that Sales Year shall be based upon such price, subject to any adjustment required under Section 4.2(b) below.

(b) RECONCILIATION. The parties shall conduct a reconciliation no later than forty-five (45) days after the end of each Sales Quarter, in order to determine whether one (1) party owes the other party any amount in connection with the sale and purchase of the Product in that Sales Quarter, based upon the difference (if any) between the applicable Transfer Price and the Supply Price for that Sales Quarter. For the purposes of such reconciliation, MEDA shall provide to VIVUS a written statement of MEDA's inventory on hand of each Stock Keeping Unit ("SKU"), sales in units per SKU broken out by each country in the Territory, and of MEDA's Net Sales broken out by each country in the Territory all in the local currency of each country in the Territory as well as in U.S. dollars, converted pursuant to Section 4.9 below ("Reconciliation Statement"). The Reconciliation Report shall also set forth MEDA's calculation of the difference between the Supply Price and the Transfer Price for the applicable Sales Quarter and the amount, if any, owed by one (1) party to the other for such quarter. If the parties disagree on the calculation set forth in the Reconciliation Report the dispute shall be handled in accordance with Exhibit 19.11. In the event that one (1) party owes the other party any amount in accordance with this Section 4.2(b), the owing party shall pay such amount within sixty (60) days of the date upon which the parties have agreed in writing upon the reconciliation calculation or the dispute between the parties is settled pursuant to Exhibit 19.11. In the event that the Supply Price is greater than one hundred ten percent (110%) or less than ninety percent (90%) of the Transfer Price for two (2) consecutive Sales Quarters, the Transfer Price established

in Section 4.2(a) shall be changed for the remainder of that Sales Year to the Supply Price applicable to the most recent Sales Quarter.

(c) In the event that MEDA, its Affiliates or Authorized Subdistributors sell Product to a third party at a discount price that is greater than the discount generally given to such third party for their other products sold to such third party (including establishing a list price at a lower than normal level), then Net Sales to such third party shall be deemed to be equal to the arm's length price that the third party would generally pay for such Product alone when not purchasing other products or services from MEDA.

4.3 MINIMUM SUPPLY PRICE. The Supply Price for the Product shall in no event be less than the Minimum Supply Price as set forth in Exhibit 4 attached to this Agreement.

4.4 ACCIDENTALLY DESTROYED AND EXPIRED UNITS. The Supply Price paid to VIVUS for units of Product that are accidentally destroyed by MEDA or units of Product that expire after delivery to MEDA shall be determined as follows:

(a) The Supply Price for units of Product that are accidentally destroyed by MEDA shall be at a price equal to (***) of the Net Sales price in the quarter prior to the date of accidental destruction, but in no event less than the Minimum Supply Price in effect in such quarter as set forth in Exhibit 4.

(b) The Supply Price for units of Product that expire after delivery to MEDA shall be at a price equal to (***) of the Net Sales price in the quarter prior to the date of expiration, but in no event less than the Minimum Supply Price in effect in such quarter as set forth in Exhibit 4 attached to this Agreement.

4.5 SAMPLES. VIVUS shall sell a quantity of Product to MEDA for use as samples, at "Sample Prices" as set forth in Exhibit 4 attached to this Agreement. MEDA may purchase such samples in quantities not to exceed the following percentages of MEDA's total unit sales of the Product in the Territory in a given Sales Year: (***) in each of the first two (2) Sales Years and (***) in each Sales Year thereafter.

4.6 INITIAL START UP AND AT RISK COSTS. MEDA will be responsible for reimbursing VIVUS for VIVUS' actual costs incurred and expenses paid to third parties to modify the packaging for the Product in order to incorporate MEDA trade dress (including, but not limited to, artwork charges, typesetting charges and plate charges), to otherwise modify the packaging for the Product to meet MEDA's requirements (including, but not limited to, foil and packaging materials), all actual costs for finished packaging materials and any production costs related to the manufacture of Product "At-Risk." "Product At-Risk" shall mean any and all initial start up costs incurred by VIVUS in connection with the manufacture of and ordering of Product prior to the marketing authorities' providing final approval of the label of those components used in the manufacture of the Product in the specific countries in the Territory. MEDA shall not repackage or relabel Product supplied to MEDA by VIVUS hereunder without the prior written consent of VIVUS.

4.7 RECORDS. MEDA and its Affiliates shall keep and shall require its Authorized Subdistributors to keep and maintain complete and accurate records of sales made pursuant to this Agreement on a country-by-country basis hereunder so that MEDA's Net Sales and the

calculation of the Transfer Price and the Supply Price may be verified. Such records shall be open to inspection upon prior written notice at any reasonable time during business hours, not more than once per calendar year, and each inspection shall cover no more than the two (2) calendar years preceding such notice of inspection. The inspection shall be conducted at VIVUS' expense by a nationally recognized independent certified public accountant who is not VIVUS' auditor of record and who is selected by VIVUS and approved by MEDA, which approval shall not be unreasonably withheld. The accountant shall be bound by confidentiality obligations at least as stringent as those provided in Article 18 of this Agreement, and shall then have the right to examine the records kept pursuant to this Agreement and report to VIVUS the findings (but not the underlying data) of the inspection as are necessary to evidence that the records were or were not maintained and used in accordance with this Agreement. A copy of any report provided to VIVUS by the accountant shall be given concurrently to MEDA. If the inspection of records reveals more than five percent (5%) underpayment by MEDA for the purchase of the Product (calculated as a percentage of all such payments made in connection with a Sales Year), then the expenses for the accountant shall be borne by MEDA and MEDA shall promptly repay to VIVUS the amount of such underpayment, plus interest calculated at the prime rate of interest as published in the WALL STREET JOURNAL for the date upon which such underpayment was made. For the purposes of this Section 4.7, an "underpayment" shall not include any amount that the parties determine is owed to VIVUS pursuant to the reconciliation procedure set forth in Section 4.2(b) above.

4.8 PAYMENT. Within sixty (60) days after the end of each calendar quarter, each party shall provide the other party with a true accounting of all payment obligations, if any, owed in accordance with this Article 4, together with a statement setting out all details necessary to calculate the amounts actually due hereunder with respect to Net Sales made in that Sales Quarter, or any overpayment by VIVUS for such Sales Quarter which is owed by MEDA to VIVUS, including, but not limited to, units of Product sold on a country-by-country basis, gross sales of Product in that Sales Quarter on a country-by-country basis, Net Sales in that Sales Quarter on a country-by-country basis, all relevant deductions, and all relevant exchange rate conversions. Any payments due shall accompany such statement. If VIVUS has made an overpayment to MEDA, VIVUS shall be entitled to credit such overpayments against the following payment due. Any payment that is more than ten (10) days past due shall bear interest from the original due date at the prime rate of interest as published in the Wall Street Journal for the due date. Any sums due VIVUS or MEDA under this Agreement shall be made by wire transfer to the bank account designated by the party to whom payment is to be made.

4.9 EXCHANGE RATE. Any sums shall be made in U.S. Dollars and, in the case of quarterly payments based upon MEDA's Net Sales in currencies other than U.S. Dollars, such quarterly payments shall be the sum of payments due for the three (3) months of the applicable quarter calculated for each such month using the beginning month's and ending month's published exchange rate, set one (1) business day prior to month end, by Reuters divided by two (if a Reuters exchange rate is not available for certain countries, an exchange rate established by a recognized third party will be used).

4.10 TAXES. Where any sum due to be paid to VIVUS hereunder is subject to any taxes, duties or other levies, including, without limitation withholding or similar tax, the parties shall use their best efforts to do all such acts and things and to sign all such documents as will enable them to take advantage of any applicable double taxation agreement or treaty. In the

event there is no applicable double taxation agreement or treaty, or if an applicable double taxation agreement or treaty reduces but does not eliminate such withholding or similar tax, MEDA shall pay such withholding or similar tax to the appropriate government authority, deduct the amount paid from the amount due VIVUS and secure and send to VIVUS evidence of such payment.

ARTICLE 5 - FORECASTS, ORDERS, INVOICES AND TITLE

5.1 INITIAL FORECAST. Within sixty (60) days after the Effective Date, MEDA shall provide VIVUS with a written forecast of the quantities of Product estimated to be required prior to and during each of the first four Sales Quarters. MEDA shall break down the forecast for the period prior to the first Sales Quarter and for the first two Sales Quarters of such forecast by month and by Stock Keeping Unit ("SKU") of the Product.

5.2 ROLLING FORECASTS. No later than ninety (90) days prior to the first day of each Sales Quarter after the initial Sales Quarter, MEDA shall provide VIVUS with its then current written forecast of the quantities of Product that MEDA will require on a month-by-month basis during the next Sales Quarter and the following three (3) Sales Quarters from VIVUS during each of the next four (4) Sales Quarters ("Q1", "Q2", "Q3" and "Q4" respectively). MEDA shall break down the forecast for Q1, Q2, and Q3 of the forecast by month and by SKU.

5.3 ORDER AND ACCEPTANCE. The forecast for the first Sales Quarter in each of MEDA's rolling forecasts made pursuant to Section 5.2 above shall constitute MEDA's firm order for that Sales Quarter, and all firm orders shall specify delivery date(s) no less than ninety (90) days from the date of such firm order. MEDA shall not increase or decrease its forecast (by SKU and in total), for the second Sales Quarter in each of MEDA's rolling forecasts made pursuant to Section 5.2 above by more than twenty percent (20%). VIVUS shall accept all firm orders from MEDA for quantities of Product up to and including one hundred twenty percent (120%) of the quantity (by SKU and in total) of Product previously forecasted by MEDA for such Sales Quarter, and shall use its best efforts to accept all firm orders from MEDA for quantities of Product in excess of that quantity of Product. MEDA shall not increase or decrease its forecast (by SKU and in total) for the third Sales Quarter in each of MEDA's rolling forecasts made pursuant to Section 5.2 above by more than thirty-five percent (35%). VIVUS shall accept all firm orders from MEDA for quantities of Product up to and including one hundred thirty-five percent (135%) of the quantity of Product previously forecasted by MEDA for such Sales Quarter (by SKU and in total), and shall use its best efforts to accept all firm orders from MEDA for quantities of Product in excess of that quantity of Product. MEDA shall not increase or decrease its forecast for the fourth Sales Quarter in each of MEDA's rolling forecasts made pursuant to Section 5.2 above, by more than fifty percent (50%). VIVUS shall accept all firm orders from MEDA for quantities of Product up to and including one hundred fifty percent (150%) of the quantity of Product previously forecasted by MEDA for such Sales Quarter, and shall use its best efforts to accept all firm orders from MEDA for quantities of Product in excess of that quantity of Product. Once a forecast has been accepted by VIVUS, then VIVUS shall be obligated to sell, and MEDA shall be obligated to purchase, the Product.

5.4 INVOICES. VIVUS shall invoice MEDA for the Transfer Price in United States Dollars at the time of delivery for all Product shipped. MEDA shall pay VIVUS such invoiced amount within sixty (60) days from the date of the invoice.

5.5 DELIVERY. VIVUS shall deliver the Product to MEDA, FOB at VIVUS' facilities located in Lakewood, New Jersey, USA. All shipping costs, liability, ownership and logistics of Product beyond the Lakewood facility's loading dock are the responsibility of MEDA.

5.6 CONFLICTING TERMS AND CONDITIONS. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall govern, notwithstanding any additional or inconsistent terms or conditions in MEDA's form of purchase order or similar document or in VIVUS' acknowledgment, invoice, or similar documents.

ARTICLE 6 - SAMPLING, TESTING AND ANALYSIS

6.1 CERTIFICATE OF ANALYSIS. VIVUS shall test or cause to be tested each lot of the Product pursuant to the Specifications before delivery to MEDA. Each test shall set forth the items tested, specifications and test results in a certificate of analysis for each lot delivered. VIVUS shall send or cause to be sent such certificates to MEDA. MEDA is entitled to rely on such certificates for all purposes of this Agreement. MEDA will perform any testing upon entry of the Product into the European Union, or elsewhere in the Territory, that is necessary for the sale or distribution of such Product in the Territory.

6.2 MANUFACTURING COMPLIANCE.

(a) On each certificate of analysis provided to MEDA pursuant to Section 6.1 above, VIVUS shall provide or cause to be provided for each lot of the Product purchased a statement that will certify that the lot of Product was manufactured in accordance with the Specifications and applicable current Good Manufacturing Practices (cGMP) laws and/or regulations.

(b) Notwithstanding VIVUS' obligation to provide such statement, within ninety (90) days of the Effective Date, VIVUS shall permit MEDA to inspect, or obtain permission for such inspection, during reasonable business hours and upon reasonable prior notice to VIVUS, those areas of the facilities where the Product is manufactured, stored, tested and handled and to manufacturing records of the Product manufactured by VIVUS and/or VIVUS' third-party contract manufacturer(s).

(c) If VIVUS or VIVUS' third-party contract manufacturer(s) for any reason makes significant changes in its or their facilities or manufacturing processes, technical documentation or record-keeping relating to the Product, VIVUS shall advise MEDA of such changes in a timely manner when, to the best of VIVUS' knowledge, such change would require a variation to be filed with a regulatory authority in the Territory.

6.3 DEFECTIVE PRODUCT. MEDA shall notify VIVUS in writing of any claim relating to damaged, defective or any shortage in quantity of any shipment of the Product within thirty (30) days of receipt of such Product. If MEDA fails to give such written claim notice to VIVUS within said thirty (30) day period, the Product shipped shall be deemed to be sufficient in quantity, and not damaged nor defective at the time of delivery. If MEDA gives such written claim notice to VIVUS within said thirty (30) day period, then MEDA and VIVUS shall, in an appropriate manner to be agreed, jointly inspect the Product to see if claimed shortage, damage or defect actually existed at the time of delivery. If existence of claimed damage, defect or shortage is reasonably verified, VIVUS shall replace the rejected Product or make up the shortage as soon

as practicable but no later than ninety (90) days after such verification, at no extra cost to MEDA, and shall make arrangements with MEDA for the destruction or return of any damaged or defective Product, at VIVUS' expense.

6.4 DISCREPANT INSPECTION RESULTS. In the event of a discrepancy between MEDA's and VIVUS' inspection results such that one party's results fall within the Specifications and the other party's results fall outside the Specifications, the parties shall cause an independent tester, mutually acceptable to the parties, to perform comparative tests on samples of the allegedly defective Product. The independent tester's results shall be final and binding and the parties shall share equally in the cost of the independent tester.

6.5 SPECIFICATIONS. The Specifications may be modified from time to time by written agreement of the parties without the necessity of amending this Agreement.

6.6 TECHNICAL AGREEMENT. Within sixty (60) days, the respective manufacturing groups of VIVUS and MEDA shall enter into a separate technical agreement, in a format suitable for submission to the regulatory authorities in each country in the Territory, recording the Specifications and Manufacturing Standards and measures to ensure compliance with applicable regulations relating to production, storage, transportation and release of the Product.

ARTICLE 7 - PATENT PROSECUTION AND LITIGATION

7.1 PATENT PROSECUTION AND MAINTENANCE. To the extent it has the right to do so, VIVUS shall, at its sole cost and expense, maintain the VIVUS Patents, and shall diligently prosecute any such patent applications and obtain all available patent term extensions; provided that VIVUS may decide not to prosecute certain of the VIVUS Patents, or to cause or permit certain of the VIVUS Patents to lapse or become abandoned in the Territory if, in VIVUS' reasonable commercial judgment, such decision would not adversely affect MEDA's ability to exercise its rights and perform its obligations under this Agreement. To the extent it does not have the right to maintain such patent applications and patents, prosecute such patent applications and obtain patent term extensions, VIVUS shall use its reasonable commercial efforts to ensure that the third party who has the right to take such actions shall do so.

7.2 THIRD PARTY INFRINGEMENT.

(a) Each party will notify the other party if it becomes aware of the activities of any third party that are believed to infringe any of the VIVUS Patents or VIVUS Trademarks. The parties shall consult as to potential strategies against the alleged infringer, including but not limited to litigation strategy.

(b) If the efforts of the parties are not successful in abating the alleged infringement, then VIVUS shall have the right, but not the obligation, to bring an appropriate suit or action against such infringement, at its own expense. MEDA agrees to cooperate in any such infringement action and agrees to execute all papers and perform such other acts as may be reasonably requested by MEDA, at VIVUS' expense. VIVUS shall consult with MEDA and take into account MEDA's recommendations regarding the conduct of such action, provided that VIVUS shall have full right and authority to determine the strategy and tactics for such action and to settle, consent to judgment, or otherwise resolve any such action or suit. The provisions of the foregoing notwithstanding, no such resolution shall be binding on MEDA without its prior

written consent (which consent shall not be unreasonably withheld) unless such resolution does not (i) impose any liability, loss, cost or obligation upon MEDA, and (ii) adversely affect MEDA's rights under this Agreement.

(c) If VIVUS does not elect to bring suit against the alleged infringer, MEDA shall have the right, but not the obligation, to bring an appropriate suit or action against such infringer in the Territory, at MEDA's own expense. VIVUS agrees to cooperate in any such infringement action and agrees to execute all papers and perform such other acts as may be reasonably requested by MEDA (including but not limited to consent to be joined as a nominal party plaintiff in such action), at MEDA's expense. MEDA shall consult with VIVUS and take into account VIVUS' recommendations regarding the conduct of such action, provided that MEDA shall have full right and authority to determine the strategy and tactics for such action and to settle, consent to judgment, or otherwise resolve any such action or suit. The provisions of the foregoing notwithstanding, no such resolution shall be binding on VIVUS without its prior written consent (which consent shall not be unreasonably withheld) unless such resolution does not (i) impose any liability, loss, cost or obligation upon VIVUS and (ii) adversely affect VIVUS' rights under this Agreement.

(d) If VIVUS or MEDA brings an infringement action pursuant to this Article 7, any amount recovered in any action or suit against a third party infringer shall be allocated as follows: first, to the party bringing such action in order to reimburse such party for the costs and expenses of such action; second, with respect to any remaining amount, (***) of that portion of such amount resulting from infringement within the Territory to MEDA, and the rest of any remaining amount to VIVUS.

7.3 INFRINGEMENT BY THE PRODUCT.

(a) VIVUS shall, at its own expense, defend or, at its option settle, any third party claim, suit or proceeding ("Action") brought against MEDA on the issue of infringement or misappropriation of any third party copyright, trade secret, or patent or trademark validly issued in one of the countries in the Territory by the Product to the extent such misappropriation or infringement was caused by VIVUS' action and pay any final judgment entered or settlement entered into as a result of such Action; provided that MEDA (i) provides VIVUS with prompt written notice of such Action, (ii) permits VIVUS to have control over the defense and settlement of such Action at VIVUS' expense, and (iii) provides VIVUS with proper and full information and assistance to settle and/or defend any such Action at VIVUS' expense. Failure by MEDA to notify VIVUS promptly in writing of such an Action will relieve VIVUS of its obligations under this Section 7.3(a). VIVUS, at its option and expense, may dispose of such Action or may conduct the defense of such Action. VIVUS shall only be obligated to indemnify MEDA under this Section 7.3 to the extent such Action does not result the modification or unauthorized use of the Product.

(b) If it is adjudicatively determined, or if VIVUS reasonably believes, that the Product or part thereof, infringes or misappropriates any patent, copyright, trade secret, or trademark or other intellectual property right of a third party, then VIVUS may, and if the sale, distribution, or use of the Product by MEDA is, as a result, enjoined, then VIVUS shall, at its option and expense: (a) procure for MEDA a license for MEDA to exercise all of its rights under this Agreement with respect to the Product, or such part thereof; or (b) replace the Product, or

parts thereof, with non-infringing suitable VIVUS products or parts with the same functionality (or better) as the infringing Product or parts; or (c) suitably modify the Product, or part thereof, to become non-infringing and have the same functionality or better; or (d) if none of the foregoing is feasible and MEDA's continued use and distribution of the infringing Product (or part thereof) has been finally enjoined, accept return of any Product in VIVUS' inventory, or part thereof, and refund to MEDA the fees paid by MEDA such Product. VIVUS will not be liable for any costs or expenses incurred without its prior written authorization.

(c) If it is adjudicatively determined that the Product or part thereof, infringes or misappropriates any patent, copyright, trade secret, or trademark or other intellectual property right of a third party, and if the sale, distribution, or use of the Product by MEDA is, as a result, enjoined from using or selling the Product in a given country in the Territory, then MEDA may exclude such country from the Territory upon written notice to VIVUS within thirty (30) days of the date of such final, permanent, unappealable or unappealed injunction or other order. If it is adjudicatively determined that the Product or part thereof, infringes or misappropriates any patent, copyright, trade secret, or trademark or other intellectual property right of a third party, and if the sale, distribution, or use of the Product by MEDA is, as a result, enjoined from using or selling the Product in all of the countries in the Territory, then MEDA may terminate this Agreement upon written notice within thirty (30) days of the date of such final, permanent, unappealable or unappealed injunction or other order.

(d) The foregoing provisions of this Section 7.3 state the entire liability and obligation of VIVUS, and the exclusive remedy of MEDA, with respect to any actual or alleged infringement of any intellectual property right or breach of any intellectual property non-infringement warranty.

7.4 STATUS OF ACTIVITIES. The parties shall keep one another informed of the status of their respective activities regarding any litigation or settlement thereof concerning Product within the Territory, provided however that no settlement or consent judgment or other voluntary final disposition of any suit defended or action brought by a party pursuant to this Section 7 may be entered into without the consent of the other party if such settlement would require the other party to be subject to an injunction or to make a monetary payment or would otherwise adversely affect the other party's rights under this Agreement.

ARTICLE 8 - TRADEMARKS

8.1 TRADEMARK RIGHTS. VIVUS hereby grants to MEDA the exclusive right, exclusive even as to VIVUS, to use the VIVUS Trademarks in connection with the Product in the Territory during the term of this Agreement. MEDA acknowledges that such VIVUS Trademarks shall be and are the sole property of VIVUS. In the event that VIVUS decides to divest itself of the VIVUS Trademarks, VIVUS shall assign such VIVUS Trademarks in the Territory to MEDA upon MEDA's written request.

8.2 TERMINATION. MEDA's right to use the VIVUS Trademark shall terminate in each country of the Territory in which MEDA's rights to distribute the Product are terminated in accordance with this Agreement. MEDA shall cooperate in the cancellation of any trademark licenses recorded or entered into in such countries. At no time during or after the term of this Agreement shall MEDA challenge or assist others to challenge the VIVUS Trademarks (except

to the extent such restriction is prohibited by applicable law) or the registration thereof by VIVUS, nor shall MEDA attempt to register any trademarks that are confusingly similar to those of VIVUS.

8.3 ELECTRONIC ADDRESS.

(a) VIVUS hereby grants to MEDA a non-exclusive right to use VIVUS' registered electronic address, www.vivus.com, for the purpose of linking electronic users with MEDA's relevant web pages, web sites or other electronic addresses relating to the Product in the Territory.

(b) MEDA hereby grants to VIVUS a non-exclusive right to use MEDA's registered electronic address, , www.meda.se for the purpose of linking electronic users with VIVUS' relevant web pages, web sites or other electronic addresses relating to the Product in the Territory.

ARTICLE 9 - DEVELOPMENT AND REGULATORY ISSUES

9.1 VIVUS RESPONSIBILITIES. VIVUS shall be responsible for, and shall bear all costs of, the following:

(a) VIVUS shall provide to MEDA, as expeditiously as possible, any and all authorizations, assistance, information and/or materials in VIVUS' possession or control that are needed in order to enable MEDA to market and sell the Product in the Territory.

(b) In fulfilling its obligations under this Agreement, VIVUS shall use its best efforts to ensure that the Product is entitled to and receives the maximum benefit of any regulatory market exclusivity periods or other safeguards or extensions of proprietary status, which are or may be applicable in the Territory.

(d) VIVUS shall be responsible for filing trademark applications for, and for the maintenance and upkeep of, the VIVUS Trademarks in the Territory.

9.2 MEDA RESPONSIBILITIES. During the term of this Agreement, MEDA shall be responsible for, and shall bear all cost of, the following:

(a) MEDA shall be responsible for obtaining all pricing and reimbursement approvals in VIVUS' name for the Product in the Territory;

(b) In fulfilling its obligations under this Agreement, MEDA shall use its best efforts to ensure that the Product is entitled to and receives the maximum benefit of any regulatory market exclusivity periods or other safeguards or extensions of proprietary status, which are or may be applicable in the Territory.

9.3 PHARMACOVIGILANCE. Promptly after the Effective Date, the respective pharmacovigilance groups of VIVUS and MEDA shall enter into a separate agreement covering adverse event information exchange relating to the Product. Such agreement will permit the inclusion of the respective pharmacovigilance groups of other third parties to whom VIVUS has

granted or will grant (during the term of this Agreement) a license under the VIVUS Technology to make, have made, use and sell the Product outside of the Territory.

9.4 REGULATORY COMMUNICATIONS. MEDA and VIVUS shall promptly inform each other of any material communications to or from governmental authorities or agencies relating to the use and sale of Product in the Territory, including but not limited to providing each other promptly with copies of any material written communications. With the exception of product recalls, which are to be handled pursuant to Article 11 below and of adverse event reporting, which is to be handled pursuant to Section 9.3 above, the parties shall consult with each other regarding any issues raised in such communications, and shall attempt in good faith to agree upon any action to be taken or response to be made in connection with such communications. If the parties are unable to agree within a reasonable time prior to when the action is to be taken or the response is to be made, the party responsible taking the action or making the response shall decide what action to take or response to make.

ARTICLE 10 - MARKETING AND SALES

10.1 MEDA DILIGENCE. MEDA shall use its diligent efforts to market and sell the Product in the Territory, consistent with the efforts that MEDA expends on pursuing commercialization of MEDA's own products of similar market potential. Without limiting the foregoing, MEDA agrees to devote a minimum amount of resources to the marketing and promotion of the Product in the Territory:

(a) During the first five (5) Sales Years, an amount that is equal to the greater of (i) (***) of the total cumulative Net Sales of the Product in the Territory for this five (5) year period, and (ii) (***).

(b) For all years following the fifth Sales Year through termination or expiration of this agreement an amount equal to or greater than (***) of the Net Sales for Products in the Territory for each such Sales Year.

10.2 MISSED TARGETS. In the event that the fee provided in Section 3.1(b) above does not become payable by the end of the third Sales Year, or that the fee provided in Section 3.1(c) above does not become payable by the end of the sixth Sales Year, then VIVUS may terminate this Agreement upon thirty (30) days written notice; provided that in either event, if MEDA's annual Net Sales are at least (***) of the amount specified in Section 3.1(b) or (c) in the Territory, as of the date of VIVUS' notice of termination, then MEDA may, at its option, avoid termination by paying to VIVUS an amount equal to the fee otherwise applicable under Section 3.1(b) or (c) (as the case may be). If MEDA makes such payment within thirty (30) days of the date of VIVUS' notice of termination, then such notice shall become null and void, and this Agreement shall remain in full force and effect.

ARTICLE 11 - PRODUCT RECALL

11.1 RECALL IN THE TERRITORY. In the event that, in the Territory, (i) any government authority issues a request, directive or order that the Product be recalled, or (ii) a court of competent jurisdiction orders such a recall, or (iii) MEDA and VIVUS jointly determine that the Product should be recalled, MEDA shall take all appropriate corrective actions. If such recall results from any cause or event attributable solely to VIVUS' negligence or fault, VIVUS shall

be responsible for direct expenses incurred as a result of the recall. If such recall results from any cause or event attributable solely to MEDA's negligence or fault, including, without limitation, mislabeling, mishandling, modification or promotion of the Product, MEDA shall be responsible for all of the direct expenses incurred as a result of the recall. If such recall results from any other cause or event (including attribution to the negligence or fault of both VIVUS and MEDA), the parties shall share equally the costs and expenses of the recall. For the purposes of this Agreement, the direct expenses of recall shall include, without limitation, the expenses of notification and return of the recalled Product and shall not include the cost of any re-launch by MEDA of the Product in the Territory subsequent to a recall. The Parties will cooperate and mutually agree upon the manner in which the recall is conducted; provided that in all cases VIVUS will have the first right to conduct the recall.

11.2 RECALL OUTSIDE THE TERRITORY. In the event that, outside the Territory, (i) any government authority issues a request, directive or order that the Product be recalled, or (ii) a court of competent jurisdiction orders such a recall, or (iii) VIVUS (or its Affiliates or Authorized Subdistributors, as the case may be) decides that the Products should be recalled, VIVUS shall notify MEDA no later than five (5) business days prior to the effective date of such recall, and shall provide MEDA with all information and assistance as MEDA may reasonably request in order to enable MEDA to determine any appropriate actions relating to the Product in the Territory arising from such recall.

ARTICLE 12 - REPRESENTATIONS AND WARRANTIES

Each party hereby represents and warrants for itself as follows:

12.1 ORGANIZED. It is a corporation duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification and failure to have such would prevent it from performing its obligations under this Agreement and has all requisite corporate power and authority to conduct its business as now being conducted, to own, lease and operate its properties and to execute, deliver and perform this Agreement.

12.2 DUE EXECUTION. The execution, delivery and performance by it of this Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of its stockholders, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it or any provision of its charter or by-laws, or (iii) result in a breach of or constitute a default under any material agreement, mortgage, lease, license (including any license from a third party which is necessary for the full performance of this Agreement), permit or other instrument or obligation to which it is a party or by which it or its properties may be bound or affected.

12.3 NO THIRD PARTY APPROVAL. No authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental authority or regulatory body (other than health regulatory authorities) is required for the due execution, delivery or performance by it of this Agreement, except as provided herein.

12.4 BINDING AGREEMENT. This Agreement is a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms and conditions. It is not under any obligation to any person, contractual or otherwise, that is in conflict with the terms of this Agreement.

12.5 FULL DISCLOSURE. Each Party has disclosed to the other in good faith all material information relevant to the subject matter of this Agreement and to such party's ability to observe and perform its obligations hereunder. Such disclosure includes information contained in publicly available filings with the Securities & Exchange Commission.

ARTICLE 13 - COVENANTS, REPRESENTATIONS AND WARRANTIES OF VIVUS

VIVUS covenants, represents and warrants to MEDA that:

13.1 AGREEMENTS. The only agreements in existence as of the Effective Date under which VIVUS has acquired rights to VIVUS Patents pertaining to the Product are listed in Exhibit 13.1 attached to this Agreement ("Third Party Licenses"). All rights with respect to VIVUS Patents referenced in Exhibit 13.1 as patents for which "Place" or "Place et al" are listed as inventor are either included in the license from ALZA or have otherwise been transferred to VIVUS and are owned by VIVUS. The "Voss Patents," (collectively, the VIVUS Patents, rights and technology granted to (i) Ortho Pharmaceutical Corporation by Gene A. Voss and Alan C. Eichler dated January 4, 1991, and assigned to VIVUS by Assignment from Ortho Pharmaceutical Corporation dated January 9, 1992, and (ii) VIVUS by Gene A. Voss and Alan C. Eichler dated December 28, 1992) are not necessary to use, manufacture, have manufactured, sell, or have sold the Product in the Territory, and MEDA's use, manufacture, have manufactured, sell and have sold Product in the Territory will not infringe the Voss Patents. To the best of knowledge of VIVUS as of the Effective Date, and other than as set forth above with respect to the Voss Patents, the VIVUS Patents and Third Party Licenses are the only patents, know-how and technology necessary to make, have made, use and sell the Product.

13.2 VIVUS OBLIGATIONS. VIVUS covenants, represents and warrants to MEDA with respect to the Third Party Licenses that (i) VIVUS and its Affiliates will fully comply with all of VIVUS' covenants and obligations hereunder, to the extent material to MEDA's rights under this Agreement; (ii) the Third Party Licenses are in full force and effect, not having been amended, other than as set forth in Exhibit 13.1 attached to this Agreement; (iii) VIVUS and its Affiliates have received no oral or written notification of any alleged breach or default by VIVUS and/or its Affiliates; (iv) VIVUS and its Affiliates are not aware of any breach or default thereof by any third party; (v) VIVUS has the full right and authority to sublicense VIVUS and its Affiliates' rights to MEDA; and (vi) VIVUS and its Affiliates will not terminate, or otherwise amend the Third Party Licenses, in any manner which would materially adversely affect MEDA's rights under this Agreement.

13.3 SPECIFICATIONS. All quantities of the Product will comply with, and VIVUS shall only release Product for shipment to MEDA which comply with, (i) all specifications of the Product in the Marketing Authorization applications approved by the regulatory authorities in the respective countries of the Territory; (ii) all Specifications; and (iii) all applicable legal and regulatory requirements relating to the manufacture of the Product for sale in the Territory, including but not limited to Good Manufacturing Practices.

13.4 QUALITY OF STARTING MATERIALS AND PACKING MATERIALS. All starting materials and packaging materials used in the manufacture of the Product shall comply with the applicable Specifications and the Manufacturing Standards (as defined below).

13.5 CURRENT GOOD MANUFACTURING PRACTICES ("CGMP") /REGULATORY REQUIREMENTS. All manufacturing and quality control methods utilized by VIVUS in the manufacture of the Product shall be carried out according to the procedures and requirements set forth in the then-current version of the VIVUS Site Master File for the Medicines Control Agency, with respect to the Product, and in accordance with all applicable rules governing medicinal products and/or medical devices in the Good Manufacturing Practice for medicinal products and/or medical devices and regulations issued by the health regulatory authorities in the countries of the Territory for which the Product is to be sold as in effect at the time and the applicable standards in effect at the time (collectively, the "Manufacturing Standards").

13.6 DOCUMENTATION. VIVUS shall keep and maintain, for the approved shelf life of the Product plus two (2) years, (i) reference samples and quality control records for each batch of starting materials and packaging material used in the manufacture of the Product, and (ii) manufacturing and quality control records for each batch of the Product. Each shipment of the Product shall be accompanied by the following written documentation: (i) the date of manufacture, (ii) delivered amount of Product units, and (iii) a certificate of analysis pursuant to Article 6.

13.7 MEDA RIGHT OF INSPECTION. Following MEDA's initial facilities and records inspection as provided in Section 6.2(b) above, VIVUS shall, upon written request of MEDA, permit MEDA's authorized representative approved by VIVUS to inspect during normal business hours the manufacturing facilities where the Product is produced for sale in the Territory. The cost of such inspections shall be borne by MEDA and may occur not more than once each year following the initial inspection.

13.8 COMPLIANCE WITH LAWS AND REGULATIONS. All Product delivered to MEDA pursuant to this Agreement will, to the best of VIVUS' knowledge, at the time of such delivery not be an article which may not, under the provisions of such applicable laws and regulations, be introduced in commerce.

13.9 SHELF LIFE. Each lot of the Product delivered pursuant to this Agreement will continue until the applicable expiration date, to conform to the Specifications. At the time of delivery to MEDA, each lot of the Product delivered pursuant to this Agreement shall be no more than four (4) months past its manufacturing date.

13.10 PATENT VALIDITY. As of the Effective Date, VIVUS has no knowledge or information that would materially impact the validity and/or enforceability of the VIVUS Patents and the VIVUS Patents have not been, and will not be, knowingly obtained through any activity, omission or representation that would limit or destroy the validity of the VIVUS Patents.

13.11 LEGAL ACTIONS. There are no actions pending, or, to the best of VIVUS' knowledge as of the Effective Date, threatened before any court or other tribunal or body relating to the VIVUS Patents.

13.12 COMPLETE PATENTS/ OWNERSHIP. Exhibit 1.5 lists all patents issued and patent applications pertaining to Product in existence on or before the Effective Date and, except for the patents licensed to VIVUS, VIVUS is named in the VIVUS Patents and all inventors named therein have assigned, or are under obligation to assign, to VIVUS all of their right, title and interest in the inventions claimed. None of the VIVUS Patents as of the Effective Date has lapsed by reason of abandonment or nonpayment of annuities.

13.13 NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY STATED IN THIS ARTICLE 13, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 14 - FORCE MAJEURE

Upon occurrence of an event of force majeure, the party affected shall promptly notify the other party in writing, setting forth the details of the occurrence, its expected duration and how that party's performance of its obligations under this Agreement is affected. The affected party shall resume the performance of its obligations as soon as practicable after the force majeure event ceases. If a party's performance of any obligation under this Agreement is significantly hindered or is prevented by an event of force majeure for more than six (6) months, whether or not consecutive, in any twelve (12) month period, then the other party may terminate this Agreement upon thirty (30) days' notice.

ARTICLE 15 - ALLOCATION OF SUPPLY

15.1 ALLOCATION OF SUPPLY. In the event of VIVUS' inability for any reason to supply the Product ordered by MEDA, VIVUS shall allocate its available supply between MEDA, VIVUS and VIVUS' distributors outside the Territory on a fair and equitable basis. If VIVUS is unable to supply eighty percent (80%) of the Product ordered by MEDA and accepted by VIVUS pursuant to Sections 5.3, 5.5 and 5.6 of this Agreement for any two (2) consecutive calendar quarters, MEDA may at its sole option: (i) forgo the quantities ordered which VIVUS is unable to supply; or (ii) take delivery within a reasonable period of time after VIVUS becomes able to supply the quantities ordered.

15.2 OTHER REMEDIES. In the event that VIVUS fails to supply to MEDA quantities of Product that VIVUS is otherwise obligated to supply under Articles 5 and 15, and such failure is the result of VIVUS' gross negligence, the remedies under Section 15.1 shall not be exclusive and MEDA shall be entitled to damages and/or other remedies legally available. EXCEPT FOR FAILURES CAUSED BY VIVUS' GROSS NEGLIGENCE, ARTICLE 15.1 ABOVE IS MEDA'S SOLE AND EXCLUSIVE REMEDY FOR VIVUS' FAILURE TO SUPPLY QUANTITIES OF PRODUCT PURSUANT TO ARTICLES 5 AND 15.

ARTICLE 16 - TERM AND TERMINATION

16.1 TERM. The term of this Agreement shall commence on the Effective Date and shall, unless earlier terminated pursuant to this Article 16 or other express termination provisions in this Agreement, expire on a country-by-country basis upon the later to occur of (i) the

expiration of the last Valid Claim that would be infringed by the manufacture, sale or use of the Product in such country, and (ii) the tenth (10th) anniversary of the First Commercial Sale by MEDA of the Product.

16.2 BREACH. Either party may, in addition to any other remedies available to it by law or in equity, terminate this Agreement, upon sixty (60) days' written notice in the event that the other party commits a material breach of this Agreement and fails to cure such breach within sixty (60) days of notice of the breach. The party giving notice of breach may withhold any payments otherwise due and owing to the breaching party, to be used as a setoff against any loss or damage arising from the breach, and said withholding shall not constitute breach of this Agreement. Any amounts so withheld shall be deposited by the withholding party into an interest-bearing escrow account. If the breaching party cures the breach within the sixty (60) day cure period and this Agreement is not terminated, then the withholding party shall promptly pay to the other party the withheld amount, less that portion of such amount which was applied as a setoff. Notwithstanding the foregoing provision, if MEDA gives notice of breach to VIVUS, MEDA may withhold other payments pursuant to this Section 16.2 but shall not be entitled to withhold payment for Product actually ordered by and delivered to MEDA pursuant to Article 5 of this Agreement.

16.3 INSOLVENCY OR BANKRUPTCY. Either party may, in addition to any other remedies available to it by law or in equity, terminate this Agreement upon thirty (30) days' written notice to the other party in the event the other party shall have become insolvent or bankrupt, or shall have made an assignment for the benefit of its creditors, or there shall have been appointed a trustee or receiver of the other party or for all or a substantial part of its property, or any case or proceeding shall have been commenced or other action taken by or against the other party in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts or any relief under any bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereinafter in effect.

16.4 SERIOUS EVENTS. Should there occur serious and unexpected events which, from a reasonable pharmaceutical company's point of view, would make it impossible or impracticable to pursue the commercialization of the Product, including but not limited to a serious adverse event associated with the Product, either party may, with full consultation with the other party, terminate this Agreement upon thirty (30) days' written notice. Termination by a party in good faith pursuant to this Section 16.4 shall not, in itself, constitute a basis for any claim for compensation or other remedies by the other party.

16.5 CHANGE OF CONTROL OR OWNERSHIP. Either party may terminate this Agreement upon thirty (30) days' written notice if the ownership or control of at least fifty percent (50%) of the assets or voting securities of the other party are transferred and, in the non-changing party's reasonable judgment, the other party's new owner or controlling entity is a competitor of the non-changing party in the field of erectile dysfunction.

16.6 SURVIVAL OF LIABILITY. Except as expressly provided otherwise in this Agreement, termination, expiration, cancellation or abandonment of this Agreement through any means and for any reason shall not relieve the parties of any obligation accruing prior thereto and shall be without prejudice to the rights and remedies of either party with respect to any antecedent breach of any provision of this Agreement.

16.7 REMAINING INVENTORY. MEDA shall maintain a normal level of inventory of the Product prior to expiration or termination of this Agreement, and shall have a period of four (4) months from the date of termination of this Agreement during which it may sell its remaining inventory of Product, provided it sells such inventory in a manner substantially similar to the manner in which it was selling Product prior to the termination.

16.8 LICENSES. Upon termination or expiration, all rights to use and sell Product in the Territory shall revert to VIVUS as of the effective date of such termination, and MEDA shall ensure that all registrations and Regulatory Approvals for the Product in the Territory shall be promptly assigned to VIVUS.

16.9 SURVIVAL. Upon expiration or termination of this Agreement, all rights and obligations of the parties under this Agreement shall terminate except those rights and obligations described in Articles 1, 16, 17, 18 and 19 and Sections 4.8, 11.1, and 13.6.

ARTICLE 17 - INDEMNITY

17.1 BY VIVUS. In addition to indemnification expressly provided elsewhere in this Agreement, VIVUS shall indemnify, defend and hold MEDA, its directors, employees, agents and representatives (including but not limited to MEDA's Affiliates) harmless from and against all claims, causes of action, settlement costs (including but not limited to reasonable attorney's fees and expenses) losses or liabilities of any kind which:

(a) arise from or are attributable to any negligent act or omission or willful misconduct on the part of VIVUS or its Affiliates, or its or their directors, employees, agents or representatives relating to any of VIVUS' obligations under this Agreement, including but not limited to any breach of a representation or warranty;

(b) arise from or are attributable to the manufacture of the Product and which in either case are not otherwise attributable to any negligent act or omission or willful misconduct on the part of MEDA, its directors, employees, agents or representatives (including, but not limited to, MEDA's Affiliates);

(c) arise from or are attributable to any act or omission of VIVUS or Abbott International or, respectively, its Affiliates, or its or their directors, employees, agents or representatives relating to the Abbott International Agreement, or any act or omission of MEDA or its Affiliates, or its or their directors, employees, agents or representatives which allegedly causes harm or damage or loss of rights to Abbott International or its Affiliates, or its or their directors, employees, agents, shareholders or representatives in connection with the Abbott International Agreement.

17.2 BY MEDA. In addition to indemnification expressly provided elsewhere in this Agreement, MEDA shall indemnify, defend and hold VIVUS, its directors, employees, agents and representatives harmless from and against all claims, causes of action, settlement costs (including but not limited to reasonable attorney's fees and expenses) losses or liabilities of any kind which:

(a) arise from or are attributable to any negligent act or omission or willful misconduct on the part of MEDA, its directors, employees, agents or representatives relating to any of its obligations under this Agreement; or

(b) arise from or are attributable to the storage, use, sale, marketing and promotion of the Product by MEDA in the Territory and which in either case are not otherwise attributable the manufacture of a Product and which in either case are not otherwise attributable to any negligent act or omission or willful misconduct on the part of VIVUS, its directors, employees, agents or representatives.

17.3 CONDITION OF INDEMNIFICATION. If either party expects to seek indemnification under this Section, it shall promptly give notice pursuant to Section 19.5 below to the indemnifying party of the basis for such claim of indemnification. If indemnification is sought as a result of any third party claim or suit, such notice to the indemnifying party shall be within fifteen (15) days after receipt by the other party of such claim or suit; provided, however, that the failure to give notice within such time period shall not relieve the indemnifying party of its obligation to indemnify unless it shall be materially prejudiced by the failure. The indemnifying party shall have full control over the defense of such claim or suit; provided that the indemnified party shall have the right to participate, at its own expense, with counsel of its own choosing, in such defense. The indemnified party shall fully cooperate with the indemnifying party in the defense of all such claims or suits. The indemnifying party shall make no offer of settlement, settlement or compromise without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld) unless such settlement fully releases the indemnified party without any liability, loss, cost or obligation.

17.4 TERM OF INDEMNIFICATION. The obligations of the parties set forth in this Article 17 shall apply during the term of this Agreement and for a period of five (5) years after the date of termination in whole or expiration of this Agreement or any extension thereof.

ARTICLE 18 - CONFIDENTIALITY AND DISCLOSURE

18.1 CONFIDENTIALITY. Neither party shall use or disclose any Confidential Information received by it pursuant to this Agreement without the prior written consent of the other. This obligation shall continue for a period of seven (7) years after expiration or termination of this Agreement.

18.2 DISCLOSURE. Nothing contained in this Article shall be construed to restrict the parties from disclosing Confidential Information as required: (i) for regulatory, tax, securities or customs reasons, (ii) by court or other government order, (iii) for confidential audit purposes, or, (iv) from using such Confidential Information as is reasonably necessary to perform acts permitted by this Agreement, including the registration, marketing, sale or use of the Product; provided that the disclosing party shall, in the event of disclosure under Sections (i) or (ii) above, provide the other party with not less than five (5) business days notice prior to disclosure (except where the disclosing party itself receives less than five (5) business days prior notice, in which case the disclosing party shall immediately notify the other party), and the disclosing party shall fully cooperate with the other party to the extent permitted by law, so that the other party may make any objections and/or secure any protective provisions it deems reasonably necessary.

ARTICLE 19 - MISCELLANEOUS

19.1 ASSIGNMENT. This Agreement may not be assigned or otherwise transferred, nor, except as expressly provided hereunder, may any right or obligation hereunder be assigned or transferred by either party without the prior written consent of the other party; provided, however, that either VIVUS or MEDA may, without such consent, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its assets, its merger or consolidation or any similar transaction, and that MEDA may, without such consent, assign this Agreement and its rights and obligations hereunder to one or more of its Affiliates. Any permitted assignee shall assume all obligations of its assignor under this Agreement.

19.2 AUTHORIZED DISTRIBUTORS. In the event that MEDA grants sublicenses under Article 2, MEDA shall ensure that such Authorized Subdistributors shall abide by all the obligations of MEDA contained in this Agreement to the extent that such obligations are relevant to and applicable to such Authorized Subdistributors.

19.3 DAMAGES. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED UNDER ANY THEORY OF LIABILITY AND WHETHER IN CONTRACT, OR TORT (INCLUDING NEGLIGENCE). THE FOREGIONG LIMITATIONS SHALL APPLY EVEN IF THE PARTY AGAINST WHOM DAMAGES ARE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

19.4 SEVERABILITY. Each party intends not to violate any public policy, statutory or common law, rule, regulation, treaty or decision of any government agency or executive body thereof of any country or community or association of countries. If any term or provision of this Agreement is held to be invalid, illegal or unenforceable by a court or other governmental authority of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, which shall remain in full force and effect. The holding of a term or provision to be invalid, illegal or unenforceable in a jurisdiction shall not have any effect on the application of the term or provision in any other jurisdiction.

19.5 NOTICES. Any consent or notice required or permitted to be given or made under this Agreement by one party to the other shall be in writing, delivered personally or by facsimile (and promptly confirmed by personal delivery, first-class mail or courier), first-class mail or courier, postage prepaid (where applicable), addressed to the other party as shown below or to such other address as the addressee shall have last furnished in writing to the addresser and (except as otherwise provided in this Agreement) shall be effective upon receipt by the addressee.

If to VIVUS: VIVUS International Limited
c/o VIVUS, Inc.
1172 Castro Street
Mountain View, CA 94040
Attention: President
Fax: (650) 934-5356

cc: Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
Attention: Kenneth A. Clark
Fax: (650) 493-6811

If to MEDA: Meda AB (publ)
Box 3051
S-183 03 Taby
Sweden
Attention: President
Fax: +46 8-630 19 50

19.6 APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws provision. Application of the United Nations Convention On Contracts For The International Sale Of Goods is hereby excluded.

19.7 ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. All express or implied agreements and understandings, either oral or written, heretofore made are superseded by this Agreement. Except as expressly provided elsewhere in this Agreement, this Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both parties hereto.

19.8 HEADINGS. The captions to the Sections hereof are not a part of this Agreement, but are merely guides or labels to assist in locating and reading the Sections hereof.

19.9 INDEPENDENT CONTRACTORS. It is expressly understood and agreed that VIVUS and MEDA are independent contractors and that the relationship between the two parties shall not constitute a partnership, joint venture or agency. Neither VIVUS nor MEDA shall have the authority to make any statement, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior written consent of the party to do so.

19.10 WAIVER. The waiver by either party of any right hereunder or of a failure to perform or breach by the other party shall not be deemed a waiver of any other right hereunder or of any other failure or breach whether of a similar nature or otherwise.

19.11 ALTERNATIVE DISPUTE RESOLUTION. The parties agree that any dispute that arises in connection with this Agreement, which cannot be amicably resolved by the parties, shall be

resolved by Alternative Dispute Resolution ("ADR") pursuant to the procedure set forth in Exhibit 19.11 attached hereto.

19.12 PUBLIC ANNOUNCEMENTS. Except as required by law, in which case the provisions of Section 18.2 shall apply, neither party shall make any public announcement, statement, response to questions or other disclosure concerning this Agreement nor the terms nor the subject matter hereof without the prior written consent of the other party.

19.13 COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THEREFORE, the parties hereto have executed this Supply Agreement as of the Effective Date.

MEDA AB	VIVUS INTERNATIONAL, LTD.
By: /s/ ANDERS LONNER	By: /s/ TERRY NIDA
Title: Chief Executive Officer	Title: Vice President
Date: September 3, 2002	Date: September 3, 2002

GUARANTEE OF PERFORMANCE

In order to induce MEDA to enter into the foregoing Agreement, VIVUS, INC., a corporation organized under the laws of the state of Delaware and having a principal place of business at 1172 Castro Street, Mountain View, CA 94040, and being the sole shareholder of VIVUS, hereby irrevocably and unconditionally guarantees any and all obligations (including, without limitation, any payment obligations) of VIVUS to MEDA, whether or not existing or hereinafter arising pursuant to the foregoing Agreement (including, without limitation, all agreements, grants, Undertakings, licenses and sublicenses now or hereafter entered into pursuant to the Agreement (collectively, the "VIVUS Undertakings") or as such VIVUS Undertakings may be hereinafter amended or modified (with or without notice to or consent of VIVUS INC.).

VIVUS INC. further agrees that VIVUS Undertakings may be extended, renewed, modified, amended or compromised in any way, with or without notice to or consent of VIVUS INC.

Notice of acceptance of the Guaranty and of the incurring of any obligation or any default of the VIVUS Undertakings, as well as demand and protest with respect to such VIVUS Undertakings and as well as any right to challenge or dispute the validity and enforceability of this Guarantee, are hereby waived by VIVUS INC.

This Guaranty shall be an irrevocable, continuing, absolute and unconditional guaranty of payment and performance by VIVUS pursuant to the VIVUS Undertakings.

VIVUS INC. represents, covenants and warrants to MEDA as follows, upon which MEDA relies in acceptance of this Guaranty: that (i) VIVUS INC. is the sole shareholder of all of issued and outstanding capital stock of VIVUS, (ii) VIVUS INC. will benefit from the Agreement between VIVUS and MEDA, (iii) VIVUS INC. has received good and valuable consideration for its execution, delivery and performance of this Guaranty, and (iv) VIVUS INC. has executed and delivered this Guaranty to MEDA.

Notice to VIVUS INC. shall be given pursuant to the provisions of Section 19.5 of the Agreement.

This Guaranty shall be governed by and construed in accordance with the laws of the State of California and shall take effect as an instrument under seal.

In the event of any dispute under this Guaranty, as to construction or performance of this Guaranty or any of its provisions or otherwise, such dispute shall be settled in accordance with

Section 19.11 above, which is incorporated herein by reference, substituting "VIVUS INC." for "VIVUS" in such Section for purposes of this Guaranty. If an action to enforce this Guaranty is undertaken, the party prevailing in such enforcement action shall be entitled to recover its reasonable out-of-pocket expenses (including fees of outside counsel) with respect to such action.

VIVUS INC. shall not assign or transfer this Guaranty without the prior written consent of MEDA.

THEREFORE, VIVUS INC. executes this Guaranty under seal as of this 3rd day of September 2002.

VIVUS, INC.

By: /s/ TERRY NIDA

Vice President

EXHIBIT 1.11

SPECIFICATIONS

MUSE(R) RELEASE AND SHELF-LIFE (REGULATORY) SPECIFICATION

(***)

EXHIBIT 1.18

(***)

PATENTS

U.S. PATENTS

REF. NO.	TITLE/INVENTORS	STATUS SERIAL AND PATENT NOS.

(***)

FOREIGN PATENTS AND APPLICATIONS

REF. NO.	TITLE/INVENTORS	COUNTRY; FILING/PUBLISHING INFO

EXHIBIT 4

PRICES

	VIVUS PRODUCES UP TO *** OF PRODUCT*	VIVUS PRODUCES *** UP TO *** OF PRODUCT*	VIVUS PRODUCES *** UP TO *** OF PRODUCT*	VIVUS PRODUCES *** UP TO *** OF PRODUCT*	VIVUS PRODUCES *** OF PRODUCT*
Sample Price per unit of Product	***	***	***	***	***
Minimum Supply Price per unit of Product	***	***	***	***	***

* Total VIVUS worldwide unit production of finished Product in a calendar year (not only VIVUS finished Product produced for MEDA)

EXHIBIT 13.1

THIRD PARTY LICENSES

AMENDMENTS TO THIRD PARTY LICENSES

1. Assignment Agreement between VIVUS, Inc. and ALZA Corporation dated December 31, 1993.

2. Assignment between Ortho Pharmaceutical Corporation ("Ortho") and VIVUS, Inc. dated June 9, 1992 (assigning to VIVUS Ortho's rights under three license agreements between Ortho and:

(a) AMSU Ltd. dated June 23, 1989;

(b) Kjell Holmquist AB dated June 26, 1989; and

(c) Gene A. Voss and Allen C. Eichler dated January 4, 1991.

3. License Agreement between VIVUS, Inc. and Gene A. Voss and Allen C. Eichler, dated December 28, 1992 (amending and restating VIVUS' rights under the license agreement between Ortho and Voss and Eichler assigned to VIVUS from Ortho);

4. Amendment between VIVUS, Inc. and AMSU, Ltd. dated April 22, 1992 (amending the license agreement between Ortho and AMSU assigned to VIVUS from Ortho);

5. Amendment between VIVUS, Inc. and AMSU, Ltd. dated July 3, 1992 (amending the license agreement between Ortho and AMSU assigned to VIVUS from Ortho);

6. Amendment between VIVUS, Inc. and Kjell Holmquist AB dated April 22, 1992 (amending the license agreement between Ortho and AMSU assigned to VIVUS from Ortho); and

7. Amendment between VIVUS, Inc. and Kjell Holmquist AB dated July 3, 1992 (amending the license agreement between Ortho and AMSU assigned to VIVUS from Ortho).

EXHIBIT 19.11

ALTERNATIVE DISPUTE RESOLUTION

The parties recognize that bona fide disputes as to certain matters may arise from time to time during the term of this Agreement that relate to either party's rights and/or obligations. To have such a dispute resolved by this Alternative Dispute Resolution ("ADR") provision, a party first must send written notice of the dispute to the other party for attempted resolution by good faith negotiations between their respective presidents (or their designees) of the affected subsidiaries, divisions, or business units within twenty-eight (28) days after such notice is received (all references to "days" in this ADR provision are to calendar days).

If the matter has not been resolved within twenty-eight (28) days of the notice of dispute, or if the parties fail to meet within such twenty-eight (28) days, either party may initiate an ADR proceeding as provided herein. The parties shall have the right to be represented by counsel in such a proceeding.

1. To begin an ADR proceeding, a party shall provide written notice to the other party of the issues to be resolved by ADR. Within fourteen (14) days after its receipt of such notice, the other party may, by written notice to the party initiating the ADR, add additional issues to be resolved within the same ADR.

2. Within twenty-one (21) days following receipt of the original ADR notice, the parties shall select a mutually acceptable neutral to preside in the resolution of any disputes in this ADR proceeding. If the parties are unable to agree on a mutually acceptable neutral within such period, either party may request the President of the CPR Institute for Dispute Resolution ("CPR"), 366 Madison Avenue, 14th Floor, New York, New York 10017, to select a neutral pursuant to the following procedures:

(a) The CPR shall submit to the parties a list of not less than five (5) candidates within fourteen (14) days after receipt of the request, along with Curriculum Vitae for each candidate. No candidate shall be an employee, director, or shareholder of either party or any of their subsidiaries or affiliates.

(b) Such list shall include a statement of disclosure by each candidate of any circumstances likely to affect his or her impartiality.

(c) Each party shall number the candidates in order of preference (with the number one (1) signifying the greatest preference) and shall deliver the list to the CPR within seven (7) days following receipt of the list of candidates. If a party believes a conflict of interest exists regarding any of the candidates, that party shall provide a written explanation of the conflict to the CPR along with its list showing its order of preference for the candidates. Any party failing to return a list of preferences on time shall be deemed to have no order of preference.

(d) If the parties collectively have identified fewer than three (3) candidates deemed to have conflicts, the CPR immediately shall designate as the neutral the candidate for whom the parties collectively have indicated the greatest preference. If a tie should result between two candidates, the CPR may designate either candidate. If the parties collectively have identified three (3) or more candidates deemed to have conflicts, the CPR shall review the explanations regarding conflicts and, in its sole discretion, may either (i) immediately designate as the neutral the candidate for whom the parties collectively have indicated the greatest preference, or (ii) issue a new list of not less than five (5) candidates, in which case the procedures set forth in subparagraphs 2(a) - 2(d) shall be repeated.

3. No earlier than twenty-eight (28) days or later than fifty-six (56) days after selection, the neutral shall hold a hearing to resolve each of the issues identified by the parties. The ADR proceeding shall take place at a location agreed upon by the parties. If the parties cannot agree, the neutral shall designate a location other than the principal place of business of either party or any of their subsidiaries or affiliates.

4. At least seven (7) days prior to the hearing, each party shall submit the following to the other party and the neutral:

(a) a copy of all exhibits on which such party intends to rely in any oral or written presentation to the neutral;

(b) a list of any witnesses such party intends to call at the hearing, and a short summary of the anticipated testimony of each witness;

(c) a proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue. The proposed rulings and remedies shall not contain any recitation of the facts or any legal arguments and shall not exceed one (1) page per issue.

(d) a brief in support of such party's proposed rulings and remedies, provided that the brief shall not exceed twenty (20) pages. This page limitation shall apply regardless of the number of issues raised in the ADR proceeding.

Except as expressly set forth in subparagraphs 4(a) - 4(d), no discovery shall be required or permitted by any means, including depositions, interrogatories, requests for admissions, or production of documents.

5. The hearing shall be conducted on two (2) consecutive days and shall be governed by the following rules:

(a) Each party shall be entitled to five (5) hours of hearing time to present its case. The neutral shall determine whether each party has had the five (5) hours to which it is entitled.

(b) Each party shall be entitled, but not required, to make an opening statement, to present regular and rebuttal testimony, documents or other evidence, to cross-examine witnesses, and to make a closing argument. Cross-examination of witnesses shall occur immediately after their direct testimony, and cross-examination time shall be charged against the party conducting the cross-examination.

(c) The party initiating the ADR shall begin the hearing and, if it chooses to make an opening statement, shall address not only issues it raised but also any issues raised by the responding party. The responding party, if it chooses to make an opening statement, also shall address all issues raised in the ADR. Thereafter, the presentation of regular and rebuttal testimony and documents, other evidence, and closing arguments shall proceed in the same sequence.

(d) Except when testifying, witnesses shall be excluded from the hearing until closing arguments.

(e) Settlement negotiations, including any statements made therein, shall not be admissible under any circumstances. Affidavits prepared for purposes of the ADR hearing also shall not be admissible. As to all other matters, the neutral shall have sole discretion regarding the admissibility of any evidence.

6. Within seven (7) days following completion of the hearing, each party may submit to the other party and the neutral a post-hearing brief in support of its proposed rulings and remedies, provided that such brief shall not contain or discuss any new evidence and shall not exceed ten (10) pages. This page limitation shall apply regardless of the number of issues raised in the ADR proceeding.

7. The neutral shall rule on each disputed issue within fourteen (14) days following completion of the hearing. Such ruling shall adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue but may adopt one party's proposed rulings and remedies on some issues and the other party's proposed rulings and remedies on other issues. The neutral shall not issue any written opinion or otherwise explain the basis of the ruling.

8. The neutral shall be paid a reasonable fee plus expenses. These fees and expenses, along with the reasonable legal fees and expenses of the prevailing party (including all expert witness fees and expenses), the fees and expenses of a court reporter, and any expenses for a hearing room, shall be paid as follows:

(a) If the neutral rules in favor of one party on all disputed issues in the ADR, the losing party shall pay 100% of such fees and expenses.

(b) If the neutral rules in favor of one party on some issues and the other party on other issues, the neutral shall issue with the rulings a written determination as to how such fees and expenses shall be allocated between the parties. The neutral shall allocate fees and expenses in a way that bears a reasonable relationship to the outcome of the

ADR, with the party prevailing on more issues, or on issues of greater value or gravity, recovering a relatively larger share of its legal fees and expenses.

9. The rulings of the neutral and the allocation of fees and expenses shall be binding, non-reviewable, and non-appealable, and may be entered as a final judgment in any court having jurisdiction.

10. Except as provided in paragraph 9 or as required by law, the existence of the dispute, any settlement negotiations, the ADR hearing, any submissions (including exhibits, testimony, proposed rulings, and briefs), and the rulings shall be deemed Confidential Information. The neutral shall have the authority to impose sanctions for unauthorized disclosure of Confidential Information.

EXHIBIT 99.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Leland F. Wilson, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. I have reviewed this Quarterly Report of VIVUS, Inc. on Form 10-Q for the quarterly period ended September 30, 2002;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

   c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors:

   a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were any significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 8, 2002

By: /s/ LELAND F. WILSON

Name: Leland F. Wilson
Title: President and Chief Executive Officer

I, Richard Walliser, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. I have reviewed this Quarterly Report of VIVUS, Inc. on Form 10-Q for the quarterly period ended September 30, 2002;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

   c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors:

   a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were any significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 8, 2002

By: /s/ RICHARD WALLISER

Name: Richard Walliser
Title: Vice President and Chief Financial Officer