UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)

April 3, 2008

VIVUS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-33389**	**94-3136179**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1172 CASTRO STREET
MOUNTAIN VIEW, CA 94040
(Address of principal executive offices, including zip code)

(650) 934-5200
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On April 3, 2008, VIVUS, Inc., or the Company, entered into several agreements with Deerfield Management Company, L.P., or Deerfield, a healthcare investment fund, and its affiliates, Deerfield Private Design Fund L.P. and Deerfield Private Design International, L.P. (collectively, the Deerfield Affiliates). Under the agreements Deerfield and its affiliates have agreed to provide $30 million in funding to the Company. The $30 million in funding consists of $20 million from a Funding and Royalty Agreement (referred to as the FARA), and $10 million from the sale of the Company's common stock. Under the FARA, the Deerfield Affiliates will make six payments of approximately $3.3 million, beginning at the closing and quarterly thereafter. The Company has agreed to pay royalties on the current net sales of MUSE, a product marketed by the Company and once approved, future sales of avanafil, an investigational product candidate, to a newly-incorporated subsidiary of Deerfield. The term of the FARA is ten years. Under a securities purchase agreement, the Deerfield Affiliates have agreed to purchase 1,626,017 shares of the Company's common stock for an aggregate purchase price of $10 million. The Company has agreed to pay a $500,000 fee to the Deerfield Affiliates and to reimburse certain expenses incurred in this transaction up to $250,000. The agreements also provide the Company with an option to purchase, and the Deerfield Affiliates with an option to compel the Company to purchase, the Deerfield subsidiary holding the royalty rights. If either party exercises its option, any further royalty payments would be effectively terminated. In exchange for the option right, the Company will pay $2 million to the Deerfield Affiliates. Collectively, these transactions are referred to as the Deerfield Transactions.

Each of the material agreements relating to the Deerfield Transactions is summarized in greater detail below.

Funding and Royalty Agreement

In connection with the Deerfield Transactions, Deerfield incorporated a special purpose entity, Deerfield ED Corporation, or ED. ED was incorporated to hold the royalty rights acquired from the Company by Deerfield. The acquisition of the royalty rights is governed by the Funding and Royalty Agreement, dated April 3, 2008, by and between ED and the Company, or the FARA. A copy of the FARA is attached as Exhibit 10.2 to this Current Report on Form 8-K and is hereby incorporated by reference.

Pursuant to the FARA, the Company granted a right to a percentage royalty on the current net sales of MUSE and any future net sales on the Company's investigational product candidate avanafil, or the Royalty Products for 10 years. Payments in respect of the royalty rights, or Royalty Payments, are required to be made no later than 60 days following the end of each quarter, or, with respect to the fourth fiscal quarter, no later than the date fourth quarter earnings are publicly announced. In exchange for the royalty rights, ED shall pay the Company an aggregate of $20 million in six payments to the Company. Such payments are referred to as the Funding Payments. The Funding Payments are to be made quarterly over 16 months, beginning on the fifteenth business day following the execution of the FARA.

Pursuant to the FARA, ED may defer a Funding Payment for up to 10 days if the Company does not pay any Royalty Payment when due. If the Company does not make such Royalty Payment within the 10-day deferral period, ED shall pay the Funding Payment less an estimate of the unpaid Royalty Payment equal to a percentage of the net sales of Royalty Products during the corresponding quarter of the prior year. If a Funding Payment is not made by ED when due, the Company may decrease the Royalty Payment on a pro rata basis in proportion to the number of days such Funding Payment is overdue.

The FARA is subject to customary closing conditions and contains customary representations, warranties and covenants for a transaction of this type, including covenants requiring the Company to use commercially reasonable efforts to preserve its intellectual property, manufacture, promote and sell MUSE, and develop avanafil. Pursuant to the FARA, to satisfy the funding obligation to the Company, ED represents that it has entered into subscription agreements with the Deerfield Affiliates, whereby ED will receive an amount in exchange for issuing shares of its common stock to the Deerfield Affiliates.

Subscription Agreements

In connection with the Deerfield Transactions, ED has entered into two subscription agreements, one with each of the Deerfield Affiliates, collectively referred to as the Subscription Agreements. Pursuant to the Subscription Agreements, the Deerfield Affiliates will pay ED $20 million in six payments. Such payments are referred to as the Subscription Payments. The Subscription Payments are to be made on the same 16-month quarterly schedule as the Funding Payments. In return for the Subscription Payments, ED will issue a total of 20,000 shares of its common stock to the Deerfield Affiliates in six equal installments.

The Company is not a party to the Subscription Agreements; however, the Subscription Agreements contain provisions whereby all parties to them acknowledge that ED intends to use the Subscription Payments to make Funding Payments to the Company and that so long as the Company is not in breach of the FARA, the Company is a third party beneficiary of the obligations of the Deerfield Affiliates with full rights of enforcement as if the Company were a party to the Subscription Agreements. Copies of the Subscription Agreements are attached as Exhibits 10.3 and 10.4 to this Current Report on Form 8-K and are hereby incorporated by reference.

Option and Put Agreement

In connection with the Deerfield Transactions, the Company, the Deerfield Affiliates and ED entered into the Option and Put Agreement, dated April 3, 2008, or the OPA. Pursuant to the OPA, the Deerfield Affiliates have granted the Company an option to purchase all of the outstanding shares of common stock of ED, or the Shares, from the Deerfield Affiliates, referred to as the Option, and the Company has agreed to grant the Deerfield Affiliates an option to require the Company to purchase all of the outstanding shares of common stock of ED from the Deerfield Affiliates, referred to as the Put Right. A copy of the OPA is attached as Exhibit 10.5 to this Current Report on Form 8-K and is hereby incorporated by reference.

The Option

If the Company exercises the Option, base consideration for the Option exercise, or Base Option Price, will be:

- $25 million, if the Option is exercised on or prior to the third anniversary of the execution of the OPA; or
- $28 million, if the Option is exercised subsequent to the third anniversary but prior to the fourth anniversary of the execution of the OPA.

The aggregate consideration payable by the Company upon exercise of the Option, or the Option Purchase Price, would be equal to the sum of the Base Option Price, plus: (i) the cash and cash equivalents held by ED at the date of the closing of the resulting sale of the common stock of ED; (ii) accrued and unpaid royalties; and minus (i) the option premium of $2 million which is to be paid at the closing of the transaction (referred to as the Option Premium); (ii) accrued but unpaid taxes; (iii) unpaid Funding Payments; and (iv) any other outstanding liabilities of ED. The Option terminates on the fourth anniversary of the execution of the OPA.

In consideration of the grant of the Option, the Company shall pay $2 million to the Deerfield Affiliates simultaneously with the payment of the first Funding Payment under the FRA. This payment is referred to as the Option Premium. As indicated in the calculation of the Option Purchase Price, if the Option is exercised by the Company the Option Premium will be applied to reduce the Option Purchase Price.

The Put Right

The Put Right terminates on the tenth anniversary of the execution of the OPA and will become exercisable on the earliest of:

- the third anniversary of the execution of the OPA;
- any date on which:

(1) the market capitalization of the Company falls below $50,000,000; or

(2) the amount of cash and cash equivalents as defined, held by the Company falls below $15,000,000; or

(3) the fifteenth day following the delivery of written notice to the Company that the Company has failed to make Royalty Payments in accordance with the provisions of the FARA unless the Company makes such Royalty Payments prior to such fifteenth day; or

(4) a Major Transaction, as defined below, closes.

If the Deerfield Affiliates exercise the Put Right, base consideration for the put exercise, or the Base Put Price, will be:

- $23 million, if the Put Right is exercised on or prior to the third anniversary of the execution of the OPA and the Company has notified the Deerfield Affiliates of its intent to enter into a Major Transaction (such notice is referred to as a Major Transaction Notice); or

- $26 million, if the Put Right is exercised subsequent to the third anniversary of the execution of the OPA and the Company has provided the Deerfield Affiliates a Major Transaction Notice; or

- $17 million, in all other cases.

The aggregate consideration payable by the Company upon exercise of the Put Right, or the Put Purchase Price, would be equal to the sum of the Base Put Price, plus: (i) the cash and cash equivalents held by ED at the date of the closing of the resulting sale of the common stock of ED; (ii) accrued and unpaid royalties; and minus (i) accrued but unpaid taxes; (ii) unpaid Funding Payments; and (iii) any other outstanding liabilities of ED.

Major Transactions

Pursuant to the OPA, the following events would qualify as Major Transactions:

- a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or similar event:

  (1) following which the holders of common stock of the Company immediately preceding such event either:

    (a) no longer hold a majority of the shares of the common stock of the Company; or

    (b) no longer have the ability to elect a majority of the board of directors of the Company;

  (2) as a result of which shares of common stock of the Company are changed into (or the shares of common stock become entitled to receive) the same or a different number of shares of the same or another class or classes of stock or securities of the Company or another entity, collectively referred to as Change in Control Transactions;

- a sale or transfer of assets of the Company in one transaction or a series of related transactions for a purchase price of more than $350 million where the consideration to be payable at or within thirty days of closing of such transaction or transactions has a value of more than $350 million, or a sale, transfer or license of all or substantially all assets or proprietary rights of the Company that relate specifically to MUSE or avanafil; or

- a purchase, tender or exchange offer made to the holders of outstanding shares of the Company's common stock, such that following such purchase, tender or exchange offer a Change in Control Transaction shall have occurred; or

- an issuance or series of issuances in a series of related transactions by the Company of an aggregate number of shares of common stock in excess of 20% of the Company's outstanding common stock on the date hereof if, immediately prior to such issuance, the market capitalization of the Company is less than $300 million.

Security Agreements

In connection with the FRA, ED and the Company have entered into a security agreement, referred to as the Royalty Security Agreement, whereby the Company has granted ED a security interest in certain collateral held by the Company. Company assets in which the security agreements grant a security interest are referred to as the Collateral. The Collateral includes: all of the Company's drug applications; all existing and future licenses relating to the development, manufacture, warehousing, distribution, promotion, sale, importing or pricing of the Royalty Products; the Company's intellectual property and all of the accounts,inventory and equipment arising out of or relating to the Royalty Products. However, Collateral does not include the "Collateral" as defined by the Term Loan Agreement dated January 4, 2006 between the Company and Crown Bank, N.A. A copy of the Royalty Security Agreement is attached as Exhibit 10.6 to this Current Report on Form 8-K and is hereby incorporated by reference.

In connection with the OPA, the Deerfield Affiliates and the Company have entered into a security agreement, referred to as the Option Security Agreement, whereby the Company has granted the Deerfield Affiliates a security interest in the same Collateral as defined by the Royalty Security Agreement. The security interest granted to the Deerfield Affiliates by the Option Security Agreement has priority to that granted to ED by the Royalty Security Agreement. A copy of the Option Security Agreement is attached as Exhibit 10.7 to this Current Report on Form 8-K and is hereby incorporated by reference.

Securities Purchase Agreement

In connection with the Deerfield Transactions, the Deerfield Affiliates have agreed to purchase 1,626,017 shares of the Company's common stock for an aggregate purchase price of $10 million. The number of shares was determined based on the average volume weighted average closing price on the Nasdaq Global Market of the Company's common stock on the three days prior to the execution of the Securities Purchase Agreement, dated April 3, 2008, by and

between the Company, the Deerfield Affiliates and Deerfield. This agreement is referred to as the SPA. A copy of the SPA is attached as Exhibit 10.1 to this Current Report on Form 8-K and is hereby incorporated by reference.

Pursuant to the SPA, the Company is required to reimburse the Deerfield Affiliates for up to $250,000 of their cost in obtaining outside counsel in connection with the SPA. In addition, provided that the $10 million purchase price is paid in full by the Deerfield Affiliates, the Company will pay a fee of $500,000 to Deerfield. The closing of the purchase of shares contemplated by the SPA will occur on the fifteenth business day following the execution of the SPA. The SPA is subject to customary closing conditions and contains customary representations, warranties and covenants for a transaction of this type. The SPA also contains, as a condition to each party's performance, a requirement that the counterparty executes and delivers the Funding and Royalty Agreement and the Option and Put Agreement, both of which are discussed below.

The information in this Form 8-K and the exhibit attached hereto shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference into any of the Registrant's filings under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in any such filing.

Item 8.01. Other Events.

On April 4, 2008, the Company issued a press release entitled "VIVUS Enters into Funding Collaboration for the Phase 3 Studies of Avanafil for Erectile Dysfunction," a copy of which is filed herewith as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
10.1	Securities Purchase Agreement, dated April 3, 2008, by and among VIVUS, Inc., Deerfield Private Design Fund L.P., Deerfield Private Design International, L.P. and Deerfield Management Company, L.P.
10.2	Funding and Royalty Agreement, dated April 3, 2008, by and between Deerfield ED Corporation and VIVUS, Inc.
10.3	Subscription Agreement, dated April 3, 2008, by and between Deerfield ED Corporation and Deerfield Private Design Fund L.P.
10.4	Subscription Agreement, dated April 3, 2008, by and between Deerfield ED Corporation and Deerfield Private Design International, L.P.
10.5	Option and Put Agreement, dated April 3, 2008, by and among VIVUS, Inc. and Deerfield ED Corporation, Deerfield Private Design International, L.P. and Deerfield Private Design Fund L.P.
10.6	Security Agreement, Exhibit A to the Funding and Royalty Agreement, dated April 3, 2008, by and between Deerfield ED Corporation and VIVUS, Inc.
10.7	Security Agreement, Exhibit 4 to the Option and Put Agreement, dated April 3, 2008, by and between VIVUS, Inc. and Deerfield Private Design Fund L.P. and Deerfield Private Design International, L.P.
99.1	Press Release, dated April 4, 2008 entitled "VIVUS Enters into Funding Collaboration for the Phase 3 Studies of Avanafil for Erectile Dysfunction."

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 hereunto duly authorized.

VIVUS, INC.

By: /s/ Lee B. Perry
Lee B. Perry
Vice President and Chief Accounting Officer

Date: **April 4, 2008**

EXHIBIT INDEX

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SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of April 3, 2008, is by and among VIVUS, Inc., a Delaware corporation (the "Company"), Deerfield Private Design Fund L.P. ("DFPDF"), Deerfield Private Design International, L.P. (collectively with DFPDF, the "Investors") and Deerfield Management Company, L.P. ("Deerfield").

WITNESSETH

WHEREAS, the Company has filed with the Securities and Exchange Commission (the "Commission") the Registration Statement (as defined below) relating to the offer and sale from time to time of the Company's securities, including shares of its Common Stock, $0.001 value ("Common Stock");

WHEREAS, the Company is offering for sale shares of Common Stock (the "Offered Shares") pursuant to the Registration Statement; and

WHEREAS, the Investor desires to purchase from the Company Offered Shares on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals (which are deemed to be a part of this Agreement), mutual covenants, representations, warranties and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used herein, the following terms have the meanings indicated:

"Business Day" means any day other than Saturday, Sunday or a day on which banks in the City of New York are authorized or required to be closed.

"Person" shall mean any individual, partnership, limited liability company, joint venture, firm, corporation, association, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"Prospectus" shall have the meaning set forth in Section 4(b)(6) hereof.

"Prospectus Supplement" shall mean the prospectus supplement filed with the Commission pursuant to Rule 424(b) promulgated under the Securities Act and deemed to be part of the Registration Statement at the time of effectiveness.

"Registration Statement" shall mean the registration statement on Form S-3 (File No. 333-135793), including a prospectus, and including all amendments and supplements thereto (including the Prospectus Supplement), relating to the offer and sale of certain of the Company's Common Stock, including the Investor Shares. References herein to the term "Registration Statement" as of any date shall mean such effective registration statement, as amended or supplemented to such date, including all information and documents incorporated by reference therein as of such date.

"Securities Act" shall mean the Securities Act of 1933, as amended.

2. Purchase of Common Stock. Subject and pursuant to the terms and conditions set forth in this Agreement, the Company agrees that it will issue and sell to the Investor and the Investor agrees that it will purchase from the Company the number of Offered Shares set forth on Schedule I attached hereto (the "Investor Shares"). The aggregate purchase price for the Investor Shares (the "Aggregate Purchase Price") and the purchase price per Investor Share is set forth on Schedule I hereto. The closing of the purchase and sale of the Investor Shares will take place on or before the fifteenth (15^{th}) Business Day following the date of this Agreement, or such other date or time as the parties may agree upon in writing (the "Closing").

3. Deliveries at Closing.

(a) Deliveries by the Investor. At the Closing, each Investor shall deliver to the Company the Aggregate Purchase Price by wire transfer of immediately available funds to an account designated by the Company as set forth on Schedule I hereto, which funds will be delivered to the Company in consideration of the Investor Shares issued at the Closing.

(b) Deliveries by the Company. At the Closing, the Company shall deliver to each Investor the Investor Shares through The Depository Trust Company DWAC system to the account that the Investor has specified in writing to the Company.

4. Representations, Warranties, Covenants and Agreements.

(a) Investor Representations, Warranties and Covenants. Each Investor represents, warrants, covenants and agrees as follows:

(1) Investor has received and reviewed copies of the Registration Statement and the Prospectus, including all documents and information incorporated by reference therein and amendments thereto, and understands that no Person has been authorized to give any information or to make any representations that were not contained in the Registration Statement and the Prospectus, and Investor has not relied on any such other information or representations in making a decision to purchase the Investor Shares. Investor hereby consents to receiving delivery of the Registration Statement and the Prospectus, including all documents and information incorporated by reference therein and amendments thereto, by electronic mail. Investor understands that an investment in the Company involves a high degree of risk for the reasons, among others, set forth under the captions "RISK FACTORS" in the Prospectus.

(2) Investor acknowledges that it has sole responsibility for its own due diligence investigation and its own investment decision, and that in connection with its investigation of the accuracy of the information contained or incorporated by reference in the Registration Statement and the Prospectus and its investment decision, Investor has not relied on any representation or information, as the case may be, not set forth in this Agreement, the Registration Statement or the Prospectus, or any Person affiliated with the Company or on the fact that any other Person has decided to invest in the Offered Shares.

(3) The execution and delivery of this Agreement by Investor and the performance of this Agreement and the consummation by Investor of the transactions contemplated hereby have been duly authorized by all necessary (corporate, partnership or limited liability in the case of a corporation, partnership or limited liability company) action of Investor, and this

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Agreement, when duly executed and delivered by Investor, will constitute a valid and legally binding instrument, enforceable in accordance with its terms against Investor, except as enforcement hereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization or similar laws or court decisions affecting enforcement of creditors' rights generally and except as enforcement hereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(4) No state, federal or foreign regulatory approvals, permits, licenses or consents or other contractual or legal obligations are required for Investor to enter into this Agreement or purchase the Investor Shares.

(b) Company Representations, Warranties and Covenants. The Company hereby represents, warrants, covenants and agrees as follows:

(1) The Company has been duly incorporated and has a valid existence and the authorization to transact business as a corporation under the laws of the State of Delaware, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such jurisdictions wherein the failure to be so qualified and in good standing would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect").

(2) Each subsidiary of the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such jurisdictions wherein the failure to be so qualified and in good standing would not individually or in the aggregate have a Material Adverse Effect. All subsidiaries and their respective jurisdictions of incorporation are identified on Schedule II hereto. Except as disclosed in Schedule II, all of the outstanding capital stock or other voting securities of each subsidiary is owned by the Company, directly or indirectly, free and clear of any lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities). There are no outstanding (i) securities of the Company or any of the subsidiaries of the Company which are convertible into or exchangeable for shares of capital stock or voting securities of any subsidiary of the Company or (ii) options or other rights to acquire from the Company or any subsidiary of the Company, or other obligation of the Company or any subsidiary of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any subsidiary of the Company (collectively, the "Subsidiary Securities"). There are no outstanding obligations of the Company or any subsidiary of the Company to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

(3) The execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby are within the corporate powers of the Company and have been duly authorized by all necessary corporate action on the part of the Company and this Agreement, when duly executed and delivered by the parties hereto, will

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constitute a valid and legally binding instrument of the Company enforceable in accordance with its terms, except as enforcement hereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization or similar laws or court decisions affecting enforcement of creditors' rights generally and except as enforcement hereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(4) The Investor Shares have been duly authorized by the Company, and when issued and delivered by the Company against payment therefor as contemplated by this Agreement, the Investor Shares will be validly issued, fully paid and nonassessable, and will conform to the description of the Common Stock contained in the Prospectus.

(5) The execution and delivery of this Agreement do not, and the compliance by the Company with the terms hereof will not, (i) violate the Certificate of Incorporation (as amended to date) of the Company or the By-Laws (as amended to date) of the Company, (ii) result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of their properties or assets are subject, or (iii) result in a violation of, or failure to be in compliance with, any applicable statute or any order, judgment, decree, rule or regulation of any court or governmental, regulatory or self-regulatory agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets, except where such breach, violation, default or the failure to be in compliance would not individually or in the aggregate have a Material Adverse Effect or adversely affect the ability of the Company to issue and sell the Investor Shares; and no consent, approval, authorization, order, registration, filing or qualification of or with any such court or governmental, regulatory or self-regulatory agency or body is required for the valid authorization, execution, delivery and performance by the Company of this Agreement or the issuance of the Investor Shares, except for the filing of the Prospectus Supplement and for such consents, approvals, authorizations, registrations, filings or qualifications as may be required under state securities or "blue sky" laws.

(6) The Company meets the requirements for use of Form S-3 under the Securities Act. The Registration Statement, which covers the Investor Shares, including a form of prospectus and such amendments or supplements to such Registration Statement as may have been required prior to the date of this Agreement, has been prepared by the Company under the provisions of the Securities Act, has been filed with the Commission, has become effective and filed with the Commission and incorporates by reference documents which the Company has filed in accordance with the provisions of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company has prepared a Prospectus Supplement, to the prospectus included in the Registration Statement referred to above and the documents incorporated by reference therein, setting forth the terms of the offering, sale and plan of distribution of the Investor Shares and additional information concerning the Company and its business and will promptly file the Prospectus Supplement with the Commission pursuant to Rule 424(b). No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, or any part thereof, has been issued and served on the Company, and no proceedings for that purpose are pending or, to the knowledge of the

Company, threatened by the Commission. Copies of such Registration Statement and prospectus, any such amendment or supplement and all documents incorporated by reference therein that were filed with the Commission on or prior to the date of this Agreement have been delivered to the Investor. The final form of prospectus included in the Registration Statement, as amended or supplemented from time to time (including the Prospectus Supplement), is referred to herein as the

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"Prospectus." Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated (or deemed to be incorporated) by reference therein, and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement or Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. As of the close of business on April 3, 2008, at least a number of shares of Common Stock equal to the number of Investor Shares were available for issuance pursuant to the Registration Statement, which permits the sale of the Investor Shares in the manner contemplated by this Agreement.

Each part of the Registration Statement, when such part became or becomes effective, and the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission and at the date hereof and the date of the Closing, did or will in all material respects comply with all applicable provisions of the Securities Act and the Exchange Act. Each part of the Registration Statement, when such part became or becomes effective, did not or will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading. The Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission, did not or will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been so described or filed. The foregoing representations and warranties in this Section 4(b)(6) do not apply to any statements or omissions made in reliance on and in conformity with information relating to the Investors furnished in writing to the Company by the Investors specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto.

The documents which are incorporated by reference in the Registration Statement or the Prospectus, or any amendment or supplement thereto, or from which information is so incorporated by reference, when they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and any further documents so filed and incorporated by reference shall, when they become effective under the Securities Act or when they are filed with the Commission, conform in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) The consolidated financial statements and financial schedules of the Company included or incorporated by reference in the Registration Statement and the Prospectus have been prepared in conformity with generally accepted accounting principles (except, with respect to the unaudited consolidated financial statements, for the footnotes and subject to customary audit adjustments) applied on a consistent basis, are consistent in all material respects with the books and records of the Company, and accurately present in all material respects the consolidated

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financial position, results of operations and cash flow of the Company and its subsidiaries as of and for the periods covered thereby.

(8) There are no material liabilities of the Company or any subsidiary of the Company of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than liabilities disclosed in the consolidated financial statements and financial schedules of the Company, and other undisclosed liabilities which, individually or in the aggregate, are not material to the Company and any of its subsidiaries, taken as a whole.

(9) Neither the Company nor any of its subsidiaries has sustained since the respective dates of the latest audited financial statements included in the Registration Statement and Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as disclosed in or contemplated by the Registration Statement and Prospectus; and, since the respective dates as of which information is given in the Registration Statement and Prospectus, there has not been any material change in the capital stock or long-term debt of the Company or any of its subsidiaries, the Company and its subsidiaries have not incurred any material liabilities or obligations, direct or contingent, nor entered into any material transactions not in the ordinary course of business and there has not been any material adverse change in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries considered as a whole, otherwise than as disclosed in or contemplated by the Registration Statement and Prospectus.

(10) Other than as disclosed in the Prospectus, there are no legal, governmental or regulatory proceedings pending to which the Company or any of its subsidiaries is a party or of which any material property of the Company or any of its subsidiaries is the subject which, taking into account the likelihood of the outcome, the damages or other relief sought and other relevant factors, would individually or in the aggregate reasonably be expected to have a Material Adverse Effect or adversely affect the ability of the Company to issue and sell the Investor Shares; to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental or regulatory authorities or threatened by others.

(11) The Company and each of its subsidiaries have good and marketable title to all the real property and owns all other properties and assets, reflected as owned in the financial statements included in the Registration Statement and the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those, if any, reflected in such financial statements or which are not material to the Company and its subsidiaries taken as a whole. The Company and each of its subsidiaries hold their respective leased real and personal properties under valid and binding leases, except where the failure to do so would not reasonably be expected to individually or in the aggregate have a Material Adverse Effect.

(12) The Company has filed all necessary federal and state income and franchise tax returns and has paid all taxes shown as due thereon or has filed all necessary extensions, and there is no tax deficiency that has been, or to the knowledge of the Company might be, asserted against the Company or any of its properties or assets that would in the aggregate or individually reasonably be expected to have a Material Adverse Affect.

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(13) There are no holders of securities of the Company having preemptive rights to purchase Common Stock. There are no holders or beneficial owners of securities of the Company having rights to registration thereof whose securities have not been previously registered or who have not waived such rights with respect to the registration of the Company's securities on the Registration Statement, except where the failure to obtain such waiver would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

(14) The Company has not taken and will not take any action that constitutes or is designed to cause or result, or which might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Shares.

(15) Other than as disclosed in the Prospectus, to the Company's knowledge, the Company together with its subsidiaries owns and possesses all right, title and interest in and to, or has duly licensed from third parties, all patents, patent rights, trade secrets, inventions, know-how, trademarks, trade names, copyrights, service marks and other proprietary rights ("Intellectual Property") necessary to the business of the Company and each of its subsidiaries taken as a whole as currently conducted. To the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, there is no infringement or other violation by third parties of any of the Intellectual Property of the Company. Neither the Company nor any of its subsidiaries has received any notice of infringement or misappropriation from any third party that has not been resolved or disposed of and, to the Company's knowledge, neither the Company nor any of its subsidiaries has infringed or misappropriated the Intellectual Property of any third party, which infringement or misappropriation would individually or in the aggregate have a Material Adverse Effect. Further, there is no pending or, to the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, threatened action, suit, proceeding or claim by governmental authorities or others that the Company is infringing a patent, and there is no pending or, to the Company's knowledge and except as would not individually or in the aggregate have a Material Adverse Effect, threatened legal or administrative proceeding relating to patents and patent applications of the Company, other than proceedings initiated by the Company before the United States Patent and Trademark Office and the patent offices of certain foreign jurisdictions which are in the ordinary course of patent prosecution. To the Company's knowledge, the patent applications of the Company presently on file disclose patentable subject matter, and the Company is not aware of any inventorship challenges, any interference which has been declared or provoked, or any other material fact that would preclude the issuance of patents with respect to such applications.

(16) The conduct of the business of the Company and each of its subsidiaries is in compliance in all respects with applicable laws, rules and regulations of governmental and regulatory bodies, except where the failure to be in compliance would not individually or in the aggregate have a Material Adverse Effect.

(17) The Company is not, and does not intend to conduct its business in a manner in which it would become, an "investment company" as defined in Section 3(a) of the Investment Company Act of 1940, as amended.

(18) All offers and sales of the Company's capital stock prior to the date hereof were at all relevant times registered pursuant to the Securities Act or exempt from the registration requirements of the Securities Act and were duly registered with or the subject of an

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available exemption from the registration requirements of the applicable state securities or blue sky laws, except where the failure to do so would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

(19) The Company has filed with the Nasdaq Global Market a Notification of Listing of Additional Shares with respect to the Investor Shares within the time period required by the rules of the Nasdaq Global Market and the Investor Shares have been approved for listing on the Nasdaq Global Market.

(20) To the extent that the Company or any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that the Company believes constitutes material, non-public information, any such material, non-public information will be disclosed by the Company within 48 hours of the Closing.

5. Conditions.

(a) The obligation of each Investor to purchase and acquire the Investor Shares hereunder shall be subject to the conditions that:

(1) All representations and warranties and other statements of the Company shall be true and correct as of and on each of the date of this Agreement and the date of the Closing;

(2) The Company shall have performed all of its obligations hereunder theretofore to be performed;

(3) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act within the applicable time period prescribed for such filing, no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission, and the Investor shall have received the Prospectus in accordance with the federal securities laws;

(4) The Company shall have executed and delivered that certain Funding and Royalty Agreement, by and between the Company and Deerfield ED Corporation ("ED"), of even date herewith (the "Funding and Royalty Agreement"); and

(5) The Company shall have shall have executed and delivered that certain Option and Put Agreement, by and between the Company ED and the Investors, of even date herewith (the "Option and Put Agreement").

(b) The obligation of the Company to enter into this Agreement shall be subject to the conditions that:

(1) All representations and warranties and other statements of the Investors shall be true and correct as of and on each of the date of this Agreement and the date of the Closing;

(2) The Investors shall have performed all of its obligations hereunder theretofore to be performed;

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(3) ED shall have executed and delivered the Funding and Royalty Agreement; and

(4) The Investors and ED shall have executed and delivered the Option and Put Agreement.

6. Miscellaneous.

(a) Fees and Expenses. The Company will reimburse the Investor for the documented, fees and expenses of outside legal counsel of up to $250,000 incurred as part of this transaction. In addition, provided that the Aggregate Purchase Price is paid in full by the Investors for the Offered Shares, the Company will pay a fee equal to 5% of the Aggregate Purchase Price to Deerfield, simultaneously with the Closing, for arranging the purchase and sale of the Offered Shares. Other than the amount listed above, each of the parties hereto shall be responsible for their own expenses incurred in connection with the transactions contemplated hereby.

(b) Binding Agreement; Assignment. This Agreement shall be binding upon, and shall inure solely to the benefit of, each of the parties hereto, and each of their respective heirs, executors, administrators, successors and permitted assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The Investors may not assign any of these rights or obligations hereunder to any other person or entity without the prior written consent of the Company.

(c) Entire Agreement. This Agreement, including Schedules I and II hereto, constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and may be amended only by written execution by both parties. Upon execution by the Company and the Investors, this Agreement shall be binding on each of the parties hereto.

(d) Consent To Jurisdiction. THIS AGREEMENT SHALL BE ENFORCED, GOVERNED AND CONSTRUED IN ALL RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAWS PRINCIPLES. FURTHERMORE, THE INVESTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE FEDERAL OR STATE COURTS LOCATED IN THE STATE OF DELAWARE IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE COMPANY AND THE INVESTOR (AND, TO THE EXTENT PERMITTED BY LAW, ON BEHALF OF ITS AND THEIR EQUITY HOLDERS AND CREDITORS) HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

(e) Notices. All notices, requests, consents and other communication hereunder shall be in writing, shall be mailed by first class registered or certified mail, or nationally recognized overnight express courier postage prepaid, and shall be deemed given when so mailed and shall be delivered as addressed as follows:

if to the Company, to:

VIVUS, Inc.
1172 Castro Street
Mountain View, CA 94040
Attn: Chief Financial Officer

with a copy mailed to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attn: Mark Reinstra, Esq.

if to Deerfield or the Investors:

c/o Deerfield Capital, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Attention: James E. Flynn

with a copy mailed to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
Attention: Mark I. Fisher

or to such other Person at such other place as the parties shall designate to one another in writing.

(f) Counterparts. This Agreement maybe executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one in the same agreement.

(g) Restriction on Resale. The Investors hereby irrevocably agree that, without the prior written consent of the Company, the Investors will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any Investor Shares, (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of the Investor Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of securities, cash or otherwise, or (3) publicly disclose the intention to do any of the foregoing, for a period commencing on the Closing and ending on the 180 day anniversary of the Closing (such 180 day period, the "Lock-Up Period"). The Lock-Up Period shall not apply to bona fide gifts, sales or other dispositions of the Investor Shares that are made exclusively between and among the affiliates of the Investors, including its partners (if a partnership) or members (if a limited liability company), provided that it shall be a condition to any such transfer that the transferee/donee agrees to be bound by the terms of this Agreement (including, without limitation, the restrictions set forth in this Section 6(g)) to the same extent as if the transferee/donee were a party hereto. The Company and its transfer

agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Section 6(g).

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

VIVUS, INC.

By: /s/ Timothy E. Morris
Name: Timothy E. Morris
Title: Chief Financial Officer

DEERFIELD MANAGEMENT COMPANY, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

DEERFIELD PRIVATE DESIGN FUND, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

SCHEDULE I
to
Securities Purchase Agreement

Name of Investors	Aggregate Purchase Price	Number of Offered Shares to be Purchased by Investor

Deerfield Private Design Fund, L.P.	$	3,830,004.75	622,765
Deerfield Private Design International, L.P.	$	6,169,999.80	1,003,252
Total:	$	10,000,004.55	

SCHEDULE II
to
Securities Purchase Agreement

List of Subsidiaries	Percent Owned
· VIVUS UK Limited (United Kingdom)	100%
· VIVUS BV (Netherlands)	100%
· VIVUS Real Estate, LLC (New Jersey)	100%

FUNDING AND ROYALTY AGREEMENT

This FUNDING AND ROYALTY AGREEMENT (this "Agreement"), dated April 3, 2008, is made by and between Deerfield ED Corporation, a Delaware corporation ("ED") and VIVUS, Inc., a Delaware corporation ("VIVUS").

Background Statement

VIVUS is a pharmaceutical company engaged in the development, manufacturing and sale of pharmaceutical products. VIVUS owns the approved new drug application number 20-700 for a product indicated for treatment of erectile dysfunction and sold in association with the trademark "MUSE." VIVUS is developing a new pharmaceutical product, referred to as "Avanafil." Avanafil is from a class of compounds the mechanism of action of which is believed to be inhibition of the phosphodiesterase type 5 enzyme, also known as PDE5 inhibitors or PDE5i's. This Agreement sets forth the terms under which ED will provide funds to VIVUS in consideration of the payment by VIVUS of a royalty on future sales of the MUSE and Avanafil products.

Statement of Agreement

The Parties agree as follows:

1. Definitions. The following terms have the meanings set forth below:

"Adverse Event" shall mean any adverse event associated with the use of a drug product in humans, whether or not considered drug-related, including (i) an adverse event occurring in the course of the use of a drug product in professional practice; (ii) an adverse event occurring from an overdose, whether accidental or intentional, related to a drug product; (iii) an adverse event occurring from drug abuse related to a drug product; (iv) an adverse event occurring from withdrawal of a drug product; and (v) any failure of expected pharmacological action of a drug product.

"Affiliate" means with respect to any Person, each other Person that directly or indirectly, through one or more intermediaries, owns or controls, is controlled by or is under common control with, such Person. For the purpose of this Agreement, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the introductory paragraph.

"Avanafil" means all drug products developed pursuant to the Avanafil IND that may be approved for marketing.

"Avanafil IND" means the investigational new drug application number 51,235, as such investigational new drug application may be supplemented and amended from time to time.

"Business Day" means any day other than Saturday, Sunday or a day on which banks in the City of New York are authorized or required to be closed.

"Collateral" has the meaning given such term in the Security Agreement.

"Design Funds" means Deerfield Private Design International Fund, L.P., a British Virgin Islands limited partnership, and Deerfield Private Design Fund, L.P., a Delaware limited partnership, which Persons are the sole stockholders of ED.

"Earnings Report" for a Quarter means the Form 10-Q filed by VIVUS following each of the first three Quarters of its fiscal year and the Form 10-K filed by VIVUS following the fourth Quarter of its fiscal year.

"ED" has the meaning set forth in the introductory paragraph.

"Estimated Royalty Payment" has the meaning set forth in **Section 2(b)**.

"FDA" means the United States Food and Drug Administration and any successor agency

"Fourth Quarter Earnings Date" means the date on which VIVUS publicly issues its Earnings Report for the fourth Quarter of its fiscal year.

"Funding Payments" has the meaning set forth in **Section 2(a)**.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any municipal, local, city or county government, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government. "Governmental Authority" includes the FDA.

"Legal Requirement" means any statute, law, treaty, rule, regulation, guidance, approval, order, decree, writ, injunction or determination of any Governmental Authority, court or arbitrator of competent jurisdiction; and, with respect to any Person, includes all such Legal Requirements applicable or binding upon such Person, its business or the ownership or use of any of its assets.

"Lien" means any reservations of title, mortgage, claim, lien, security interest, pledge, hypothecation, escrow, charge, option or other restriction or encumbrance of any kind.

"MUSE" means all drug products that are now or may hereafter be approved for marketing under the MUSE NDA.

"MUSE NDA" means new drug application number 20-700, as such new drug application may be supplemented and amended from time to time.

"Net Sales" means, with respect to Royalty Products, the gross amount invoiced by or on behalf of VIVUS or any of its Affiliates (or a direct or indirect assignee or licensee of VIVUS or any such Affiliate) for Royalty Products sold to third parties in *bona fide*,

arm's length transactions, less customary deductions determined without duplication in accordance with VIVUS' (or, as applicable, any such Affiliate's, assignee's or licensee's) standard accounting methods as generally and consistently applied for: (i) applicable sales credits (as described below), (ii) payments or rebates incurred, or reserves and allowances, pursuant to programs of any Governmental Authority, (iii) freight charges, transit insurance and other transportation costs, and (iv) to the extent included in the gross amount invoiced, sales, use and excise taxes. Applicable sales credits means credits or discounts, or reserves and allowances, deducted from the gross amount invoiced for: (A) customer returns, returned goods allowances, rejected goods and damaged goods not covered by insurance, (B) cash or terms discounts, (C) direct to customer discount or customer rebate programs, (D) third party rebates and chargebacks, (E) trade show discounts and stocking allowances, (F) price adjustments on customer inventories following price changes, (G) product recalls, (H) discount card programs, and (I) amounts credited for uncollectible amounts.

"Party" means either VIVUS or ED, and "Parties" means both VIVUS and ED.

"Person" means any natural person, corporation, limited liability company, partnership, association, trust, organization, Governmental Authority or other legal entity.

"Quarter" means a calendar quarter.

"Registrations" means all investigational new drug applications, all new drug applications and all abbreviated new drug applications, including, without limitation, the Avanafil IND and the MUSE NDA, and including in each case all supplements and amendments thereto, and all approvals, codes, permits, authorizations and licenses issued or approved by any Governmental Authority that are or may hereafter be held by VIVUS relating to the development, manufacture, warehousing, distribution, promotion, sale, importing or pricing of the Royalty Products.

"Royalty" has the meaning set forth in **Section 3(a)**.

"Royalty Products" means MUSE and Avanafil.

"Security Agreement" means that certain security agreement between VIVUS and ED entered into pursuant to **Section 5** and attached hereto as **Exhibit A**.

"VIVUS" has the meaning set forth in the introductory paragraph.

"VIVUS' Knowledge" means the actual knowledge of any officer or director of VIVUS.

2. Funding Payments by ED.

(a) Schedule for Funding Payments. Subject to the terms of this Agreement, ED shall pay Twenty Million Dollars ($20,000,000) to VIVUS in accordance with the following funding schedule:

(i) $3,333,333 on or before the fifteen (15th) Business Day following the execution of this Agreement, provided that ED shall use its best efforts to make such payment at the earliest practicable date;

(ii) $3,333,333 within two (2) Business Days after each of the following dates: August 29, 2008, November 29, 2008, the Fourth Quarter Earnings Date with respect to VIVUS' 2008 fiscal year and May 30, 2009; and

(iii) $3,333,335 within two (2) Business Days after August 29, 2009.

Such payments (the "Funding Payments") shall be made by wire transfer of immediately available funds to the account set forth on **Exhibit B** attached hereto, or to such other account as VIVUS may notify ED of in writing not less than three (3) Business Days prior to the date of payment.

(b) Offset. If VIVUS does not pay any Royalty payment when due pursuant to **Section 3(b)**, then ED may defer the next Funding Payment for up to ten (10) days. If VIVUS does not pay such Royalty within such ten (10) day period then ED shall promptly pay such deferred Funding Payment and may offset from the amount of such Funding Payment the amount of such unpaid Royalty. For purposes of such offset, the amount of the unpaid Royalty shall be deemed to be an amount equal to [***](1)% of the Net Sales of Royalty Products during the corresponding Quarter of the prior year (the "Estimated Royalty Payment"), and upon making the next Royalty payment pursuant to **Section 3(b)**, VIVUS shall, as applicable, (i) also pay the amount by which such Estimated Royalty Payment was less than the corresponding actual Royalty payment due or (ii) receive a credit for the amount by which such Estimated Royalty Payment exceeded the corresponding actual Royalty payment due.

(c) Allocation of Funding Payments. [***](2) percent ([***](3)%) of each Funding Payment shall be deemed paid in consideration of the Royalty attributable to Net Sales of MUSE, and [***](4) percent ([***](5)%) of each Funding Payment shall be deemed paid in consideration of the Royalty attributable to Net Sales of Avanafil.

3. Royalty.

(a) Rate. In consideration of the Funding Payments made by ED, from the date hereof through the tenth (10th) anniversary of such date, VIVUS shall pay to ED a royalty of [***](6) percent ([***](7)%) of Net Sales of Royalty Products made on or after the date of this Agreement (the "Royalty"). The Royalty shall be determined for each Quarter for all Net Sales of Royalty Products made during such Quarter; provided, that (i) only Net Sales occurring on or

(1) *** Indicates that confidential treatment has been sought for this information.
(2) *** Indicates that confidential treatment has been sought for this information.
(3) *** Indicates that confidential treatment has been sought for this information.
(4) *** Indicates that confidential treatment has been sought for this information.
(5) *** Indicates that confidential treatment has been sought for this information.
(6) *** Indicates that confidential treatment has been sought for this information.
(7) *** Indicates that confidential treatment has been sought for this information.

after the date of this Agreement shall be considered in determining the Royalty for the initial Quarter for which the Royalty is due and (ii) only Net Sales occurring on or before the tenth (10th) anniversary of date of this Agreement shall be considered in determining the Royalty for the final Quarter for which the Royalty is due. In addition, notwithstanding anything herein to the contrary, the Royalty for any Quarter during which any Funding Payment hereunder is overdue shall be decreased on a pro rata basis in proportion to the number of days such Funding Payment is overdue. The Royalty payable for any Quarter to be prorated shall be calculated by multiplying [***](8) percent ([***](9)%) of the Net Sales of Royalty Products for such Quarter by the ratio of the number of days for which the Royalty is due in such Quarter to the total number of days in such Quarter.

(b) Payment. No later than sixty (60) days following the end of each Quarter, or no later than the Fourth Quarter Earnings Date in the case of the fourth Quarter of VIVUS' fiscal year, VIVUS shall make a Royalty payment equal to [***](10)% of the Net Sales of Royalty Products during such Quarter. For the initial and final Quarters for which the Royalty is due, the Royalty payment shall be pro-rated for the portion of such Quarter during which the royalty is payable pursuant to **Section 3(a)**. At the time of any Royalty payment made pursuant to this **Section 3(b)**, VIVUS shall deliver to ED a written statement showing all Net Sales of Royalty Products during such Quarter and VIVUS' computation of the Royalty due on such Net Sales. All payments of the Royalty shall be made by wire transfer of immediately available funds to an account designated by the recipient.

(c) Audit Right. Upon not less than fourteen (14) days written notice, ED shall have the right to audit the books and records of VIVUS relating to sales of Royalty Products for the purpose of determining the correctness of VIVUS' computation and payment of the Royalty. Such audit may not be conducted more than once in any calendar year and shall be conducted during normal business hours by an accounting firm engaged by ED at its cost, provided that such accounting firm enters into a reasonable confidentiality agreement prior to commencing any such audit. VIVUS shall provide ED, its officers, agents and accountants with access to all pertinent books and records and shall reasonably cooperate with ED's efforts to conduct such audits. If such audit discloses an underpayment of the Royalty by VIVUS of more than $35,000, VIVUS shall reimburse ED for the reasonable out-of-pocket costs (including the accountants' fees) incurred by ED in performing such audit. In the event ED claims that any such audit reveals an underpayment of the Royalty, ED will make its audit papers for the relevant period available to VIVUS upon VIVUS' request.

4. Assignment or Sublicense. VIVUS shall continue to pay, or cause to be paid, the Royalty on all Net Sales of Royalty Products by any direct or indirect licensee or assignee of VIVUS.

5. Security Interest. In order to secure the full and punctual payment of the Royalty in accordance with the terms of this Agreement, VIVUS shall execute and deliver to ED a security agreement in the form attached hereto as **Exhibit A**.

(8) *** Indicates that confidential treatment has been sought for this information.
(9) *** Indicates that confidential treatment has been sought for this information.
(10) *** Indicates that confidential treatment has been sought for this information.

6. Covenants of VIVUS.

(a) Maintenance of Registrations and Other Rights. VIVUS shall use commercially reasonable efforts to take appropriate actions, at its sole cost and expense, to maintain the Registrations and all other regulatory rights and all patents, trademarks and other intellectual property rights necessary for VIVUS to develop, manufacture, distribute, promote, offer for sale and sell the Royalty Products throughout the United States.

(b) Promotion of MUSE. From the date hereof through the eighth (8^{th}) anniversary of such date, VIVUS shall (i) manufacture or have manufactured, promote and sell MUSE throughout the United States using a similar level of commercial effort as employed by VIVUS immediately prior to the date hereof; provided, however, that this clause (i) shall not require VIVUS to maintain any particular spending levels, and (ii) not manufacture, have manufactured, promote or sell any product that competes with MUSE in the United States other than Avanafil.

(c) Development and Promotion of Avanafil. VIVUS shall use commercially reasonable efforts to obtain FDA approval of Avanafil. From the date on which the FDA approves a new drug application for Avanafil through the eighth (8^{th}) anniversary of this Agreement, VIVUS shall (i) manufacture or have manufactured, promote and sell Avanavil throughout the United States using commercially reasonable efforts similar to those efforts employed by VIVUS for its other approved drug products; provided, however, that this clause (ii) shall not require VIVUS to maintain any particular spending levels, and (ii) not manufacture, have manufactured, promote or sell any product that competes with Avanafil in the United States other than MUSE.

7. Representations and Warranties of VIVUS. Except as set forth in that certain disclosure letter of even date herewith delivered by VIVUS to ED, VIVUS represents and warrants to ED that:

(a) Organization. VIVUS is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. VIVUS has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

(b) Authority; Execution; Enforceability. VIVUS has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance of all of its obligations hereunder have been duly authorized by VIVUS. This Agreement has been duly executed and delivered by VIVUS and constitutes the legal, valid and binding obligation of VIVUS, enforceable against VIVUS in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, moratorium, reorganization or other laws of general application relating to or affecting creditors' rights generally.

(c) No Violation. The signing, delivery and performance of this Agreement by VIVUS is not prohibited or limited by, and will not result in the breach of or a default under, any provision of the certificate of incorporation, bylaws or other formation documents of VIVUS, any material agreement or instrument binding on VIVUS, or any Legal Requirement applicable

to VIVUS, except for such prohibitions, limitations, defaults or Legal Requirements as would not prevent consummation by VIVUS of the transactions contemplated hereby or the performance by VIVUS of its obligations hereunder. The execution, delivery and performance of this Agreement by VIVUS, and VIVUS' compliance with the terms and provisions hereof, do not and will not conflict with or result in a breach of any of the terms and provisions of or constitute a default, with or without the passage of time and the giving of notice, under any material contract or other instrument or obligation binding or affecting VIVUS or the Royalty Products.

(d) Financial Condition. No insolvency proceeding of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, has been commenced by or against VIVUS or any of its assets or properties, nor has any such proceeding been threatened. VIVUS does not contemplate and has not taken any action in contemplation of the institution of any such proceeding.

(e) Regulatory Rights and Intellectual Property. VIVUS (i) owns the Registrations, (ii) owns or holds a valid license to use all patents and trademarks required to develop, manufacture, distribute and sell the Royalty Products, and (iii) owns or holds a valid license to use all trades secrets and other intellectual property rights required to develop, manufacture, have manufactured, promote, distribute and sell the Royalty Products, in each case throughout the United States. VIVUS' development, manufacture, promotion, distribution and sale of the Royalty Products does not infringe the intellectual property rights of any Person.

(f) Registrations. The Registrations are in full force and effect, and no Governmental Authority has initiated, or to VIVUS' Knowledge intends to or is contemplating, any action to terminate or suspend any of the Registrations. As of the date hereof, VIVUS is in compliance in all material respects with all Legal Requirements applicable to the development, manufacture, promotion, distribution and sale of the Royalty Products. VIVUS has timely filed all annual and other reports required to be filed with any Governmental Authority in order to maintain the Registrations and satisfy all Legal Requirements relating to the Registrations and the Royalty Products.

(g) Royalty Products.

(i) VIVUS has not received notification from any Governmental Authority alleging that any marketed quantities of MUSE have been misbranded or adulterated, or contesting the marketing approval, labeling or promotion of MUSE. There has been no recall of any quantities of MUSE. No Adverse Events caused by use of MUSE have been reported in writing to VIVUS that are not disclosed in the package insert for MUSE or that have not been reported by VIVUS to the FDA.

(ii) MUSE is covered by the claims of United States patents that will expire not sooner than March 23, 2016. VIVUS has not received a written claim from any Person, and to VIVUS' Knowledge no Person has asserted any claim, that any of the claims of any United States patent covering MUSE are invalid or unenforceable.

(iii) Avanafil is covered by the claims of United States patents that will expire not sooner than September 13, 2020. VIVUS has not received a written claim from any

Person, and to VIVUS' Knowledge no Person has asserted any claim, that any of the claims of any United States patent covering Avanafil are invalid or unenforceable.

(iv) To VIVUS' Knowledge, no Person has filed, or has stated in writing that it intends to file, an abbreviated new drug application seeking approval to market a generic version of any of the Royalty Products.

(v) To VIVUS' Knowledge, there are no facts or circumstances (including the announcements or actions of any Governmental Authority) as of the date of this Agreement that would reasonably be expected to result in a material decline in the level of sales or pricing for MUSE in the United States prior to the date set forth in **Section 7(g)(ii)**.

8. Representations and Warranties of ED; Covenants of ED. ED represents and warrants to VIVUS that:

(a) Organization. ED is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. ED has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. The directors, officers and employer identification number of ED are as set forth on **Exhibit C** attached hereto.

(b) Authority; Execution; Enforceability. ED has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance of all of its obligations hereunder have been duly authorized by

ED. This Agreement has been duly executed and delivered by ED and constitutes the legal, valid and binding obligation of ED, enforceable against ED in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, moratorium, reorganization or other laws of general application relating to or affecting creditors' rights generally.

(c) No Violation. The signing, delivery and performance of this Agreement by ED is not prohibited or limited by, and will not result in the breach of or a default under, any provision of the certificate of incorporation, bylaws or other formation documents of ED, or of any material agreement or instrument binding on ED, or of any Legal Requirement applicable to ED, except for such prohibitions, limitations, defaults or Legal Requirements as would not prevent consummation by ED of the transactions contemplated hereby or the performance by ED of its obligations hereunder. The execution, delivery and performance of this Agreement by ED, and ED's compliance with the terms and provisions hereof, do not and will not conflict with or result in a breach of any of the terms and provisions of or constitute a default, with or without the passage of time and the giving of notice, under any material contract or other instrument or obligation binding or affecting ED.

(d) Subscription Agreements. ED has entered into subscription agreements of even date herewith with Deerfield Private Design International, L.P. and Deerfield Private Design Fund, L.P. (the "Subscription Agreements"), whereby ED will receive an aggregate of $20,000,000 in exchange for 20,000 shares of its common stock. ED further warrants that

VIVUS is a third party beneficiary under the Subscription Agreements with full rights of enforcement as if a party to the Subscription Agreements.

(e) Financial Information. Within fourteen (14) days following the end of each Quarter, ED will provide to VIVUS financial statements of ED, including a balance sheet, operating statement and cash flow for such Quarter and year to date prepared in accordance with U.S. generally accepted accounting principles. Also, if requested by VIVUS, in a timely manner ED will provide additional detail as to the amounts in such quarterly and year to date financial statements. Upon not less than fourteen (14) days written notice, VIVUS will have the right to examine the financial books and records of ED. ED shall provide VIVUS and its officers, agents and accountants with access to all pertinent books and records and shall reasonably cooperate with VIVUS' efforts to conduct such examination.

9. General Provisions.

(a) Independent Contracting Parties. The Parties are not joint venturers, partners, principal and agent, master and servant, or employer and employee, and have no relationship other than as independent contracting parties. Neither Party shall be a legal representative of the other or have the power to bind or obligate the other in any manner.

(b) Amendment and Modification. This Agreement may be amended, modified or supplemented only by an instrument in writing signed by the Party against whom such amendment, modification or supplement is sought to be enforced.

(c) Waiver of Compliance; Consents. The rights and remedies of the Parties are cumulative and not alternative and may be exercised concurrently or separately. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (ii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement. Any consent required or permitted by this Agreement is binding only if in writing.

(d) Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be (i) delivered by hand, (ii) sent by facsimile transmission, or (iii) sent certified mail or by a nationally recognized overnight delivery service, charges prepaid, to the address set forth below (or such other address for a Party as shall be specified by like notice):

If to ED, to:
c/o Deerfield Capital, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Attention: James E. Flynn
Facsimile: (212) 573-8111

Copy to:
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Attention: David J. Clark
Facsimile: (704) 373-3990

If to VIVUS, to:
VIVUS, Inc.
1172 Castro Street
Mountain View, California 94040
Attention: Leland F. Wilson
Facsimile: (650) 934-5389

Copy to:
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attention: Ian B. Edvalson

Facsimile: (650) 493-6811

Each such notice or other communication shall be deemed to have been duly given and to be effective (x) if delivered by hand, immediately upon delivery if delivered on a Business Day during normal business hours and, if otherwise, on the next Business Day; (y) if sent by facsimile transmission, immediately upon confirmation that such transmission has been successfully transmitted on a Business Day before or during normal business hours and, if otherwise, on the Business Day following such confirmation, or (z) if sent by certified mail or a nationally recognized overnight delivery service, on the day of delivery if delivered during normal business hours on a Business Day and, if otherwise, on the first Business Day after delivery. Notices and other communications sent via facsimile must be followed by notice delivered by hand or by certified mail or overnight delivery service as set forth herein within five (5) Business Days.

(e) Publicity. Neither Party shall issue any press release or any other form of public disclosure regarding the existence of this Agreement or the terms hereof, or use the name of the other Party hereto in any press release or other public disclosure, without the prior written consent of the other Party, except (i) for those disclosures and notifications contemplated by this Agreement and (ii) as required by any Legal Requirement and solely to the extent necessary to satisfy such Legal Requirement. Prior to making any press release that describes this Agreement or the transactions contemplated hereby, VIVUS shall provide ED with a copy of, and an opportunity to comment on, such press release.

(f) No Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or delegated by a Party without the prior written consent of the other Party, except that VIVUS may assign this Agreement without such consent to any successor to all or substantially all of VIVUS' assets or business to which this Agreement relates (whether by stock purchase, asset purchase, merger, operation of law or otherwise); provided, however, that any such assignment shall be effective

only if the assignee shall have assumed all of the obligations of VIVUS under this Agreement and under the Security Agreement.

(g) Governing Law. The execution, interpretation and performance of this Agreement, and any disputes with respect to the transactions contemplated by this Agreement, shall be governed by the internal laws and judicial decisions of the State of Delaware applicable to contracts made and to be performed entirely within the State of Delaware.

(h) Severability. If any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless the invalidity of any such provision substantially deprives either Party of the practical benefits intended to be conferred by this Agreement. Notwithstanding the foregoing, any provision of this Agreement held invalid, illegal or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable, and the determination that any provision of this Agreement is invalid, illegal or unenforceable as applied to particular circumstances shall not affect the application of such provision to circumstances other than those as to which it is held invalid, illegal or unenforceable.

(i) Construction. Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.

(j) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed on signature pages exchanged by facsimile, in which event each Party shall promptly deliver to the other such number of original executed copies as the other Party may reasonably request.

(k) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties hereto in respect of the subject matter hereof. This Agreement supersedes all prior agreements, understandings, promises, representations and statements between the Parties and their representatives with respect to the transactions contemplated by this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have caused this Funding and Royalty Agreement to be executed by their duly authorized representatives as of the date first set forth above.

DEERFIELD ED CORPORATION

By: /s/ Jeff Kaplan
Name: Jeff Kaplan
Title: Treasurer

VIVUS, INC.

By: /s/ Timothy E. Morris
Name: Timothy E. Morris
Title: Chief Financial Officer

EXHIBIT A

Security Agreement

EXHIBIT B

Bank:

Address:

Account Name:

Account Number:

ABA Number:

E-mail confirmation to:

EXHIBIT C

Directors:

Officers:

EIN:

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (this "Agreement"), dated as of April 3, 2008, is by and between Deerfield ED Corporation, a Delaware corporation (the "Company") and Deerfield Private Design Fund, L.P., a Delaware limited partnership ("Subscriber").

Background Statement

Subscriber is willing to irrevocably subscribe for and acquire, and the Company is willing to issue to Subscriber, shares of the Company's common stock in accordance with the terms and conditions of this Agreement.

Statement of Agreement

The parties hereto agree as follows:

1. Issuance and Acquisition of Stock

(a) Acquisition of Stock. Subject to the terms and conditions of this Agreement, Subscriber agrees to acquire from the Company for investment, and the Company agrees to issue to Subscriber, the number of shares of the Company's common stock (the "Shares") for the aggregate purchase price (the "Purchase Price") and on the dates (each a "Closing Date") set forth below:

Date	Number of Shares	Purchase Price
On or before the 15th Business Day after the execution of this Agreement	1,277	$ 1,276,666.50
Within 2 Business Days after August 29, 2008	1,277	$ 1,276,666.50
Within 2 Business Days after November 29, 2008	1,277	$ 1,276,666.50
Within 2 Business Days after VIVUS publicly issues its earnings report for the 4th quarter of its 2008 fiscal year	1,277	$ 1,276,666.50
Within 2 Business Days after May 30, 2009	1,277	$ 1,276,666.50
Within 2 Business Days after August 29, 2009	1,275	$ 1,276,667.50
Total	7,660	$ 7,660,000.00

For purposes of this Agreement, "Business Day" means any day other than Saturday, Sunday or a day on which banks in the City of New York are authorized or required to be closed.

(b) Closing; Payment; Issuance. On each Closing Date, Subscriber shall deliver to the Company the Purchase Price in immediately available funds, and the Company shall issue to and register in the name of Subscriber one or more certificates evidencing the Shares purchased by Subscriber on such Closing Date.

(c) Condition Precedent. Subscriber shall have no obligation to acquire the Shares at any time when VIVUS, Inc., a Delaware corporation ("VIVUS"), is in breach of that certain Funding and Royalty Agreement between the Company and VIVUS (as amended, the "Funding Agreement").

2. Subscriber's Representations, Warranties and Agreements. All representations and warranties of Subscriber contained herein are made as of the date hereof.

(a) Investment Intention. Subscriber understands that the Shares have not been registered, and that there is no plan or intention by the Company to so register the Shares, under the Securities Act of 1933, as amended (together with applicable rules and regulations promulgated thereunder, the "Act"), or any other applicable state or federal securities statutes. Subscriber represents and warrants that it is acquiring the Shares solely for its own account for the purpose of investment and not with a view to or for sale in connection with any distribution thereof. Subscriber agrees that it will not, directly or indirectly, offer, transfer, sell, pledge, hypothecate or otherwise dispose of any of the Shares (or solicit any offers to buy, purchase, or otherwise acquire or take a pledge of any of the Shares), except in compliance with the Act (including without limitation Release No. 5226 limiting the resale to the public of any of the Shares), and the rules and regulations thereunder.

(b) Ability to Bear Risk. Subscriber represents and warrants that (i) the financial situation of the Subscriber is such that it can afford to bear the economic risk of holding the unregistered Shares for an indefinite period and (ii) it can afford to suffer the complete loss of its investment in the Shares.

(c) Access to Information; Evaluation of Risks. Subscriber represents and warrants that (i) it understands and has taken cognizance of all the risk factors related to its purchase of the Shares, (ii) it has been granted the opportunity to ask questions of, and receive satisfactory answers from, representatives of the Company concerning the terms and conditions of the acquisition of the Shares and has had the opportunity to obtain and has obtained any additional information that it deems necessary regarding the acquisition of the Shares, (iii) it has not relied on any person in connection with its investigation of the accuracy or sufficiency of such information or its investment decision and (iv) it has such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the Shares. Subscriber represents and warrants that it is an "accredited investor," as that term is defined in Regulation D under the Act.

(d) Enforceability. This Agreement has been duly executed and delivered by Subscriber and constitutes a legal, valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms except as may be limited by bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally, and the effect of rules of law governing the availability of equitable remedies.

(e) Compliance with Laws and Other Instruments. Subscriber represents and warrants that the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the performance of each obligation hereunder will not conflict with, or

result in any violation of or default under, any agreement or instrument to which Subscriber is a party or by which Subscriber is bound, or any judgment, decree, statute, law, order, rule or regulation applicable to Subscriber.

(f) No General Solicitation. Subscriber acknowledges that the Shares were not offered to Subscriber by means of any general solicitation, publicly disseminated advertisement or sales literature.

(g) No Recommendation. Subscriber acknowledges that no federal or state agency has made any finding or determination relating to the fairness for investment in the Shares, and no federal or state agency has recommended or endorsed the Shares. Subscriber has relied on Subscriber's own legal counsel to the extent Subscriber has deemed necessary as to all legal matters and questions presented with reference to the issuance of the Shares subscribed for herein.

(h) Legend. Subscriber acknowledges that a legend substantially as follows will be placed on the certificates representing the Shares along with any additional legend required by federal or state law or required pursuant to any stockholder or similar agreement:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933 OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT.

3. VIVUS.

(a) VIVUS as Beneficiary. The parties acknowledge that (i) the Company intends to use the funds received from Subscriber to make certain payments to VIVUS pursuant to the Funding Agreement, and (ii) VIVUS, so long as it is not in breach of any its obligations under the Funding Agreement, shall be a third party beneficiary of the obligation of Subscriber to acquire the Shares pursuant to this Agreement with full rights of enforcement as if a party to this Agreement.

(b) Termination upon Exercise of Put or Call. The parties hereto acknowledge that VIVUS has an option to purchase, and Subscriber has an option to sell to VIVUS, the Shares held by Subscriber. Upon the closing of any exercise of such option to purchase or option to sell, Subscriber shall have no further obligation to acquire, and the Company shall have no further obligation to issue, the Shares.

4. Miscellaneous

(a) Binding Effect; Benefits. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. Except as provided in Section 3(a), nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective

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successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

(b) Waiver. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by any party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

(c) Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument executed by Subscriber and the Company.

(d) Assignment. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by Subscriber without the prior written consent of the Company.

(e) Applicable Law. Notwithstanding the principles of conflicts of law of any jurisdiction that would cause any other law to apply, the interpretation, validity and performance of the terms of this Agreement shall be governed by the laws of State of New York except for matters of corporate law, which shall be governed by the Delaware General Corporation Law.

(f) Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

(h) Survival of Representations and Warranties and Covenants. The representations, warranties and covenants contained in this Agreement shall survive the issuance of the Shares to Subscriber, and shall remain effective.

(i) Indemnification. Subscriber hereby indemnifies and holds the Company harmless from damage, claim or loss (including attorneys' fees) resulting from any misrepresentation or breach of this Agreement by Subscriber. The Company hereby indemnifies and holds Subscriber harmless from damage, claim or loss (including attorneys' fees) resulting from any misrepresentation or breach of this Agreement by the Company.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Company and Subscriber have executed this Subscription Agreement as of the day and year first above written.

Company:

DEERFIELD ED CORPORATION

By: /s/ Jeff Kaplan
Name: Jeff Kaplan
Title: Treasurer

Subscriber:

DEERFIELD PRIVATE DESIGN FUND, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

SUBSCRIPTION AGREEMENT

This **SUBSCRIPTION AGREEMENT** (this "Agreement"), dated as of April 3, 2008, is by and between Deerfield ED Corporation, a Delaware corporation (the "Company") and Deerfield Private Design International, L.P., a British Virgin Islands limited partnership ("Subscriber").

Background Statement

Subscriber is willing to irrevocably subscribe for and acquire, and the Company is willing to issue to Subscriber, shares of the Company's common stock in accordance with the terms and conditions of this Agreement.

Statement of Agreement

The parties hereto agree as follows:

1. Issuance and Acquisition of Stock

(a) Acquisition of Stock. Subject to the terms and conditions of this Agreement, Subscriber agrees to acquire from the Company for investment, and the Company agrees to issue to Subscriber, the number of shares of the Company's common stock (the "Shares") for the aggregate purchase price (the "Purchase Price") and on the dates (each a "Closing Date") set forth below:

Date	Number of Shares	Purchase Price
On or before the 15th Business Day after the execution of this Agreement	2,057	$ 2,056,666.50
Within 2 Business Days after August 29, 2008	2,057	$ 2,056,666.50
Within 2 Business Days after November 29, 2008	2,057	$ 2,056,666.50
Within 2 Business Days after VIVUS publicly issues its earnings report for the 4th quarter of its 2008 fiscal year	2,057	$ 2,056,666.50
Within 2 Business Days after May 30, 2009	2,057	$ 2,056,666.50
Within 2 Business Days after August 29, 2009	2,055	$ 2,056,667.50
Total	12,340	$ 12,340,000.00

For purposes of this Agreement, "Business Day" means any day other than Saturday, Sunday or a day on which banks in the City of New York are authorized or required to be closed.

(b) Closing; Payment; Issuance. On each Closing Date, Subscriber shall deliver to the Company the Purchase Price in immediately available funds, and the Company shall issue to and

register in the name of Subscriber one or more certificates evidencing the Shares purchased by Subscriber on such Closing Date.

(c) Condition Precedent. Subscriber shall have no obligation to acquire the Shares at any time when VIVUS, Inc., a Delaware corporation ("VIVUS"), is in breach of that certain Funding and Royalty Agreement between the Company and VIVUS (as amended, the "Funding Agreement").

2. Subscriber's Representations, Warranties and Agreements. All representations and warranties of Subscriber contained herein are made as of the date hereof.

(a) Investment Intention. Subscriber understands that the Shares have not been registered, and that there is no plan or intention by the Company to so register the Shares, under the Securities Act of 1933, as amended (together with applicable rules and regulations promulgated thereunder, the "Act"), or any other applicable state or federal securities statutes. Subscriber represents and warrants that it is acquiring the Shares solely for its own account for the purpose of investment and not with a view to or for sale in connection with any distribution thereof. Subscriber agrees that it will not, directly or indirectly, offer, transfer, sell, pledge, hypothecate or otherwise dispose of any of the Shares (or solicit any offers to buy, purchase, or otherwise acquire or take a pledge of any of the Shares), except in compliance with the Act (including without limitation Release No. 5226 limiting the resale to the public of any of the Shares), and the rules and regulations thereunder.

(b) Ability to Bear Risk. Subscriber represents and warrants that (i) the financial situation of the Subscriber is such that it can afford to bear the economic risk of holding the unregistered Shares for an indefinite period and (ii) it can afford to suffer the complete loss of its investment in the Shares.

(c) Access to Information; Evaluation of Risks. Subscriber represents and warrants that (i) it understands and has taken cognizance of all the risk factors related to its purchase of the Shares, (ii) it has been granted the opportunity to ask questions of, and receive satisfactory answers from, representatives of the Company concerning the terms and conditions of the acquisition of the Shares and has had the opportunity to obtain and has obtained any additional information that it deems necessary regarding the acquisition of the Shares, (iii) it has not relied on any person in connection with its investigation of the accuracy or sufficiency of such information or its investment decision and (iv) it has such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the Shares. Subscriber represents and warrants that it is an "accredited investor," as that term is defined in Regulation D under the Act.

(d) Enforceability. This Agreement has been duly executed and delivered by Subscriber and constitutes a legal, valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms except as may be limited by bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally, and the effect of rules of law governing the availability of equitable remedies.

(e) Compliance with Laws and Other Instruments. Subscriber represents and warrants that the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the performance of each obligation hereunder will not conflict with, or result in any violation of or default under, any agreement or instrument to which Subscriber is a party or by which Subscriber is bound, or any judgment, decree, statute, law, order, rule or regulation applicable to Subscriber.

(f) No General Solicitation. Subscriber acknowledges that the Shares were not offered to Subscriber by means of any general solicitation, publicly disseminated advertisement or sales literature.

(g) No Recommendation. Subscriber acknowledges that no federal or state agency has made any finding or determination relating to the fairness for investment in the Shares, and no federal or state agency has recommended or endorsed the Shares. Subscriber has relied on Subscriber's own legal counsel to the extent Subscriber has deemed necessary as to all legal matters and questions presented with reference to the issuance of the Shares subscribed for herein.

(h) Legend. Subscriber acknowledges that a legend substantially as follows will be placed on the certificates representing the Shares along with any additional legend required by federal or state law or required pursuant to any stockholder or similar agreement:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933 OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT.

3. VIVUS.

(a) VIVUS as Beneficiary. The parties acknowledge that (i) the Company intends to use the funds received from Subscriber to make certain payments to VIVUS pursuant to the Funding Agreement, and (ii) VIVUS, so long as it is not in breach of any its obligations under the Funding Agreement, shall be a third party beneficiary of the obligation of Subscriber to acquire the Shares pursuant to this Agreement with full rights of enforcement as if a party to this Agreement.

(b) Termination upon Exercise of Put or Call. The parties hereto acknowledge that VIVUS has an option to purchase, and Subscriber has an option to sell to VIVUS, the Shares held by Subscriber. Upon the closing of any exercise of such option to purchase or option to sell, Subscriber shall have no further obligation to acquire, and the Company shall have no further obligation to issue, the Shares.

4. Miscellaneous

(a) Binding Effect; Benefits. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. Except as provided in **Section 3(a)**, nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

(b) Waiver. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by any party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

(c) Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument executed by Subscriber and the Company.

(d) Assignment. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by Subscriber without the prior written consent of the Company.

(e) Applicable Law. Notwithstanding the principles of conflicts of law of any jurisdiction that would cause any other law to apply, the interpretation, validity and performance of the terms of this Agreement shall be governed by the laws of State of New York except for matters of corporate law, which shall be governed by the Delaware General Corporation Law.

(f) Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

(h) Survival of Representations and Warranties and Covenants. The representations, warranties and covenants contained in this Agreement shall survive the issuance of the Shares to Subscriber, and shall remain effective.

(i) Indemnification. Subscriber hereby indemnifies and holds the Company harmless from damage, claim or loss (including attorneys' fees) resulting from any misrepresentation or breach of this Agreement by Subscriber. The Company hereby indemnifies and holds Subscriber harmless from damage, claim or loss (including attorneys' fees) resulting from any misrepresentation or breach of this Agreement by the Company.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Company and Subscriber have executed this Subscription Agreement as of the day and year first above written.

Company:

DEERFIELD ED CORPORATION

By: /s/ Jeff Kaplan
Name: Jeff Kaplan
Title: Treasurer

Subscriber:

DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

OPTION AND PUT AGREEMENT

This OPTION AND PUT AGREEMENT (this "Agreement"), dated as of April 3, 2008, is by and among VIVUS, Inc., a Delaware corporation (the "Company"), Deerfield ED Corporation, a Delaware corporation ("ED"), and the entities listed on Exhibit 1 hereto (each a "Stockholder" and together the "Stockholders").

W I T N E S S E T H:

WHEREAS, the Stockholders own all of the issued and outstanding capital stock of ED;

WHEREAS, concurrently with the execution of this Agreement, the Company and ED are entering into a Funding and Royalty Agreement (the "Funding and Royalty Agreement") pursuant to which ED has agreed to provide the Company with funding for the development of certain products and the Company has granted ED the right to receive a Royalty with respect to sales of MUSE and Avanafil; and

WHEREAS, the Stockholders have agreed to grant the Company an option to purchase from the Stockholders all of the outstanding shares of common stock of ED on the terms and conditions set forth herein, and the Company has agreed to grant to the Stockholders an option to require the Company to purchase from the Stockholders all of the outstanding shares of common stock of ED on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

"Avanafil" has the meaning set forth in the Funding and Royalty Agreement.

"Arrangement Fee" shall have the meaning set forth in Section 4.8.

"Base Option Price" means $25,000,000 if the Option Closing Date occurs on or prior to the third anniversary of the date hereof and $28,000,000 if the Option Closing Date occurs subsequent to the third anniversary of the date hereof.

"Base Put Price" means (x) $23,000,000 in the case of a Put Closing that occurs on or prior to the third anniversary of the date hereof pursuant to a Major Transaction Notice, (y) $26,000,000 in the case of a Put Closing that occurs subsequent to the third anniversary of the date hereof pursuant to a Major Transaction Notice and (z) $17,000,000 in all other cases.

"Business Day" means a day other than a Saturday, Sunday or day on which banks in the City of New York are authorized or required to be closed.

"Cash" and "Cash Equivalents" means (a) unrestricted funds in bank accounts; (b) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (c) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits; (d) securities with maturities of one year or less issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor's Rating Service ("S&P") or A by Moody's Investors Service, Inc. ("Moody's"); (e) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (d) of this definition; (f) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, and (ii) are rated AAA by S&P and Aaa by Moody's or (g) available for sale securities which are rated AAA by S&P and Aaa by Moody's.

"Cash Adjustment" means the amount of Cash and Cash Equivalents held by ED as of the Option Closing Date or the Put Closing Date, as the case may be.

"Cash and Cash Equivalent Notice" has the meaning set forth in Section 3.3(b).

"Closing" shall have the meaning set forth in Section 8.2.

"Company Documents" has the meaning set forth in Section 6.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contract" means any note, bond, mortgage, indenture, contract, agreement, guaranty, lien, pledge, lease, purchase order, sales order, arrangement or other commitment, obligation or understanding, written or oral, to which a Person is a party or by which a Person or its assets or properties are bound.

"Damages" means any loss, liability, claim, damage or expense (including reasonable attorneys' fees).

"Encumbrance" means any security interest, mortgage, lien, pledge, charging order, warrant, option, conversion right, purchase right or other encumbrance of any sort.

"Funding Adjustment" means the amount of any Funding Payments that have not been made under the Funding and Royalty Agreement.

"Funding and Royalty Agreement" has the meaning set forth in the Recitals to this Agreement.

"Funding Payment" has the meaning set forth in the Funding and Royalty Agreement.

"GAAP" means generally accepted accounting principles as recognized by the American Institute of Certified Public Accountants.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any municipal, local, city or county government, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Governmental Authorization" means any approval, consent, license, permit, waiver or other authorization issued, granted or given by or under the authority of any Governmental Authority.

"Indemnified Party" has the meaning set forth in Section 9.4(a).

"Indemnifying Party" has the meaning set forth in Section 9.4(a).

"Law" means any foreign, federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, Order, requirement or rule of law (including common law), as amended and in effect from time to time.

"Legal Requirement" means any federal, state, local or foreign statute, law, treaty, rule, regulation, Order, decree, writ, injunction or determination of any arbitrator, court or Governmental Authority and, with respect to any Person, includes all such Legal Requirements applicable or binding upon such Person, its business or the ownership or use of any of its assets.

"Liabilities" means any and all debts, liabilities and obligations of any sort, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, including those arising under any Legal Requirement or Contract or otherwise.

"Major Transaction" means (A) a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or similar event (1) following which the holders of common stock of the Company immediately preceding a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or similar event either (a) no longer hold a majority of the shares of the common stock of the Company or (b) no longer have the ability to elect a majority of the board of directors of the Company or (2) as a result of which shares of common stock of the Company are changed into (or the shares of common stock become entitled to receive) the same or a different number of shares of the same or another class or classes of stock or securities of the Company or another entity (collectively, a "Change in Control Transaction"), (B) a sale or transfer of assets of the Company in one transaction or a series of related transactions where the consideration to be payable at and within thirty (30) days of closing of such transaction or transactions has a value of more than $350,000,000, or a sale, transfer or license of all or substantially all assets or proprietary rights of the Company that relate specifically to MUSE or Avanafil, or (C) a purchase, tender or exchange offer made to the holders of outstanding shares of the Company's common stock, such that following such purchase, tender or exchange offer a Change in Control Transaction shall have occurred; or (D) an issuance or series of issuances by the Company in related transactions of an aggregate number of shares of common stock in excess of 20% of the Company's outstanding common stock on the

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date hereof if, immediately prior to such issuance or series of issuances, the Market Capitalization of the Company is less than $300,000,000.

"Major Transaction Notice" has the meaning set forth in Section 3.3.

"Market Capitalization of the Company" means the aggregate of the value of all of the Company's outstanding shares of common stock based on the volume weighted average price of such shares on the NASDAQ Global Market as reported by Bloomberg Financial Markets or an equivalent reliable reporting source ("Bloomberg") or if NASDAQ is not the principal trading market for such shares, the volume weighted average price of such shares on the principal securities exchange or the trading market whose such shares are listed or traded as reported by Bloomberg.

"MUSE" has the meaning set forth in the Funding and Royalty Agreement.

"Net Sales" shall have the meaning ascribed to that term in the Funding and Royalty Agreement.

"Option" has the meaning set forth in Section 2.1.

"Option Closing" has the meaning set forth in Section 2.5.

"Option Closing Date" has the meaning set forth in Section 2.4.

"Option Period" has the meaning set forth in Section 2.4.

"Option Premium" has the meaning set forth in Section 2.2.

"Option Purchase Price" has the meaning set forth in Section 2.3.

"Order" means any binding order, judgment, ruling, subpoena or verdict rendered by any Governmental Authority or by any arbitrator.

"Party" means the Company, ED and the Stockholders, and "Parties" means all such Persons.

"Permitted Encumbrances" means (i) all Encumbrances approved in writing by the Company; (ii) mechanics', materialmen's, carriers', workmen's, warehousemen's, repairmen's and landlords' liens or other like Encumbrances arising or incurred in the ordinary course of business for amounts which are not

material and not yet due and payable; (iii) Encumbrances for Taxes and other governmental charges that are not due and payable or delinquent or which are being contested in good faith through appropriate Proceedings and (iv) Encumbrances arising under Contracts with third parties entered into in the ordinary course of business in respect of amounts still owing.

"Person" means any corporation, association, joint venture, partnership, limited liability company, organization, business, individual, trust, Governmental Authority or other legal entity.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal or administrative) commenced, conducted, or heard by or before any Governmental Authority or arbitrator.

"Put Closing" has the meaning set forth in Section 3.6.

"Put Closing Date" means the date on which the Shares are sold to the Company pursuant to the Put Right.

"Put Exercise Notice" has the meaning set forth in Section 3.5.

"Put Period" has the meaning set forth in Section 3.2.

"Put Purchase Price" has the meaning set forth in Section 3.4.

"Put Right" has the meaning set forth in Section 3.1.

"Royalty" has the meaning set forth in the Funding and Royalty Agreement.

"Royalty Adjustment" means the amount of accrued and unpaid Royalties for all periods of time ending on the Option Closing Date or the Put Closing Date, as the case may be. For purposes of determining the amount of Royalties payable with respect to the quarterly period during which an Option Closing or Put Closing occurs, it shall be assumed that Net Sales of MUSE were made at the same rate as Net Sales in the comparable period of the prior year and that Net Sales of PDE-5I were made at the same rate as Net Sales in the immediately preceding quarter.

"Royalty Default Notice" shall have the meaning set forth in Section 3.2.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agreement" has the meaning set forth in Section 3.1A.

"Shares" shall have the meaning set forth in Section 4.2.

"Stockholder Documents" has the meaning set forth in Section 5.2.

"Stockholders" has the meaning set forth in the first paragraph of the Agreement.

"Straddle Period" means any Taxable Period that begins on or before, and ends after, the Option Closing Date or the Put Closing Date, as applicable.

"Subscription Agreements" has the meaning set forth in Section 4.2.

"Tax Adjustment" means the amount of accrued Taxes of ED for all periods up to the Option Closing or the Put Closing, as the case may be, to the extent such Taxes have not been paid by ED as of the applicable Closing.

"Taxable Period" shall mean any taxable year or any other period that is treated as a taxable year (or other period, or portion thereof, in the case of a Tax imposed with respect to such other period; e.g., a quarter) with respect to which any Tax may be imposed under any applicable statute, rule, or regulation.

"Taxes" means any and all U.S. federal, state and local taxes, assessments and other governmental charges, duties, impositions, levies and liabilities, including, without limitation, taxes based upon or measured by gross receipts, income profits, sales, use and occupation, and value added, goods and services, ad valorem, transfer, gains, franchise, withholding, payroll, recapture, employment, excise, unemployment, insurance, social security, business license, occupation, business organization, stamp, environmental and property taxes, together with any interest, penalties and additions imposed with respect to such amounts. For purposes of this Agreement, "Taxes" also includes any obligations under any agreements or arrangements with any Person with respect to the liability for, or sharing of, Taxes.

"Tax Return" means any return, statement, declaration, report, estimate, notice, form, schedule or other document (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, information returns and reports and any amendment to any of the foregoing) relating to Taxes.

ARTICLE II

OPTION

2.1 Option. On the terms and subject to the conditions of this Agreement, the Stockholders hereby grant the Company an option (the "Option") which, when exercised, shall obligate each of the Stockholders to sell the Shares to the Company, and the Company to purchase the Shares from each of the Stockholders.

2.2 Option Premium. In consideration of the grant by the Stockholders to the Company of the Option, the Company shall simultaneously with the payment of the first Funding Payment under the Funding and Royalty Agreement pay to the Stockholders Two Million Dollars ($2,000,000) (the "Option Premium") by wire transfer of immediately available funds to the account listed in Exhibit 2 hereto. Such amount shall be allocated between the Stockholders as provided in Exhibit 2 hereto. If the Option is exercised by the Company, upon closing of the sale of the Shares the Option Premium shall be applied against the Option Purchase Price in accordance with Section 2.3 below. In all other circumstances, including but not limited to the sale of the Shares pursuant to the Put Right, the Stockholders shall be entitled to retain the Option Premium.

2.3 Option Purchase Price. If the Company exercises the Option, the aggregate consideration to be paid by the Company (the "Option Purchase Price") to the Stockholders for the Shares shall be equal to the sum of the Base Option Price plus the Cash Adjustment plus the Royalty Adjustment, and minus the Option Premium, the Tax Adjustment, the Funding Adjustment and any other outstanding liabilities of ED. The Stockholders shall provide written notice of the amount of the Cash Adjustment, the Tax Adjustment and any other outstanding

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liabilities of ED, and the Company shall provide written notice of the amount of the Royalty Adjustment, no later than five (5) Business Days prior to the Option Closing Date. At the Option Closing, the Company shall pay the Option Purchase Price to the Stockholders by wire transfer of immediately available funds to an account or accounts designated in writing by the Stockholders. The Option Purchase Price shall be allocated between the Stockholders pro rata in accordance with the percentage of the Shares held by the Stockholders.

2.4 Term and Method of Exercise of Option. The Option shall commence on the date of this Agreement and terminate at 5:00 p.m. Eastern time on the fourth anniversary of the date of this Agreement (the "Option Period"). Except as hereafter provided, at any time prior to the expiration of the Option Period, the Company may exercise the Option by delivery to the Stockholders of a written notice (the "Option Exercise Notice") substantially in the form of Exhibit 3 hereto. The Option Exercise Notice shall constitute a binding obligation of the Company to purchase, and the Stockholders to sell, all of the Shares pursuant to the terms and conditions of this Agreement. The Option Exercise Notice may be delivered on any Business Day during the Option Period that is at least twenty (20) days prior to the expiration of the Option Period and shall specify a closing date (the "Option Closing Date") for the sale of the Shares pursuant to the Option, which shall be a Business Day not earlier than ten (10) nor later than twenty (20) days, after the date of the Option Exercise Notice.

2.5 Option Closing. The closing of the sale of Shares pursuant to the Option (the "Option Closing") shall take place at the offices of Katten Muchin Rosenman LLP, in New York, New York, commencing at 10:00 a.m., local time, on a Business Day within the Option Period. The Option Closing shall be effective as of 5:00 p.m., local time, on the Option Closing Date, and all actions scheduled in this Agreement for the Option Closing Date shall be deemed to occur simultaneously at that time, except as otherwise contemplated hereby or as expressly agreed in writing by the Parties. At the Option Closing the Stockholders shall deliver to the Company certificates representing the Shares, duly endorsed in blank (or accompanied by duly executed stock powers in blank), and the Company shall deliver to the Stockholders the Option Purchase Price by wire transfer of immediately available funds to an account or accounts specified by the Stockholders.

ARTICLE III

PUT RIGHT

3.1 Put Right. On the terms and subject to the conditions of this Agreement, the Company hereby grants the Stockholders an option (the "Put Right") which, when exercised, shall obligate the Company to purchase the Shares from each of the Stockholders, and obligate each of the Stockholders to sell the Shares to the Company.

3.2 The Put Period. The Put Right shall commence on the earliest of (a) the third anniversary of the date of this Agreement, (b) any date on which (i) the Market Capitalization of the Company falls below $50,000,000 or (ii) the amount of Cash and Cash Equivalents held by the Company falls below $15,000,000, (c) the fifteenth day following the delivery of written notice to the Company (a "Royalty Default Notice") that the Company has failed to pay

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Royalties in accordance with the provisions of the Funding and Royalty Agreement which failure constitutes a breach of the Funding and Royalty Agreement, unless the Company shall have paid such Royalties prior to such fifteenth day and (d) the closing of a Major Transaction. The Put Right shall terminate on the tenth anniversary of the date hereof. The period during which the Shares may be sold pursuant to the Put Right is referred to as the "Put Period."

3.3 Major Transaction Notice and Cash and Cash Equivalent Notice. (a) At least twenty (20) days prior to the consummation of any Major Transaction, but, in any event, not later than the date of the public announcement of such Major Transaction, the Company shall deliver to the Stockholders a written notice setting forth the terms of such Major Transaction (a "Major Transaction Notice"). If, subsequent to the delivery of the Major Transaction Notice, the Stockholders shall have delivered a Put Exercise Notice (as defined below) then, not less than three (3) Business Days prior to the consummation of such Major Transaction, the Company shall deliver to the Stockholders a dated written notice specifying the anticipated closing date for such Major Transaction.

(b) Not less than two (2) Business Days after any date on which the amount of Cash and Cash Equivalents of the Company falls below $15,000,000, the Company shall deliver written notice (a "Cash and Cash Equivalent Notice") thereof to the Stockholders.

3.4 Put Purchase Price. If the Stockholders exercise the Put Right, the aggregate consideration to be paid by the Company (the "Put Purchase Price") to the Stockholders for the Shares shall be equal to the Base Put Price plus the Cash Adjustment and the Royalty Adjustment and minus the Tax Adjustment, the Funding Adjustment and any other outstanding liabilities of ED. The Stockholders shall provide written notice of the amount of the Cash Adjustment, the Tax Adjustment and any other outstanding liabilities of ED, and the Company shall provide written notice of the amount of the Royalty Adjustment, no later than five (5) Business Days prior to the Put Closing Date. At the Put Closing, the Company shall pay the Put Purchase Price to the Stockholders by wire transfer of immediately available funds to an account or accounts designated in writing by the Stockholders. The Put Purchase Price shall be allocated among the Stockholders pro rata in accordance with the number of the Shares held respectively by the Stockholders.

3.5 Method of Exercise. Except as hereinafter provided, at any time during the Put Period, all, but not less than all, of the Stockholders may exercise the Put Right by delivery to the Company of a written notice executed by each of the Stockholders (the "Put Exercise Notice") substantially in the form of Exhibit 3 hereto. The Put Exercise Notice shall constitute a binding obligation of the Company to purchase, and the Stockholders to sell, all of the Shares pursuant to the terms and conditions of this Agreement. The Put Exercise Notice may be delivered on any Business Day during the Put Period that is at least twenty (20) days prior to the expiration of the Put Period. In addition, the Put Exercise Notice given in respect of (a) the Put Right provided for in Section 3.2(a) may also be given on any date that is no more than twenty (20) days prior to the third anniversary of the date hereof, (b) the Put Right provided for in Section 3.2(b)(ii) and 3.2(d) may also be given at any time after the delivery of a Cash and Cash Equivalent Notice or a Major Transaction Notice, as the case may be, and (c) the Put Right provided for in Section 3.2(c) may be given simultaneously with or at any time after the delivery of a Royalty Default Notice. The Put Exercise Notice in respect of all Put Rights other than the Put Right provided for in Section 3.2(d) shall specify a closing date

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for the sale of Shares pursuant to the Put Right, which shall be a Business Day not earlier than ten (10), nor later than twenty (20), days after the date of the Put Exercise Notice. The Put Exercise Notice in respect of the Put Right provided for in Section 3.2(d) shall specify that the closing date for the sale of the Shares shall take place simultaneously with the closing of the Major Transaction or on a date that is mutually agreeable to the Stockholders and the Company that is prior to the closing of the Major Transaction.

3.6 Put Closing. The closing of the purchase of the Shares pursuant to the Put Right (the "Put Closing") shall take place at the offices of Katten Muchin Rosenman LLP, in New York, New York, commencing at 10:00 a.m., local time on a Business Day within the Put Period. The Put Closing shall be effective as of 5:00 P.M., local time, on the Put Closing Date, and all actions scheduled in this Agreement for the Put Closing Date shall be deemed to occur simultaneously at that time, except as otherwise contemplated hereby or as expressly agreed in writing by the Parties. At the Put Closing the Stockholders shall deliver to the Company certificates representing the Shares, duly endorsed in blank (or accompanied by duly executed stock powers in blank), and the Company shall deliver to the Stockholders the Put Purchase Price, by wire transfer of immediately available funds to an account or accounts specified by the Stockholders in writing to the Company.

3.7 Major Transaction Closing. Notwithstanding anything to the contrary contained herein, the Company shall not consummate a Major Transaction if the Stockholders have previously delivered a Put Exercise Notice unless the Put Purchase Price is paid to the Stockholders in full prior to or simultaneously with the consummation of such Major Transaction.

ARTICLE IIIA

SECURITY AGREEMENT

3.1A Security Agreement. As security for the performance of its obligations with respect to the Put Right, simultaneously with the execution of this Agreement the Company has entered into the Security Agreement (the "Security Agreement") annexed hereto as Exhibit 4.

ARTICLE IV

REPRESENTATIONS RELATING TO ED

The Stockholders and ED jointly and severally represent to the Company that:

4.1 ED is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. ED has the requisite corporate power and authority to own the assets that it owns and to conduct its business. The current officers of ED are as follows: Peter Steelman, President; Alexander Karnal, Secretary and Jeffrey Kaplan, Treasurer. The Stockholders shall notify the Company as soon as practicable following any change in the

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officers of ED that occurs prior to the earlier of (x) the exercise of the Option or the Put Right and (y) the expiration of the Option and the Put Right.

4.2 The authorized capital stock of ED consists of 21,000 shares of common stock having a par value of $0.001 per share. As of the date of this Agreement, none of such authorized shares are outstanding. All of the foregoing shares have been duly authorized and validly issued and are fully paid and nonassessable and free of preemptive and similar rights. Except as expressly contemplated by this Agreement and except for shares of common stock which are the subject of the Subscription Agreements (the "Subscription Agreements"), dated on or about the date hereof, between ED and the respective Stockholders, there are no outstanding (i) shares of capital stock, debt securities or other voting securities of ED; (ii) securities of ED which are or may become convertible into or exchangeable for shares of capital stock, debt securities or voting securities or ownership interests in ED; (iii) Contracts that grant or may grant the right to acquire from ED, or obligations of ED to issue any capital stock, debt securities, voting securities or other ownership interests in, or any securities convertible into or exchangeable or exercisable for any capital stock, voting securities, debt securities or ownership interests in, ED, or obligations of ED to grant, extend or enter into any such agreement or commitment; or (iv) obligations of ED to repurchase, redeem or otherwise acquire any outstanding securities of ED, or to vote or to dispose of any shares of the capital stock of ED. All of the outstanding equity securities of ED have been offered and issued in compliance with all applicable federal and state securities laws, including "blue sky" laws. Any outstanding shares of capital stock of ED, including the shares of common stock issuable pursuant to the Subscription Agreements, are referred to as the "Shares."

4.3 There are no agreements, arrangements, proxies or understandings that restrict or otherwise affect the transfer of any of the Shares except as set forth in this Agreement.

4.4 ED has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance of all of its obligations hereunder have been duly authorized by ED and the Stockholders. This Agreement has been duly executed and delivered by ED and constitutes the legal, valid and binding obligation of ED, enforceable against ED in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, moratorium, reorganization or other laws of general application relating to or affecting creditors' rights generally.

4.5 The signing, delivery and performance of this Agreement by ED is not prohibited or limited by, and will not result in the breach of or a default under, any provision of the certificate of incorporation or bylaws of ED, or of any applicable Law, Order, writ, injunction or decree of any

Governmental Authority, except for such prohibition, limitation or default as would not prevent consummation by ED of the transactions contemplated hereby.

4.6 There is no Proceeding pending or threatened, directly or indirectly, involving ED or the transactions contemplated hereby or ED's ability to perform its obligations hereunder. ED is not a party or subject to or in default under any Order applicable to ED

4.7 No insolvency Proceeding of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, has been commenced by or against ED or any of its assets, nor is any such Proceeding threatened. Neither the Stockholders nor ED contemplates, nor has ED or either Stockholder taken any action in contemplation of, the institution of any such insolvency Proceedings.

4.8 No broker, investment banker, agent, finder or other intermediary acting on behalf of ED or under the authority of ED is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with any of the transactions contemplated hereby, except for the arrangement fee payable to Deerfield Management Company, L.P. pursuant to Section 6(a) of the Securities Purchase Agreement of even date herewith among VIVUS, the Stockholders and Deerfield Management Company, L.P. (the "Arrangement Fee").

4.9 As of the date of this Agreement, ED's sole assets consist of Cash and Cash Equivalents and its rights under the Subscription Agreements and the Funding and Royalty Agreement. ED has no Liabilities, other than those Liabilities that are incidental to the permitted activities of ED or are otherwise created by the Funding and Royalty Agreement or this Agreement or relate to the payment of Taxes. ED has timely filed all material Tax Returns required to be filed by it and has timely paid all material Taxes required to be paid by it. ED does not own any interest in any other Person.

4.10 There are no Encumbrances upon any of the Shares other than those created by this Agreement.

4.11 None of the Shares has been issued in violation of any Legal Requirement or the certificate of incorporation or bylaws of ED or in violation of any preemptive, subscription or similar rights.

4.12 ED was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and the Funding and Royalty Agreement. ED has not owned, operated or conducted and, other than its receipt of Royalties and subscription payments under the Subscription Agreements, will not own any assets other than Cash and Cash Equivalents or operate or conduct any assets, businesses or activities other than in connection with its organization, the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby and by the Funding and Royalty Agreement.

4.13 No Governmental Authorization is required by ED in connection with the execution or delivery by ED of this Agreement or the performance by ED of ED's obligations under this Agreement. Neither the execution and delivery of this Agreement by ED nor the performance of ED's obligations hereunder shall (with or without notice or lapse of time) (i) result in the creation of any Encumbrance upon the Shares or (ii) conflict with or violate any Legal Requirement applicable to ED.

4.14 The Board of Directors of ED and the Stockholders have approved this Agreement and the Funding and Royalty Agreement and the transactions contemplated hereby and thereby.

4.15 ED is not, and does not intend to conduct its business in a manner in which it would be, required to be registered as an "investment company" as defined in Section 3(a) of the Investment Company Act of 1940, as amended.

4.16 EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE IV AND IN ARTICLE V, NEITHER THE STOCKHOLDERS NOR ED MAKES, AND NO PARTY SHALL BE ENTITLED TO RELY UPON, ANY REPRESENTATION OR WARRANTY AS TO ANY FACT OR MATTER ABOUT ED UNDER THIS AGREEMENT.

ARTICLE V

REPRESENTATIONS RELATING TO THE STOCKHOLDERS

Each Stockholder represents to the Company, solely with respect to itself, that:

5.1 Organization. Such Stockholder is a limited partnership and is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

5.2 Authority; Enforceability. Such Stockholder has the requisite legal power and authority to (i) execute and deliver this Agreement and each certificate, document and agreement to be executed by such Stockholder in connection herewith (collectively, the "Stockholder Documents") and (ii) perform its obligations hereunder and thereunder, and such execution, delivery and performance have been duly and validly authorized by such Stockholder. This Agreement has been duly and validly executed and delivered by such Stockholder and constitutes, and upon execution and delivery by such Stockholder of each Stockholder Document to which such Stockholder is a party, each such Stockholder Document will constitute, a legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms, except as the enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws relating to or limiting creditors' rights generally or by general principles of equity.

5.3 No Violation; Enforceability. The signing, delivery and performance of this Agreement by such Stockholder is not prohibited or limited by, and will not result in the breach of or a default under, any provision of the limited partnership agreement or other formation documents of such Stockholder, or of any material agreement or instrument binding on such Stockholder, or of any applicable law or Order, except for such prohibition, limitation or default as would not prevent consummation by such Stockholder of the transactions contemplated hereby. The execution, delivery and performance of this Agreement by such Stockholder and such Stockholder's compliance with the terms and provisions hereof do not and will not conflict with or result in a

breach of any of the terms and provisions of or constitute a default, with or without the passage of time and the giving of notice, under any material Contract binding or affecting such Stockholder or such Stockholder's property.

5.4 No Proceedings. There is no Proceeding pending or threatened involving such Stockholder that would materially affect such Stockholder's ability to perform its obligations hereunder.

5.5 Financial Condition. No insolvency Proceeding of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, has been commenced by or against such Stockholder or any of its assets or properties, nor is any such Proceeding threatened. Such Stockholder does not contemplate, and has not taken any action in contemplation of, the institution of any such insolvency Proceedings.

5.6 Sufficient Funds. Such Stockholder has sufficient capital commitments to be capable of funding its subscription obligations on the terms and conditions set forth in the Subscription Agreement to which such Stockholder is a party.

5.7 Consents and Approvals; No Violation.

(a) No Governmental Authorization is required by such Stockholder in connection with the execution or delivery by such Stockholder of this Agreement or the Stockholder Documents to which such Stockholder is a party, or the performance by such Stockholder of the Stockholder's obligations under this Agreement or the Stockholder Documents to which such Stockholder is a party, except for any Governmental Authorizations that are not material.

(b) Neither the execution and delivery of this Agreement and the Stockholder Documents by such Stockholder nor the performance of such Stockholder's obligations hereunder or thereunder shall (with or without notice or lapse of time) conflict with or violate any Legal Requirement applicable to such Stockholder, except for any Legal Requirements that are not material.

5.8 Capital Stock. As of the date of this Agreement, such Stockholder has subscribed for the number of Shares pursuant to the Subscription Agreement to which such Stockholder is a party, and upon issuance of such Shares such Stockholder shall be the sole record and beneficial owner thereof, free and clear of any Encumbrances (other than restrictions on transfer under applicable Legal Requirements).

5.9 Brokers, Etc. No broker, investment banker, agent, finder or other intermediary acting on behalf of such Stockholder or under the authority of such Stockholder is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with any of the transactions contemplated hereby, except for the Arrangement Fee.

5.10 Investment Company Act of 1940. Such Stockholder is not, and does not intend to conduct its business in a manner in which it would be, required to be registered as an "investment company" as defined in Section 3(a) of the Investment Company Act of 1940, as amended.

5.11 No Other Representations or Warranties. EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE IV AND THIS ARTICLE V, NEITHER THE STOCKHOLDERS NOR ED MAKES, AND NO PARTY SHALL BE ENTITLED TO RELY UPON, ANY REPRESENTATION OR WARRANTY AS TO ANY FACT OR MATTER ABOUT THE STOCKHOLDERS UNDER THIS AGREEMENT.

ARTICLE VI

REPRESENTATIONS RELATING TO THE COMPANY

The Company represents to the Stockholders and ED:

6.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization. The Company has the requisite power and authority to own, lease and use the properties and assets that it owns, leases and uses and to conduct its business as presently conducted.

6.2 Authority; Enforceability. The Company has the requisite power and authority to (i) execute and deliver this Agreement, the Security Agreement, the Funding and Royalty Agreement and each certificate, document and agreement to be executed by the Company in connection herewith and therewith (collectively, the "Company Documents") and (ii) perform its obligations hereunder and thereunder. The execution and delivery of this Agreement, the Security Agreement, the Funding and Royalty Agreement and the Company Documents and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Company, and no other Proceedings on the part of the Company are necessary to authorize this Agreement, the Security Agreement, the Funding and Royalty Agreement or any of the Company Documents or to consummate the transactions contemplated hereby or thereby. This Agreement, the Security Agreement and the Funding and Royalty Agreement have been duly and validly executed and delivered by the Company and constitute, and upon execution and delivery by the Company of each Company Document, each Company Document will constitute, a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws relating to or limiting creditors' rights generally or by general principles of equity.

6.3 Consents and Approvals; No Violation.

(a) No Governmental Authorization is required by the Company in connection with the execution or delivery by the Company of this Agreement, the Security Agreement the Funding and Royalty Agreement or the Company Documents, or the performance of the Company's obligations under this Agreement, the Security Agreement, the Funding and Royalty Agreement or the Company Documents.

(b) Neither the execution and delivery of this Agreement, the Security Agreement, the Funding and Royalty Agreement and the Company Documents by the Company nor the performance of the Company's obligations hereunder or thereunder shall (with or without notice or lapse of time): (i) conflict with or violate any provision of the certificate of incorporation or bylaws of the Company or any resolution adopted by the board of directors or stockholders of the

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Company, (ii) conflict with or breach any of the terms or provisions of, or give any Person a right to declare a default or exercise any remedy under, any material Contract binding on the Company or (iii) conflict with or violate any Legal Requirement applicable to the Company, but excluding from the foregoing clauses (ii) and (iii) conflicts, breaches, defaults, remedies and violations that would not be reasonably likely, either individually or in the aggregate, to adversely affect the Company's ability to consummate the transactions contemplated by this Agreement.

6.4 Compliance With Laws. The Company is in compliance with all material Legal Requirements applicable to the Company. The Company has not received any written notice from any Governmental Authority regarding any violation of, or failure to comply with, any material Legal Requirement.

6.5 Litigation. There are no Proceedings that are pending against or threatened against the Company that would adversely affect its ability to consummate the transactions contemplated by this Agreement. The Company is not subject to any Order that could affect the enforceability of this Agreement against the Company or that would adversely affect the Company's ability to consummate the transactions contemplated by this Agreement.

6.6 Investment Interest. The Company is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act and will be acquiring the Shares for its own account for investment purposes only and not with a view to, or for sale or resale in connection with, any distribution within the meaning of Section 2(11) of the Securities Act. The Company understands that the Shares are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Stockholders in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances.

6.7 Brokers. No broker, investment banker, agent, finder or other intermediary acting on behalf of the Company or under the authority of the Company is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with any of the transactions contemplated hereby, except for the Arrangement Fee.

6.8 No Other Representations. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE VI, THE COMPANY DOES NOT MAKE, AND NO PARTY SHALL BE ENTITLED TO RELY UPON, ANY REPRESENTATION AS TO ANY FACT OR MATTER ABOUT THE COMPANY.

ARTICLE VII

COVENANTS

7.1 Tax.

(a) From the date that the Option or Put Right is exercised to the Option Closing Date or Put Closing Date, as the case may be, ED will not:

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(1) make any new Tax election except as described in Section 7.1(a)(3) below;

(2) consent to any claim or assessment relating to any material Taxes or any waiver of the statute of limitations for any such claim or assessment; and

(3) make any material change in a Tax accounting method (except as required below) without the Company's prior written consent (which consent may not be unreasonably withheld, conditioned or delayed).

(b) From the date the Option or Put Right is exercised to the Option Closing Date or Put Closing Date, as the case may be:

(1) ED will promptly notify the Company of any Tax Proceeding initiated against ED where an adverse determination could result in a material Tax Liability or materially and adversely affect the Tax attributes of ED; and

(2) for purposes of apportioning a Tax to any pre-Closing portion of a Straddle Period, the Parties shall treat such Straddle Period as if it were two Tax Periods, one ending with the Option Closing or the Put Closing, as the case may be, and the other beginning immediately following such Option Closing or Put Closing; the Parties shall elect to do so if permitted by applicable law.

(c) From the date hereof to the Option Closing Date or Put Closing Date, as the case may be, ED will timely file all Tax Returns required to be filed by it during such period and will pay when due all Taxes due and payable by ED during such period.

7.2 Operations During Purchase Period. From the date of this Agreement through the first to occur of (a) the expiration or termination of the Option and the Put Right or (b) the Option Closing Date or the Put Closing Date, ED shall, and the Stockholders shall cause ED to, engage in no other business other than the payment of the Funding Payments pursuant to the Funding and Royalty Agreement, the receipt of the Royalties, the investment of Royalties in Cash and the distribution of Cash to the Stockholders. Without limiting the foregoing, ED shall not, and the Stockholders shall not cause ED to, do any of the following without the prior written consent of the Company:

(a) amend its Certificate of Incorporation or By-laws;

(b) issue any capital stock or any option, warrant or right relating thereto or any securities convertible into or exchangeable for any shares of capital stock, equity securities or other equity interests other than pursuant to this Agreement or the Subscription Agreements.

(c) permit, allow or suffer any of its assets to be subject to any Encumbrance other than Permitted Encumbrances;

(d) sell, transfer or lease rights to the Royalties;

(e) acquire or agree to acquire any assets other than (A) Royalties and (B) Cash and Cash Equivalents;

(f) agree to any of the foregoing.

7.3 Preservation of Shares. No Stockholder shall (a) sell, lease or otherwise dispose of any Shares or (b) permit, allow or suffer any Shares to be subject to any Encumbrance, in each case until the expiration or termination of the Option and the Put Right.

7.4 Further Assurances. Upon the terms and subject to the conditions of this Agreement, each Party shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Legal Requirements to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, including, without limitation, the prompt preparation and filing of all forms, registrations and notices required to be filed to consummate the transactions contemplated by this Agreement and the taking of such commercially reasonable actions as are necessary to obtain any requisite consents, Orders, exemptions or waivers by any Governmental Authority or any other Person. Each Party shall promptly consult with the other Parties with respect to, provide the other Parties any necessary information with respect to and provide the other Parties (or their respective counsel) copies of, all filings made by such Party with any Governmental Authority or any other Person or any other information supplied by such Party to a Governmental Authority or any other Person in connection with this Agreement and the transactions contemplated by this Agreement. From time to time after the Option Closing or Put Closing, without additional consideration, each Party will execute and deliver such further instruments and take such other action as may be necessary or reasonably requested by each other Party to make effective the transactions contemplated by this Agreement and to provide each other Party with the benefits of this Agreement.

ARTICLE VIII

CLOSING CONDITIONS

8.1 Mutual Condition. The obligation of the Parties to consummate the Option Closing or the Put Closing, as applicable, shall be subject to the satisfaction (or waiver, if permissible under applicable Legal Requirements) of the following conditions:

(a) No Legal Requirement, temporary restraining Order, preliminary injunction or permanent injunction, judgment or ruling enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority shall be in effect enjoining, restraining, preventing or prohibiting the consummation of such Option Closing or Put Closing, as applicable.

(b) The Company shall have delivered to the Stockholders the Option Exercise Notice or the Stockholders shall have delivered to the Company the Put Exercise Notice, as applicable.

8.2 The Company's Conditions. The obligation of the Company to consummate the Option Closing or the Put Closing (each, a "Closing"), as applicable, shall be subject to the satisfaction (or waiver, if permissible under applicable Legal Requirements) of the following conditions:

(a) Each of the representations and warranties of ED and each Stockholder set forth in this Agreement, shall be true and correct in all material respects, in each case as of (i) the date of this Agreement; and (ii) the Closing, as though made on and as of the Closing, except for representations and warranties that are made as of the date of this Agreement (which shall be true and correct as of the date of this Agreement) and except where the failure or failures to be true and correct would not in the aggregate reasonably be expected to materially and adversely affect the Company.

(b) ED and each Stockholder shall have performed in all material respects all obligations and complied with all covenants required to be performed by it under this Agreement at or prior to the Closing.

(c) The Stockholders shall have delivered to the Company a certificate certifying the matters set forth in Sections 8.2(a) and (b).

8.3 Stockholders' Conditions. The obligation of ED and the Stockholders to consummate any Closing shall be subject to the satisfaction (or waiver, if permissible under applicable Legal Requirements) of the following conditions:

(a) Each of the representations and warranties of the Company set forth in this Agreement shall be true and correct in all material respects, in each case as of (i) the date of this Agreement and (ii) the Closing, as though made on and as of the Closing, except for representations and warranties that are made as of the date of this Agreement (which shall be true and correct as of the date of this Agreement) and except where the failure or failures to be true and correct would not in the aggregate reasonably be expected to materially and adversely affect the Stockholders.

(b) The Company shall have performed in all material respects all obligations and complied with all covenants required to be performed by it under this Agreement at or prior to the Closing.

(c) The Company shall have delivered to the Stockholders a certificate certifying the matters set forth in Sections 8.3(a) and (b) executed by a duly authorized officer of the Company.

ARTICLE IX

INDEMNIFICATION

9.1 Survival. All representations and warranties made by the Stockholders, ED and the Company in this Agreement and the documents to be executed in connection with this Agreement shall survive the Closing until the earlier of the expiration of the applicable statute of limitations with respect to

such matters or the payment of all Royalty obligations by the Company under the Funding and Royalty Agreement. All covenants and agreements contained in this Agreement and the documents to be executed in connection with this Agreement shall survive the Closing in accordance with their respective terms.

9.2 Indemnification by the Stockholders. Subject to the limitations set forth in this Article IX, after the Closing the Stockholders shall jointly and severally indemnify and hold harmless the Company from, and shall pay to the Company, any and all Damages arising, directly or indirectly, from or in connection with:

(a) the breach of any of the representations, warranties, covenants or agreements of any Stockholder or ED contained in this Agreement;

(b) any Liability of ED arising prior to the Closing Date other than (i) obligations arising solely from ED's right to receive the Royalties, (ii) Liabilities that have been reflected in the computation of the Option Purchase Price or the Put Purchase Price, as the case may be, and (iii) Liabilities caused by the acts or omissions of the Company, but only to the extent such Liabilities are caused by the acts or omissions of the Company; and

(c) the violation by ED or any Stockholder of any Legal Requirement, or any gross negligence or willful misconduct of ED or any Stockholder, or the performance by ED or any Stockholder of its obligations under this Agreement.

9.3 Indemnification by the Company. Subject to the limitations set forth in this Article IX, after the Closing the Company shall indemnify and hold harmless the Stockholders from, and shall pay to the Stockholders, any and all Damages arising, directly or indirectly, from or in connection with:

(a) the breach of any of the representations, warranties, covenants or agreements of the Company contained in this Agreement; and

(b) the violation by the Company of any Legal Requirement, or any gross negligence or willful misconduct of the Company, or the failure by the Company of its obligations under this Agreement.

9.4 Procedure for Indemnification – Third Party Claims.

(a) If any Person shall claim indemnification hereunder arising from any claim or demand of a third party, the Party seeking indemnification (the "Indemnified Party") shall notify the Party from whom indemnification is sought (the "Indemnifying Party") in writing of the basis for such claim or demand and such notice shall set forth the nature of the claim or demand in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any indemnification obligation hereunder except to the extent that the defense of such claim or demand is prejudiced by the failure to give such notice.

(b) If any Proceeding is brought by a third party against an Indemnified Party and the Indemnified Party gives notice to the Indemnifying Party pursuant to Section 9.4(a), the Indemnifying Party may assume the defense and control the settlement of such Proceeding. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Indemnified Party in its sole discretion) in any such Proceeding and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Indemnified Party. If the Indemnified Party assumes the defense of such Proceeding pursuant to Section 9.4(c) because of the failure of the Indemnifying Party to conduct such

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defense in good faith, the fees and expenses of such counsel shall be paid by the Indemnifying Party. The Indemnified Party shall cooperate fully with the Indemnifying Party and its counsel in the defense or settlement of such Proceeding. If the Indemnifying Party assumes the defense of a Proceeding, no compromise or settlement of such claims may be effected by the Indemnifying Party without the Indemnified Party's consent unless (i) there is no finding or admission of any violation of Legal Requirements or the rights of any Person by the Indemnified Party and no material adverse effect on the Indemnified Party with respect to any other claims that may be made against it, and (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

(c) If (i) notice is given to the Indemnifying Party of the commencement of any third party Proceeding and the Indemnifying Party does not, within ten (10) days after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such Proceeding, or (ii) having assumed the defense of such Proceeding, the Indemnifying Party fails to conduct such defense in good faith, then the Indemnified Party shall (upon notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Proceeding; provided that no compromise or settlement of such Proceeding may be affected by the Indemnified Party without the Indemnifying Party's consent, if (A) the Indemnifying Party will be liable for any amounts to be paid to compromise or settle the Proceeding, (B) there is a finding or admission of any violation by the Indemnifying Party of any Legal Requirement or the rights of any Person, or (C) the compromise or settlement would have a material adverse effect on the Indemnifying Party with respect to any other claims that may be made against it. The Indemnifying Party shall reimburse the Indemnified Party for the costs and expenses of defending against the third party Proceeding (including reasonable attorneys' fees and expenses) and the Indemnifying Party shall remain responsible for any Damages arising from or related to such third party Proceeding to the extent provided in this Article IX. The Indemnifying Party may elect to participate in such Proceedings, negotiations or defense at any time at its own expense.

9.5 Limitation on Damages.

(a) The Stockholders' aggregate liability for Damages under this Agreement shall be limited to the amount of the Option Purchase Price or the Put Purchase Price, as the case may be.

(b) The Company's aggregate liability for Damages under this Agreement shall be limited to the amount of the Option Purchase Price or the Put Purchase Price, as the case may be.

(c) Upon any payment of Damages to or on behalf of an Indemnified Party, the Indemnifying Party shall be subrogated to all rights of the Indemnified Party with respect to the Damages to which such indemnification relates to the extent of the amount of such payment.

(c) The Indemnified Party shall have no right to recover consequential, punitive or multiplied damages pursuant to this Article IX except to the extent the Indemnified Party is liable to a third party for such damages.

9.6 Tax Treatment of Indemnity. Notwithstanding anything to the contrary in this Article IX, any Tax or other amount for which indemnification is provided under this Agreement

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shall be treated as an adjustment to the Option Purchase Price or the Put Purchase Price, as the case may be.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 No Joint Venture. The relationship between the Parties is that of independent contractors. The Parties are not joint venturers, partners, principal and agent, master and servant, employer or employee, and have no relationship other than as independent contracting parties. No Party shall have the power to bind or obligate any other in any manner.

10.2 Expenses. Each Party shall pay all costs and expenses incurred by such Party in connection with this Agreement and the transactions contemplated hereby, including in each case all fees and expenses of investment bankers, finders, brokers, agents, representatives, consultants, counsel and accountants.

10.3 Amendment and Modification. This Agreement may be amended, modified or supplemented only by an agreement in writing signed by the Party against whom such amendment, modification or supplement is sought to be enforced.

10.4 Waiver of Compliance; Consents. The rights and remedies of the Parties are cumulative and not alternative and may be exercised concurrently or separately. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Parties; (ii) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement. Any consent required or permitted by this Agreement is binding only if in writing.

10.5 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be (i) delivered by hand, (ii) sent by facsimile transmission, or (iii) sent by certified mail or by a nationally recognized overnight delivery service, charges prepaid, to the address set forth below (or such other address for a Party as shall be specified by like notice):

If to the Stockholders or ED, to:

c/o Deerfield Capital, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Attention: James E. Flynn
Facsimile: (212) 573-8111

Copies to:
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
Attention: Mark I. Fisher
Facsimile: (212) 894-5877

If to the Company, to:
VIVUS, Inc.
1172 Castro Street
Mountain View, California 94040
Attention: Leland F. Wilson
Facsimile: (650) 934-5389

Copy to:
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attn: Mark Reinstra, Esq.
Facsimile: 650-493-6811

Each such notice or other communication shall be deemed to have been duly given and to be effective (x) if delivered by hand, immediately upon delivery if delivered on a Business Day during normal business hours and, if otherwise, on the next Business Day; (y) if sent by facsimile transmission, immediately upon confirmation that such transmission has been successfully transmitted on a Business Day before or during normal business hours and, if otherwise, on the Business Day following such confirmation; or (z) if sent by a nationally recognized overnight delivery service, on the day of delivery by such service or, if not a Business Day, on the first Business Day after delivery. Notices and other communications sent via facsimile must be followed by notice delivered by hand or by overnight delivery service as set forth herein within five (5) Business Days.

10.6 Publicity. No Party shall issue any press release or any other form of public disclosure regarding the existence of this Agreement or the terms hereof, or use the name of any other Party hereto in any press release or other public disclosure without the prior written consent of the other Parties,

except (i) for those disclosures and notifications contemplated by this Agreement and (ii) as required by any Legal Requirement and solely to the extent necessary to satisfy such Legal Requirement.

10.7 Assignment; No Third-Party Rights. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto without the prior written consent of each other Party. Notwithstanding the foregoing, and subject to compliance with Section 3.7, in the event the Option Closing or Put Closing has not occurred prior to or simultaneously with the closing of a Major Transaction, the Company shall assign this Agreement to the surviving or acquiring entity in such Major Transaction, and shall cause the successor entity resulting from such Major Transaction to assume all of the obligations of the Company under this Agreement

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pursuant to an assumption agreement in form and substance reasonably satisfactory to the Stockholders. This Agreement and its provisions are for the sole benefit of the Parties to this Agreement and their successors and permitted assigns and shall not give any other Person any legal or equitable right, remedy or claim.

10.8 Confidentiality. Each Stockholder and ED hereby agrees, and shall cause its respective employees and agents, not to disclose to any third party any material non-public information received from or on behalf of the Company in connection with this Agreement, or to use such material non-public information for any purpose except as expressly permitted under this Agreement. Each Stockholder and ED further agrees that it and its respective employees and agents have not and will not engage in any trades, transfers or other similar transactions involving the Company's common stock in violation of federal securities laws while in receipt of such non-public information of the Company. Notwithstanding the foregoing, the Parties shall be permitted to make such public and other statements as are necessary for it to comply with applicable federal and state securities laws or rules.

10.9 Governing Law. The execution, interpretation and performance of this Agreement, and any disputes with respect to the transactions contemplated by this Agreement, including any fraud claims, shall be governed by the internal laws and judicial decisions of the State of Delaware, without regard to principles of conflicts of laws.

10.10 Severability. If any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless the invalidity of any such provision substantially deprives any Party of the practical benefits intended to be conferred by this Agreement. Notwithstanding the foregoing, any provision of this Agreement held invalid, illegal or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable, and the determination that any provision of this Agreement is invalid, illegal or unenforceable as applied to particular circumstances shall not affect the application of such provision to circumstances other than those as to which it is held invalid, illegal or unenforceable.

10.11 Construction. Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed on signature pages exchanged by facsimile, in which event each Party shall promptly deliver to the others such number of original executed copies as the other Parties may reasonably request.

10.13 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties hereto in respect of the subject matter hereof. This Agreement

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supersedes all prior agreements, understandings, promises, representations and statements between the Parties and their representatives with respect to the transactions contemplated by this Agreement.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Parties have executed this Option and Put Agreement as of the date first written above.

VIVUS, INC.

By: /s/ Timothy E. Morris
Name: Timothy E. Morris
Title: Chief Financial Officer

DEERFIELD ED CORPORATION

By: /s/ Jeff Kaplan
Name: Jeff Kaplan
Title: Treasurer

DEERFIELD PRIVATE DESIGN FUND, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

Signature Page to Option and Put Agreement

EXHIBIT 1

Stockholders

Stockholders

Deerfield Private Design International, L.P., a British Virgin Islands limited partnership

Deerfield Private Design Fund, L.P., a Delaware limited partnership

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EXHIBIT 2

WIRING INSTRUCTIONS

Name		Amount
Deerfield Private Design International, L.P.	**$**	1,234,000
Deerfield Private Design Fund, L.P.	**$**	766,000

EXHIBIT 3

OPTION EXERCISE NOTICE

Deerfield ED Corporation
c/o Deerfield Capital, L.P.
780 Third Avenue
New York, New York 10017
Attention: James E. Flynn

Dear Mr. Flynn:

Reference is made to that certain Option and Put Agreement dated as of , 2008 (the "Agreement"), between VIVUS, Inc., a Delaware corporation (the "Company"), Deerfield ED Corporation, a Delaware corporation ("ED"), and the Stockholders of ED. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

Pursuant to Section 2.4 of the Agreement, the Company hereby provides notice of its exercise of the Option. The Company will purchase all of the Shares from the Stockholderse on , 20 in accordance with and subject to the terms and conditions set forth in the Agreement.

IN WITNESS WHEREOF, the Company has caused this Option Exercise Notice to be given by its duly authorized representative as of the date written above:

VIVUS INC.

By: _____

Name:

Title:

PUT EXERCISE NOTICE

VIVUS, Inc.
1172 Castro Street
Mountain View, California 94040
Attention: Leland F. Wilson

Dear Mr. Wilson:

Reference is made to that certain Option and Put Agreement dated as of , 2008 (the "Agreement"), between VIVUS, Inc., a Delaware corporation (the "Company"), Deerfield ED Corporation, a Delaware corporation ("ED"), and the Stockholders of ED. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

[FOR EXERCISE IN RESPECT OF PUT RIGHTS OTHER THAN PURSUANT TO SECTION 3.2(d) OF THE AGREEMENT] Pursuant to Section 3.5 of the Agreement, the Stockholders hereby provide notice of their exercise of the Put Right. The Stockholders will sell all of the Shares to the Company on , 20 in accordance with and subject to the terms and conditions set forth in the Agreement.

[FOR EXERCISE IN RESPECT OF PUT RIGHT SPECIFIED IN SECTION 3.2(D) OF THE AGREEMENT] Pursuant to Section 3.5 of the Agreement, the Stockholders hereby provide notice of their exercise of the Put Right. The Stockholders will sell all of the Shares to the Company simultaneously with the closing of the Major Transaction specified in the Major Transaction Notice of the Company dated , 200 , or on a date that is mutually agreeable to the Company and the Stockholders that is prior to the closing of the Major Transaction. Such sale and purchase will be subject to and will be made in accordance with the terms and conditions set forth in the Agreement.

IN WITNESS WHEREOF, the Stockholders have caused this Put Exercise Notice to be given by its duly authorized representative as of the date written above:

DEERFIELD PRIVATE DESIGN FUND, L.P.

By: _____
Name: _____
Title: _____

DEERFIELD PRIVATE DESIGN
INTERNATIONAL, L.P.

By: _____
Name: _____
Title: _____

EXHIBIT 4

Security Agreement

See Exhibit 10.7 to the 8-K.

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") dated as of April 3, 2008, is made by and between **VIVUS, INC.**, a Delaware corporation (the "Debtor"), and **DEERFIELD ED CORPORATION**, a Delaware corporation (the "Secured Party").

WHEREAS, the Debtor and the Secured Party have entered into that certain Funding and Royalty Agreement dated as of April 3, 2008 (the "Royalty Agreement") pursuant to which the Secured Party has agreed to provide funds to the Debtor in consideration of the payment by the Debtor of a royalty on future sales of certain pharmaceutical products specified therein;

WHEREAS, it is a condition precedent to the Secured Party's execution of the Royalty Agreement that the Debtor execute and deliver to the Secured Party a security agreement in substantially the form hereof;

WHEREAS, the Debtor wishes to grant a security interest in favor of the Secured Party on the terms and subject to the conditions set forth herein; and

WHEREAS, the Debtor intends to enter into a separate Security Agreement (the "Option Security Agreement") with the stockholders of the Secured Party (including such stockholders' successors and assigns, the "Stockholders"), pursuant to which the Debtor will grant to the Stockholders a security interest in the same Collateral (as defined herein) as the Debtor grants a security interest to the Secured Party pursuant to this Agreement, which security interest shall have priority over the security interest granted to the Secured Party under this Agreement.

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1 UCC Terms. The following terms that are defined in the Uniform Commercial Code (as hereinafter defined) are used in this Agreement as so defined (and, in the event any such term is defined differently for purposes of Article 9 of the Uniform Commercial Code than for any other purpose or purposes of the Uniform Commercial Code, the Article 9 definition shall govern): Account, Documents, Equipment, Inventory, Proceeds and Records.

1.2 Royalty Agreement Terms. All other capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Royalty Agreement.

1.3 Other Defined Terms. In addition, the following terms shall have the meanings set forth below:

"Collateral" means and includes the Registrations, the Intellectual Property and all of the Accounts, Equipment and Inventory arising out of or relating specifically to the Royalty

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Products, wherever located, of the Debtor now or hereafter held or received by, in transit to, or in the possession or control of the Debtor or the Secured Party, and any substitutions or replacements thereof and any products and proceeds thereof, including without limitation, insurance proceeds. Equipment of which Debtor makes significant use for purposes unrelated to the Royalty Products is not Collateral.

"Collateral Accounts" means any Accounts comprising any or all of the Collateral.

"Collateral Collection Accounts" has the meaning set forth in **Section 5.4**.

"Collateral Equipment" means Equipment comprising part of the Collateral.

"Collateral Inventory" means any Inventory comprising any or all of the Collateral.

"Copyright" means the legal right provided by the Copyright Act of 1976, as amended, to the expression contained in any work of authorship fixed in any tangible medium of expression together with any similar rights arising in any other country as a result of statute or treaty, and any right that may exist to obtain a registration with respect thereto from any Governmental Authority and any rights arising under any such application.

"Event of Default" shall mean any failure of the Debtor to make Royalty payments in accordance with the Royalty Agreement, which failure constitutes a breach of the Royalty Agreement, within fifteen (15) days after the Debtor receives written notice of such failure to pay from the Secured Party.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any municipal, local, city or county government, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled, through capital stock or otherwise, by any of the foregoing.

"Intellectual Property" means all Patents, Marks, Trade Names, Copyrights, Software, Trade Secrets, Know-How, tests, protocols, standard operating procedures, results and data owned, licensed, possessed, used or useful by the Debtor specifically relating to or necessary for the Royalty Products or the composition, manufacture, quality control, testing, packaging, storage or use of the Royalty Products. "Intellectual Property" includes the contents of the drug master file, all adverse event reports made or received by the Debtor and all submissions made to the FDA relating to the Royalty Products.

"Know-How" means ideas, designs, inventions, discoveries, concepts, compilations of information, methods, techniques, procedures and processes, whether confidential or not, whether patentable or not and whether reduced to practice or not.

"Lien" means any mortgage, claim, lien, security interest, pledge, escrow, charge, option, restriction or encumbrance of any kind or character whatsoever.

"Mark" means any word, name, symbol or device used by a Person to identify its goods or services, whether or not registered, all goodwill associated therewith, and any right that may

exist to obtain a registration with respect thereto from any Governmental Authority and any rights arising under any such application. "Mark" includes trademarks and service marks.

"Obligations" means all of the obligations and liabilities of the Debtor to make Royalty payments to the Secured Party pursuant to the Royalty Agreement.

"Patent" means any patent granted by the U.S. Patent and Trademark Office or by the comparable agency of any other country, and any renewal thereof, and any rights arising under any patent application filed with the U.S. Patent and Trademark Office or the comparable agency of any other country and any rights that may exist to file any such application.

"Permitted Liens" means (i) Liens for current Taxes not yet delinquent or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been made, (ii) possessory Liens on personal property imposed by law, such as the Liens of carriers, warehousemen, mechanics, materialmen and landlords, incurred in the ordinary course for sums not constituting borrowed money, that are not overdue or which are being contested in good faith and by appropriate proceedings, (iii) the Liens granted pursuant to this Agreement (iv) Liens in favor of the Stockholders and (v) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of customs duties in connection with the importation of goods.

"Person" means any corporation, association, joint venture, partnership, limited liability company, organization, business, individual, trust, Governmental Authority or other legal entity.

"Registrations" has the meaning given such term in the Royalty Agreement.

"Royalty Products" has the meaning given such term in the Royalty Agreement.

"Software" means, with respect to a Person, all types of computer software programs owned, licensed, used or usable by such Person, including operating systems, application programs, software tools, firmware and software imbedded in equipment, including both object code and source code versions thereof. The term "Software" also includes all written or electronic materials that explain the structure or use of the Software or that were used in the development of the Software, including logic diagrams, flow charts, procedural diagrams, error reports, manuals and training materials.

"Trade Names" means any words, names or symbols used by a Person to identify its business.

"Trade Secrets" means the business or technical information of any Person including, but not limited to, customer lists, marketing data and Know-How that is not generally known to other Persons who are not subject to an obligation of nondisclosure and that derives actual or potential commercial value from being not generally known to other Persons.

"Uniform Commercial Code" means the Uniform Commercial Code as the same may be in effect from time to time in the State of Delaware; provided that if, by reason of applicable law, the validity or perfection of any security interest in any Collateral granted under this Agreement is governed by the Uniform Commercial Code as in effect in another jurisdiction, then as to the

validity or perfection, as the case may be, of such security interest, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction.

1.4 Construction. Unless the context requires otherwise, words in the singular include the plural, words in the plural include the singular, and words importing any gender shall be applicable to all genders. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb).

ARTICLE 2

GRANT OF SECURITY INTEREST

2.1 Pledge and Grant of Security Interest. The Debtor hereby pledges, assigns and delivers to the Secured Party and grants to the Secured Party, to secure the payment and performance in full of all of the Obligations, a lien upon and security interest in all of its right, title and interest in and to the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

2.2 Security for Debtor's Obligations. This Agreement and the Collateral secure the full and prompt payment, at any time and from time to time as and when due (whether at the stated maturity, by acceleration or otherwise), of all of the Obligations of the Debtor.

2.3 Security Interests Absolute. All rights of the Secured Party and security interests hereunder, and all obligations of the Debtor hereunder, shall be absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver or release in respect of any Obligation, the Royalty Agreement or any other document evidencing or securing such Obligation, by operation of law or otherwise;

(b) any modification, amendment or supplement to the Royalty Agreement or any other document evidencing or securing any Obligation;

(c) any release, non-perfection or invalidity of any direct or indirect security for any Obligation;

(d) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Debtor or its assets or any resulting disallowance, release or discharge of all or any portion of the Obligations;

(e) the existence of any claim, set-off or other right which the Secured Party may have at any time against the Debtor or any other Person, whether in connection herewith or any unrelated transactions; provided, that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(f) any invalidity or unenforceability relating to or against the Debtor for any reason of any Obligation, or any provision of applicable law or regulation purporting to prohibit the payment by the Debtor of the Obligations;

(g) any failure by the Secured Party (A) to file or enforce a claim against the Debtor (in a bankruptcy or other proceeding), (B) to give notice of the existence, creation or incurrence by the Debtor of any new or additional indebtedness or obligation under or with respect to the Obligations, (C) to commence any action against the Debtor or (D) to proceed with due diligence in the collection, protection or realization upon any collateral securing the Obligations; or

(h) any other act or omission to act or delay of any kind by the Secured Party or the Debtor or any other corporation or Person or any other circumstance whatsoever which might, but for the provisions of this clause, constitute a legal or equitable discharge of the Debtor's obligations hereunder.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Debtor hereby represents and warrants as follows:

3.1 Ownership of Collateral. The Debtor owns, or has valid rights as a lessee or licensee with respect to, all Collateral purported to be pledged by it hereunder, free and clear of any Liens except for Permitted Liens. No mortgage, security agreement, financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any government or public office, and the Debtor has not filed or consented to the filing of any such mortgage, agreement, statement or notice, except (i) Uniform Commercial Code financing statements naming the Secured Party as secured party and (ii) Liens in favor of the Stockholders.

3.2 Security Interests; Filings. This Agreement, together with (i) the filing of duly completed and executed Uniform Commercial Code financing statements naming the Debtor as debtor, the Secured Party as secured party, and describing the Collateral, in the jurisdictions set forth with respect to the Debtor on **Schedule I** hereto (which filing is hereby authorized by the Debtor) and (ii) to the extent required by applicable law, the filing of duly completed and executed assignments in the forms required by the U.S. Copyright Office or the U.S. Patent and Trademark Office, creates, and at all times shall constitute, a valid and perfected security interest in and Lien upon the Collateral in favor of the Secured Party, to the extent a security interest and Lien therein can be perfected by such filings, recordings or possession, as applicable, superior and prior to the rights of all other Persons therein except for Permitted Liens.

3.3 Locations. **Schedule I** lists as to the Debtor, (i) its exact legal name, (ii) the jurisdiction of its incorporation or organization, its federal tax identification number, and (if applicable) its organizational identification number, (iii) the addresses of its chief executive office and each other place of business and (iv) the address of each location at which any of the Collateral Inventory or Collateral Equipment is kept, except for any new locations established in accordance with the provisions of **Section 4.2**. The Debtor does not presently conduct business

under any prior or other corporate or company name or under any trade or fictitious names, except as indicated beneath its name on **Schedule I**, and the Debtor has not entered into any contract or granted any Lien within the past five (5) years under any name other than its legal corporate name or a trade or fictitious name indicated on **Schedule I**.

3.4 No Violations. The signing, delivery and performance of this Agreement by the Debtor is not prohibited or limited by, and will not result in the breach of or a default under, any provision of the certificate of incorporation, bylaws or other formation documents of the Debtor, any material agreement or instrument binding on the Debtor or any Legal Requirement applicable to the Debtor, except for such prohibitions, limitations, defaults or Legal Requirements as would not prevent or impair consummation by the Debtor of the transactions contemplated hereby, the performance by the Debtor of its obligations hereunder or the exercise of the Secured Party of its rights hereunder. The execution, delivery and performance of this Agreement by the Debtor, the Debtor's compliance with the terms and provisions hereof and the Secured Party's exercise of any of its rights hereunder, do not and will not conflict with or result in a breach of any of the terms and provisions of or constitute a default or create a termination right under, with or without the passage of time and the giving of notice, any material contract or other instrument or obligation binding or affecting the Debtor, the Royalty Products or the Collateral including, without limitation, that certain agreement dated December 28, 2000 between Tanabe Seiyaku Co., Ltd. and the Debtor (the "Tanabe Agreement"), except as set forth in that certain disclosure letter of even date herewith delivered by the Debtor to the Secured Party pursuant to Section 7 of the Royalty Agreement.

3.5 No Restrictions. There are no statutory or regulatory restrictions, prohibitions or limitations on the Debtor's ability to grant to the Secured Party a Lien upon and security interest in the Collateral pursuant to this Agreement or (except for the provisions of the federal Anti-Assignment Act (41 U.S.C. 15), as amended and the Anti-Claims Act (31 U.S.C. 3727), as amended) on the exercise by the Secured Party of its rights and remedies hereunder

(including any foreclosure upon or collection of the Collateral), and there are no contractual restrictions on the Debtor's ability to grant such Lien and security interest.

3.6 Accounts. Each Collateral Account is, or at the time it arises will be, (i) a bona fide, valid and legally enforceable indebtedness of the account debtor according to its terms, arising out of or in connection with the sale, lease or performance of goods or services by the Debtor or any of them, (ii) subject to no offsets, discounts, counterclaims, contra accounts or any other defense of any kind and character, other than warranties and discounts customarily given by the Debtor in the ordinary course of business and warranties provided by applicable law, (iii) to the extent listed on any schedule of Collateral Accounts at any time furnished to the Secured Party, a true and correct statement of the amount actually and unconditionally owing thereunder, maturing as stated in such schedule and in the invoice covering the transaction creating such Collateral Account, and (iv) not evidenced by any other instrument; or if so, such other instrument (other than invoices and related correspondence and supporting documentation) shall promptly be duly endorsed to the order of the Secured Party and delivered to the Secured Party to be held as Collateral hereunder. To the knowledge of the Debtor, there are no facts, events or occurrences that would in any way impair the validity or enforcement of any Collateral Accounts except as set forth above.

ARTICLE 4

COVENANTS

The Debtor agrees that so long as any Obligation remains unpaid:

4.1 Use and Disposition of Collateral. So long as no Event of Default shall have occurred and be continuing, the Debtor may, in any lawful manner not inconsistent with the provisions of this Agreement, use, control and manage the Collateral in the operation of its business, and receive and use the income, revenue and profits arising therefrom and the proceeds thereof, in the same manner and with the same effect as if this Agreement had not been made; provided, however, that the Debtor will not sell or otherwise dispose of (other than sales of Royalty Products in the ordinary course of the Debtor's business), grant any option with respect to or grant any Lien with respect to or otherwise encumber any of the Collateral or any interest therein, except for Permitted Liens, except as may be otherwise expressly permitted in accordance with the terms of this Agreement (including any applicable provisions therein regarding delivery of proceeds of sale or disposition to the Secured Party) or except in connection with a permitted assignment under Section 9(f) of the Royalty Agreement.

4.2 Change of Name, Locations, etc. The Debtor will not (i) change its name, identity or corporate structure, (ii) change its chief executive office from the location thereof listed on **Schedule I**, (iii) change the jurisdiction of its incorporation or organization from the jurisdiction listed on **Schedule I** (whether by merger or otherwise) or (iv) remove any Collateral, or any books, records or other information relating to such Collateral, from the applicable location thereof listed on **Schedule I**, or keep or maintain any Collateral at a location not listed on **Schedule I**, (except for Collateral with an aggregate fair market value not to exceed $250,000 at any time, in the ordinary course of business, including, without limitation, for testing or evaluation purposes) unless in each case the Debtor has (A) given prior written notice to the Secured Party of its intention to do so, together with information regarding any such new location and such other information in connection with such proposed action as the Secured Party may reasonably request, and (B) delivered to the Secured Party, prior to any such change or removal, such documents, instruments and financing statements as may be reasonably required by the Secured Party, all in form and substance reasonably satisfactory to the Secured Party, paid all necessary filing and recording fees and taxes, and taken all other actions reasonably requested by the Secured Party, in order to perfect and maintain the Lien upon and security interest in the Collateral.

4.3 Records; Inspection.

(a) The Debtor will keep and maintain at its own cost and expense satisfactory and complete records of the Collateral Accounts and all other Collateral, and will furnish to the Secured Party from time to time such statements, schedules and reports (including, without limitation, accounts receivable aging schedules) with regard to the Collateral as the Secured Party may reasonably request.

(b) The Debtor shall, from time to time at such times as may be reasonably requested and upon not less than seven (7) days' prior notice, permit the Secured Party to

visit its offices or the premises upon which any Collateral may be located (provided that with respect to locations owned or operated by third parties, Debtor shall satisfy its obligations hereunder by making reasonable commercial efforts to secure access to the Secured Party), inspect its books and records relating to the Collateral and make copies and memoranda thereof, inspect the Collateral, discuss its finances and affairs relating to the Collateral with its officers, employees and independent accountants and take any other actions necessary for the protection of the interests of the Secured Party in the Collateral, provided that such audit or inspection shall not be conducted more than once per year.

4.4 Accounts. Unless notified otherwise by the Secured Party in accordance with the terms hereof, the Debtor shall endeavor to collect its Collateral Accounts and all amounts owing to it thereunder in the ordinary course of its business consistent with past practices and shall apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balances thereof, and in connection therewith shall, at the request of the Secured Party, take such reasonable action as the Secured Party may deem necessary or advisable (within applicable laws) to enforce such collection. The Debtor shall promptly inform the Secured Party of any disputes with any account debtor or obligor and of any claimed offset and counterclaim that may be asserted with respect thereto involving, in each case, any material amount, where the Debtor reasonably believes that the likelihood of payment by such account debtor is materially impaired, indicating in detail the reason for the dispute, all claims relating thereto and the amount in controversy.

4.5 Collateral Inventory. Debtor will maintain at all times at least six months' inventory of active pharmaceutical ingredient for Muse.

4.6 Intellectual Property. The Debtor will execute and deliver to the Secured Party fully completed collateral assignments in the forms requested by the Secured Party for recordation in the U.S. Copyright Office or the U.S. Patent and Trademark Office with regard to any registered Intellectual Property owned by the Debtor and included among the Collateral. In the event that after the date hereof the Debtor shall acquire any or effect any registration of any such registered Intellectual Property, the Debtor shall promptly furnish written notice thereof to the Secured Party and execute and deliver to the

Secured Party, as promptly as possible after the date of such acquisition or registration fully completed collateral assignments in the forms requested by the Secured Party for recordation in the U.S. Copyright Office or the U.S. Patent and Trademark Office. The Debtor hereby appoints the Secured Party its attorney-in-fact to execute, deliver and record any and all such amendments, agreements, instruments and documents for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed and such power, being coupled with an interest, shall be irrevocable for so long as this Agreement shall be in effect with respect to the Debtor.

4.7 Collateral in Possession of Third Party. Without limiting the generality of any other provision of this Agreement, the Debtor agrees that it shall not permit any Collateral to be in the possession of any bailee, warehouseman, agent, processor or other third party at any time (except for relocations of Collateral with an aggregate fair market value not to exceed $250,000 at any time, in the ordinary course of business, including, without limitation, for testing or evaluation purposes) unless such bailee or other Person shall have been notified of the security

interest created by this Agreement (or, if required under applicable law in order to perfect the Secured Party's security interest in such Collateral, such bailee or other Person shall have acknowledged to the Secured Party in writing that it is holding such Collateral for the benefit of the Secured Party and subject to such security interest and to the instructions of the Secured Party) and the Debtor shall have exercised its commercially reasonable efforts to obtain from such bailee or other Person, at the Debtor's sole cost and expense, the written acknowledgement described above (if not already required by applicable law to perfect the Secured Party's security interest) and agreement to waive and release any Lien (whether arising by operation of law or otherwise) it may have with respect to such Collateral, such agreement to be in form and substance reasonably satisfactory to the Secured Party.

4.8 Protection of Security Interest; Further Assurances. The Debtor will, at its expense and in such manner and form as the Secured Party may reasonably require, execute, deliver, file and record any financing statement, specific assignment or other paper, obtain all necessary consents of third parties and take any other action that may be necessary or desirable, or that the Secured Party may reasonably request, in order to create, preserve, perfect or validate the security interests granted hereby or to enable the Secured Party to exercise and enforce its rights hereunder with respect to any of the Collateral. To the extent permitted by applicable law, the Debtor hereby authorizes the Secured Party to execute and file, in the name of the Debtor or otherwise, Uniform Commercial Code financing statements which the Secured Party in its sole discretion may deem necessary or appropriate to further perfect the security interests.

ARTICLE 5

5.1 General Authority. Upon the occurrence and during the continuance of an Event of Default, the Debtor hereby irrevocably appoints the Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact, in the name of the Debtor or its own name, for the sole use and benefit of the Secured Party, but at the Debtor's expense, at any time and from time to time, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Agreement and, without limiting the foregoing, the Debtor hereby gives the Secured Party the power and right on its behalf, without notice to or further assent by the Debtor to do the following:

(a) to receive, take, endorse, assign and deliver any and all checks, notes, drafts, acceptances, documents and other negotiable and nonnegotiable instruments taken or received by the Debtor as, or in connection with, the Collateral;

(b) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or in connection with the Collateral;

(c) to commence, settle, compromise, compound, prosecute, defend or adjust any claim, suit, action or proceeding with respect to, or in connection with, the Collateral;

(d) to sell, transfer, assign or otherwise deal in or with the Collateral or any part thereof, as fully and effectually as if the Secured Party were the absolute owner thereof; and

(e) to do, at its option, but at the expense of the Debtor, at any time or from time to time, all acts and things which the Secured Party deems necessary to protect or preserve the Collateral and to realize upon the Collateral.

5.2 Rights and Remedies. If an Event of Default shall have occurred and be continuing, the Secured Party shall be entitled to exercise in respect of the Collateral all of its rights, powers and remedies provided for herein or otherwise available to it by law, in equity or otherwise, including all rights and remedies of a secured party under the Uniform Commercial Code, and shall be entitled in particular, but without limitation of the foregoing, to exercise the following rights, which the Debtor agrees to be commercially reasonable:

(a) To notify any or all account debtors or obligors under any Collateral Accounts or other Collateral of the security interest in favor of the Secured Party created hereby and to direct all such Persons to make payments of all amounts due thereon or thereunder directly to the Secured Party or to an account designated by the Secured Party; and in such instance and from and after such notice, all amounts and proceeds received by the Debtor in respect of any Collateral Accounts or other Collateral shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from the other funds of the Debtor and shall be forthwith deposited into such account or paid over or delivered to the Secured Party in the same form as so received (with any necessary endorsements or assignments), to be held as Collateral and applied to the Obligations as provided herein;

(b) To take possession of, receive, endorse, assign and deliver, in its own name or in the name of the Debtor, all checks, notes, drafts and other instruments relating to any Collateral, including receiving, opening and properly disposing of all mail addressed to the Debtor concerning Collateral Accounts and other Collateral; to verify with account debtors or other contract parties the validity, amount or any other matter relating to any Collateral Accounts or other Collateral, in its own name or in the name of the Debtor; to accelerate any indebtedness or other obligation constituting Collateral that may be accelerated in accordance with its terms; to take or bring all actions and suits deemed necessary or appropriate to effect collections and to enforce payment of any Collateral Accounts or other Collateral; to settle, compromise or release in whole or in part any

amounts owing on Collateral Accounts or other Collateral; and to extend the time of payment of any and all Collateral Accounts or other amounts owing under any Collateral and to make allowances and adjustments with respect thereto, all in the same manner and to the same extent as the Debtor might have done;

(c) To transfer to or register in the Secured Party's name or the name of any of its agents or nominees all or any part of the Collateral;

(d) To require the Debtor to, and the Debtor hereby agrees that it will at its expense and upon request of the Secured Party forthwith, assemble all or any part of the Collateral as directed by the Secured Party and make it available to the Secured Party at a place designated by the Secured Party;

(e) To enter and remain upon the premises of the Debtor and take possession of all or any part of the Collateral, with or without judicial process; to use the materials, services, books and records of the Debtor for the purpose of liquidating or collecting the Collateral, whether by foreclosure, auction or otherwise; and to remove the same to the premises of the Secured Party or any designated agent for such time as the Secured Party may desire, in order to effectively collect or liquidate the Collateral; and

(f) To sell, resell, assign and deliver, in its sole discretion, all or any of the Collateral, in one or more parcels, at public or private sale, at any of the Secured Party's offices or elsewhere, for cash, upon credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Secured Party may deem satisfactory. If any of the Collateral is sold by the Secured Party upon credit or for future delivery, the Secured Party shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, the Secured Party may resell such Collateral. In no event shall the Debtor be credited with any part of the proceeds of sale of any Collateral until and to the extent cash payment in respect thereof has actually been received by the Secured Party. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right of whatsoever kind, including any equity or right of redemption of the Debtor, and the Debtor hereby expressly waives all rights of redemption, stay or appraisal, and all rights to require the Secured Party to marshal any assets in favor of the Debtor or any other party or against or in payment of any or all of the Obligations, that it has or may have under any rule of law or statute now existing or hereafter adopted. No demand, presentment, protest, advertisement or notice of any kind (except any notice required by law, as referred to below), all of which are hereby expressly waived by the Debtor, shall be required in connection with any sale or other disposition of any part of the Collateral. If any notice of a proposed sale or other disposition of any part of the Collateral shall be required under applicable law, the Secured Party shall give the Debtor at least ten (10) days' prior notice of the time and place of any public sale and of the time after which any private sale or other disposition is to be made, which notice the Debtor agrees is commercially reasonable. The Secured Party shall not be obligated to make any sale of Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given. The Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each public sale and, to the extent permitted by applicable law, upon each private sale, the Secured Party may purchase all or any of the Collateral being sold, free from any equity, right of redemption or other claim or demand, and may make payment therefor by endorsement and application (without recourse) of the Obligations in lieu of cash as a credit on account of the purchase price for such Collateral.

5.3 Application of Proceeds.

(a) All proceeds collected by the Secured Party upon any sale, other disposition of or realization upon any of the Collateral, together with all other moneys received by the Secured Party hereunder, shall be applied as follows:

(i) first, to payment of the expenses of such sale or other realization, including reasonable compensation to the Secured Party and its agents and counsel, and all expenses, liabilities and advances incurred or made by the Secured Party, its agents and counsel in connection therewith or in connection with the care, safekeeping or otherwise of any or all of the Collateral, and any other unreimbursed expenses for which the Secured Party is to be reimbursed pursuant to **Section 6.1**;

(ii) second, after payment in full of the amounts specified in **clause (i)** above, to payment of the Obligations; and

(iii) finally, after payment in full of the amounts specified in **clauses (i)** and **(ii)** above, any surplus then remaining shall be paid to the Debtor, or its successors or assigns, or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(b) The Debtor shall remain liable to the extent of any deficiency between the amount of all proceeds realized upon sale or other disposition of the Collateral pursuant to this Agreement and the amount of any then outstanding Obligations. Upon any sale of any Collateral hereunder by the Secured Party (whether by virtue of the power of sale herein granted, pursuant to judicial proceeding, or otherwise), the receipt of the Secured Party or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Secured Party or such officer or be answerable in any way for the misapplication thereof.

5.4 Collateral Collection Accounts. Upon the occurrence and during the continuance of an Event of Default, the Secured Party shall have the right to cause to be established and maintained, at its principal office or such other location or locations as it may establish from time to time in its discretion, one or more accounts (collectively, "Collateral Collection Accounts") for the collection of cash proceeds of the Collateral. Such proceeds, when deposited, shall continue to constitute Collateral for the Obligations and shall not constitute payment thereof until applied as herein provided. The Secured Party shall have sole dominion and control over all funds deposited in any Collateral Collection Account, and such funds may be withdrawn therefrom only by the Secured Party. Upon the occurrence and during the continuance of an Event of Default, the Secured Party shall have the right to apply amounts held in the Collateral Collection Accounts in payment of the Obligations in the manner provided for in **Section 5.3**.

5.5 Grant of License. The Debtor hereby grants to the Secured Party, with effect upon the occurrence and during the continuance of an Event of Default, an irrevocable, non-exclusive license or sublicense (as applicable) of any duration, with right to sublicense (exercisable without payment of royalty or other compensation to the Debtor), in, to and under all Intellectual Property now owned or licensed or hereafter acquired or licensed by the Debtor, wherever the same may be located throughout the world, for any purpose relating to the Royalty Products, subject to applicable law and subject to the requirements of the Tanabe Agreement, including, without limitation, **Section 2.3** thereof.

5.6 Waivers. The Debtor, to the greatest extent not prohibited by applicable law, hereby (i) agrees that it will not invoke, claim or assert the benefit of any rule of law or statute now or hereafter in effect (including, without limitation, any right to prior notice or judicial hearing in connection with the Secured Party's possession, custody or disposition of any Collateral or any appraisal, valuation, stay, extension, moratorium or redemption law), or take or omit to take any other action, that would or could reasonably be expected to have the effect of delaying, impeding or preventing the exercise of any rights and remedies in respect of the Collateral, the absolute sale of any of the Collateral or the possession thereof by any purchaser at any sale thereof, and waives the benefit of all such laws and further agrees that it will not hinder, delay or impede the execution of any power granted hereunder to the Secured Party, but that it will permit the execution of every such power as though no such laws were in effect, (ii) waives all rights that it has or may have under any rule of law or statute now existing or hereafter adopted to require the Secured Party to marshal any Collateral or other assets in favor of the Debtor or any other party or against or in payment of any or all of the Obligations, and (iii) waives all rights that it has or may have under any rule of law or statute now existing or hereafter adopted to demand, presentment, protest, advertisement or notice of any kind (except notices expressly provided for herein).

5.7 Subordination to Security Interest of Stockholders. The security interest granted to the Secured Party pursuant to this Agreement shall be subordinate to the security interest granted to the Stockholders pursuant to the Option Security Agreement. The Stockholders are intended beneficiaries of this **Section 5.7**.

ARTICLE 6

6.1 Indemnity and Expenses. Debtor agrees:

(a) To indemnify and hold harmless the Secured Party and each of its directors, managers, officers, employees, agents, members and affiliates from and against any and all claims, damages, demands, losses, obligations, judgments and liabilities (including, without limitation, reasonable attorneys' fees and expenses) in any way arising out of or in connection with this Agreement and the transactions contemplated hereby, except to the extent the same shall arise as a result of the gross negligence or willful misconduct of the party seeking to be indemnified; and

(b) To pay and reimburse Secured Party upon demand for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) that the Secured Party may incur in connection with (i) the custody, use or preservation of, or the sale of, collection from or other realization upon, any of the Collateral, including the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, (ii) the exercise or enforcement of any rights or remedies granted hereunder (including, without limitation, under **Article 5**), under the Royalty Agreement or otherwise available to it (whether at law, in equity or otherwise), or (iii) the failure by the Debtor to perform or observe any of the provisions hereof. The provisions of this **Section 6.1** shall survive the execution and delivery of this Agreement, the repayment of any of the Obligations and the termination of this Agreement, the

Royalty Agreement or any other instruments or documents executed and delivered pursuant to or in connection with this Agreement.

6.2 No Waiver. The Secured Party's failure at any time or times hereafter to require strict performance by the Debtor of any of the provisions of this Agreement or of the Royalty Agreement shall not waive, affect or diminish any right of the Secured Party at any time or times hereafter to demand strict performance therewith and with respect to any other provision of this Agreement, and any waiver of any Event of Default shall not waive or affect any other Event of Default, whether prior or subsequent thereto, and whether of the same or a different type. None of the provisions of this Agreement shall be deemed to have been waived by any act or knowledge of the Secured Party, its agents, officers or employees except by an instrument in writing signed by an officer of the Secured Party and directed to the Debtor specifying such waiver.

6.3 Binding Effect. This Agreement and all other instruments and documents executed and delivered pursuant hereto or in connection herewith shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.4 Governing Law. This Agreement shall be construed and interpreted in accordance with the internal laws and judicial decisions of the State of Delaware without giving effect to the conflict of laws principles thereof, except to the extent that matters of perfection and validity of the security interests hereunder, or remedies hereunder, are governed by the laws of a jurisdiction other than the State of Delaware.

6.5 Survival of Agreement. All representations and warranties of the Debtor and all obligations of the Debtor contained herein shall survive the execution and delivery of this Agreement.

6.6 Pre-Filing and Filing of Financing Statements. By execution of this Agreement, the Debtor (a) expressly authorizes the Secured Party to prepare and file or cause to be filed such Uniform Commercial Code financing statements (including attached schedules, exhibits, and addenda) as the Secured Party may deem reasonably necessary to perfect the security interests and liens granted herein and (b) hereby ratifies and confirms that the Secured Party was and is authorized to file all such Uniform Commercial Code financing statements (including attached schedules, exhibits, and addenda) prior to the execution and delivery of this Agreement, and hereby ratifies any such filings.

6.7 Continuing Security Interest; Term; Successors and Assigns; Assignment; Termination and Release; Survival. This Agreement shall create a continuing security interest in the Collateral and shall secure the payment and performance of all of the Obligations as the same may arise and be outstanding at any time and from time to time from and after the date hereof, and shall (i) remain in full force and effect until all of the Obligations have been finally discharged in full, (ii) be binding upon and enforceable against the Debtor and its successors and assigns (provided, however, that the Debtor may not sell, assign or transfer any of its rights, interests, duties or obligations hereunder without the prior written consent of the Secured Party, except that the Debtor

may assign this Agreement without such consent to any successor to all or substantially all of the Debtor's assets or business to which the Royalty Agreement relates

(whether by stock purchase, asset purchase, merger, operation of law or otherwise); provided, however, that any such assignment shall be effective only if the assignee shall have assumed all of the obligations of the Debtor under the Royalty Agreement and this Agreement), and (iii) inure to the benefit of and be enforceable by the Secured Party and its successors and assigns. Upon the termination of the security interest created by this Agreement, the security interest in the Collateral granted herein shall terminate and all rights to the Collateral shall revert to Debtor. Upon such termination of the security interest, the Secured Party hereby authorizes the Debtor to file any UCC termination statements necessary to effect such termination and the Secured Party will execute and deliver to the Debtor any additional documents or instruments reasonably requested by the Debtor to evidence such termination.

6.8 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be (i) delivered by hand, (ii) sent by facsimile transmission, or (iii) sent certified mail or by a nationally recognized overnight delivery service, charges prepaid, to the address set forth below (or such other address for a Party as shall be specified by like notice):

If to the Secured Party, to:	c/o Deerfield Capital, L.P. 780 Third Avenue, 37th Floor New York, New York 10017 Attention: James E. Flynn Facsimile: (212) 573-8111
Copy to:	Robinson, Bradshaw & Hinson, P.A. 101 North Tryon Street, Suite 1900 Charlotte, North Carolina 28246 Attention: David J. Clark Facsimile: (704) 373-3990
If to the Debtor, to:	Vivus, Inc. 1172 Castro Street Mountain View, California 94040 Attention: Leland F. Wilson Facsimile: (650) 934-5389
Copy to:	Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304 Attention: Ian B. Edvalson Facsimile: (650) 493-6811

Each such notice or other communication shall be deemed to have been duly given and to be effective (x) if delivered by hand, immediately upon delivery if delivered on a Business Day during normal business hours and, if otherwise, on the next Business Day; (y) if sent by facsimile transmission, immediately upon confirmation that such transmission has been successfully transmitted on a Business Day before or during normal business hours and, if otherwise, on the Business Day following such confirmation, or (z) if sent by certified mail or a nationally recognized overnight delivery service, on the day of delivery if delivered during normal business

hours on a Business Day and, if otherwise, on the first Business Day after delivery. Notices and other communications sent via facsimile must be followed by notice delivered by hand or by certified mail or overnight delivery service as set forth herein within five (5) Business Days.

6.9 Severability. To the extent any provision of this Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6.10 Captions. The captions to the sections of this Agreement have been inserted for convenience only and shall not limit or modify any of the terms hereof.

6.11 Counterparts. This Agreement may be executed in two or more counterparts, which when assembled shall constitute one and the same agreement.

6.12 Amendments and Waivers. Any provision of this Agreement may be amended or waived, if, but only if, such amendment or waiver is in writing and is signed by the Debtor and the Secured Party.

[Signature Page Follows]

IN WITNESS WHEREOF, intending to be legally bound, the Debtor has caused this Security Agreement to be duly executed as of the date first above written.

VIVUS, INC.

By: /s/ Timothy E. Morris
Name: Timothy E. Morris
Title: Chief Financial Officer

Accepted:

DEERFIELD ED CORPORATION

By: /s/ Jeff Kaplan
Name: Jeff Kaplan
Title: Treasurer

SCHEDULE I

Name and Jurisdiction of Incorporation:	VIVUS, Inc., a Delaware corporation
Federal Tax Identification Number:	94-3136179
Chief Executive Office:	1172 Castro Street, Mountain View, CA 94040
Other Place of Business:	735 an 745 Airport Road, Lakewood, NJ 08701
Locations of Collateral Inventory and Collateral Equipment:	1172 Castro Street, Mountain View, CA 94040
	735 and 745 Airport Road, Lakewood, NJ 08701
	15 Ingram Boulevard, La Vergne, TN 37086 (Cardinal Health)
	118 Melrich Road, Cranbury, NJ 08512 (E-Beam)
	500 West 4th Street, Lima, OH 45804 (Beam One)
	930 Wanamaker Avenue, Ontario, CA 91761 (Medegen)
	122 Fairfield Road, Fairfield, NJ 07004 (Gibraltor Labs)

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") dated as of April 3, 2008, is made by and between **VIVUS, INC.**, a Delaware corporation (the "Debtor"), **DEERFIELD ED CORPORATION**, a Delaware corporation ("ED"), and the entities listed on Exhibit 1 hereto (each a "Stockholder," together the "Stockholders" and together with ED the "Secured Parties").

WHEREAS, the Debtor and the Secured Parties have entered into that certain Option and Put Agreement dated as of April 3, 2008 (the "Option and Put Agreement") pursuant to which the Secured Parties have granted the Debtor an option to purchase from the Stockholders all of the outstanding shares of common stock of ED and the Debtor has agreed to grant to the Stockholders an option to require the Debtor to purchase from the Stockholders all of the outstanding shares of common stock of ED, all upon the terms and conditions set forth therein;

WHEREAS, the Debtor and ED have entered into that certain Funding and Royalty Agreement dated as of April 3, 2008 (the "Royalty Agreement") pursuant to which ED has agreed to provide funds to the Debtor in consideration of the payment by the Debtor of a royalty on future sales of certain pharmaceutical products specified therein;

WHEREAS, it is a condition precedent to the Secured Parties' execution of the Option and Put Agreement that the Debtor execute and deliver to the Secured Parties a security agreement in substantially the form hereof;

WHEREAS, the Debtor wishes to grant a security interest in favor of the Secured Parties on the terms and subject to the conditions set forth herein; and

WHEREAS, the Debtor intends to enter into a separate Security Agreement (the "Royalty Security Agreement") with ED, pursuant to which the Debtor will grant to ED a security interest in the same Collateral (as defined herein) as the Debtor grants a security interest to the Secured Parties pursuant to this Agreement, which security interest shall be subordinate to the security interest granted to the Secured Parties under this Agreement.

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1 UCC Terms. The following terms that are defined in the Uniform Commercial Code (as hereinafter defined) are used in this Agreement as so defined (and, in the event any such term is defined differently for purposes of Article 9 of the Uniform Commercial Code than for any other purpose or purposes of the Uniform Commercial Code, the Article 9 definition shall govern): Account, Documents, Equipment, Inventory, Proceeds and Records.

1.2 Royalty Agreement Terms. All other capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Royalty Agreement.

1.3 Other Defined Terms. In addition, the following terms shall have the meanings set forth below:

"Collateral" means and includes the Registrations, the Intellectual Property and all of the Accounts, Equipment and Inventory arising out of or relating specifically to the Royalty Products, wherever located, of the Debtor now or hereafter held or received by, in transit to, or in the possession or control of the Debtor or ED, and any substitutions or replacements thereof and any products and proceeds thereof, including without limitation, insurance proceeds. Equipment of which Debtor makes significant use for purposes unrelated to the Royalty Products is not Collateral.

"Collateral Accounts" means any Accounts comprising any or all of the Collateral.

"Collateral Collection Accounts" has the meaning set forth in **Section 5.4**.

"Collateral Equipment" means Equipment comprising part of the Collateral.

"Collateral Inventory" means any Inventory comprising any or all of the Collateral.

"Copyright" means the legal right provided by the Copyright Act of 1976, as amended, to the expression contained in any work of authorship fixed in any tangible medium of expression together with any similar rights arising in any other country as a result of statute or treaty, and any right that may exist to obtain a registration with respect thereto from any Governmental Authority and any rights arising under any such application.

"Event of Default" shall mean any failure of the Debtor to make any payments to any of the Secured Parties when and as required pursuant to the Option and Put Agreement within fifteen (15) days after the Debtor receives written notice of such failure to pay from the Secured Parties.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any municipal, local, city or county government, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled, through capital stock or otherwise, by any of the foregoing.

"Intellectual Property" means all Patents, Marks, Trade Names, Copyrights, Software, Trade Secrets, Know-How, tests, protocols, standard operating procedures, results and data owned, licensed, possessed, used or useful by the Debtor specifically relating to or necessary for the Royalty Products or the composition, manufacture, quality control, testing, packaging, storage or use of the Royalty Products. "Intellectual Property" includes the contents of the drug master file, all adverse event reports made or received by the Debtor and all submissions made to the FDA relating to the Royalty Products.

"Know-How" means ideas, designs, inventions, discoveries, concepts, compilations of information, methods, techniques, procedures and processes, whether confidential or not, whether patentable or not and whether reduced to practice or not.

"Lien" means any mortgage, claim, lien, security interest, pledge, escrow, charge, option, restriction or encumbrance of any kind or character whatsoever.

"Mark" means any word, name, symbol or device used by a Person to identify its goods or services, whether or not registered, all goodwill associated therewith, and any right that may exist to obtain a registration with respect thereto from any Governmental Authority and any rights arising under any such application. "Mark" includes trademarks and service marks.

"Obligations" means all of the obligations and liabilities of the Debtor to make payments to the Secured Parties pursuant to the Option and Put Agreement.

"Patent" means any patent granted by the U.S. Patent and Trademark Office or by the comparable agency of any other country, and any renewal thereof, and any rights arising under any patent application filed with the U.S. Patent and Trademark Office or the comparable agency of any other country and any rights that may exist to file any such application.

"Permitted Liens" means (i) Liens for current Taxes not yet delinquent or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been made, (ii) possessory Liens on personal property imposed by law, such as the Liens of carriers, warehousemen, mechanics, materialmen and landlords, incurred in the ordinary course for sums not constituting borrowed money, that are not overdue or which are being contested in good faith and by appropriate proceedings, (iii) the Liens granted pursuant to this Agreement (iv) Liens in favor of the Stockholders and (v) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of customs duties in connection with the importation of goods.

"Person" means any corporation, association, joint venture, partnership, limited liability company, organization, business, individual, trust, Governmental Authority or other legal entity.

"Registrations" has the meaning given such term in the Royalty Agreement.

"Royalty Products" has the meaning given such term in the Royalty Agreement.

"Software" means, with respect to a Person, all types of computer software programs owned, licensed, used or usable by such Person, including operating systems, application programs, software tools, firmware and software imbedded in equipment, including both object code and source code versions thereof. The term "Software" also includes all written or electronic materials that explain the structure or use of the Software or that were used in the development of the Software, including logic diagrams, flow charts, procedural diagrams, error reports, manuals and training materials.

"Trade Names" means any words, names or symbols used by a Person to identify its business.

"Trade Secrets" means the business or technical information of any Person including, but not limited to, customer lists, marketing data and Know-How that is not generally known to other Persons who are not subject to an obligation of nondisclosure and that derives actual or potential commercial value from being not generally known to other Persons.

"Uniform Commercial Code" means the Uniform Commercial Code as the same may be in effect from time to time in the State of Delaware; provided that if, by reason of applicable law, the validity or perfection of any security interest in any Collateral granted under this Agreement is governed by the Uniform Commercial Code as in effect in another jurisdiction, then as to the validity or perfection, as the case may be, of such security interest, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction.

1.4 Construction. Unless the context requires otherwise, words in the singular include the plural, words in the plural include the singular, and words importing any gender shall be applicable to all genders. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb).

ARTICLE 2

GRANT OF SECURITY INTEREST

2.1 Pledge and Grant of Security Interest. The Debtor hereby pledges, assigns and delivers to the Secured Parties and grants to the Secured Parties, to secure the payment and performance in full of all of the Obligations, a lien upon and security interest in all of its right, title and interest in and to the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

2.2 Security for Debtor's Obligations. This Agreement and the Collateral secure the full and prompt payment, at any time and from time to time as and when due (whether at the stated maturity, by acceleration or otherwise), of all of the Obligations of the Debtor.

2.3 Security Interests Absolute. All rights of the Secured Parties and security interests hereunder, and all obligations of the Debtor hereunder, shall be absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver or release in respect of any Obligation, the Option and Put Agreement or any other document evidencing or securing such Obligation, by operation of law or otherwise;

(b) any modification, amendment or supplement to the Option and Put Agreement or any other document evidencing or securing any Obligation;

(c) any release, non-perfection or invalidity of any direct or indirect security for any Obligation;

(d) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Debtor or its assets or any resulting disallowance, release or discharge of all or any portion of the Obligations;

(e) the existence of any claim, set-off or other right which the Secured Parties may have at any time against the Debtor or any other Person, whether in connection herewith or any unrelated transactions; provided, that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(f) any invalidity or unenforceability relating to or against the Debtor for any reason of any Obligation, or any provision of applicable law or regulation purporting to prohibit the payment by the Debtor of the Obligations;

(g) any failure by the Secured Parties (A) to file or enforce a claim against the Debtor (in a bankruptcy or other proceeding), (B) to give notice of the existence, creation or incurrence by the Debtor of any new or additional indebtedness or obligation under or with respect to the Obligations, (C) to commence any action against the Debtor or (D) to proceed with due diligence in the collection, protection or realization upon any collateral securing the Obligations; or

(h) any other act or omission to act or delay of any kind by the Secured Parties or the Debtor or any other corporation or Person or any other circumstance whatsoever which might, but for the provisions of this clause, constitute a legal or equitable discharge of the Debtor's obligations hereunder.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Debtor hereby represents and warrants as follows:

3.1 Ownership of Collateral. The Debtor owns, or has valid rights as a lessee or licensee with respect to, all Collateral purported to be pledged by it hereunder, free and clear of any Liens except for Permitted Liens. No mortgage, security agreement, financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any government or public office, and the Debtor has not filed or consented to the filing of any such mortgage, agreement, statement or notice, except (i) Uniform Commercial Code financing statements naming the Secured Parties as Secured Parties and (ii) Liens in favor of ED pursuant to the Royalty Security Agreement.

3.2 Security Interests; Filings. This Agreement, together with (i) the filing of duly completed and executed Uniform Commercial Code financing statements naming the Debtor as debtor, the Secured Parties as secured parties, and describing the Collateral, in the jurisdictions set forth with respect to the Debtor on **Schedule I** hereto (which filing is hereby authorized by the Debtor) and (ii) to the extent required by applicable law, the filing of duly completed and executed assignments in the forms required by the U.S. Copyright Office or the U.S. Patent and Trademark Office, creates, and at all times shall constitute, a valid and perfected security interest

in and Lien upon the Collateral in favor of the Secured Parties, to the extent a security interest and Lien therein can be perfected by such filings, recordings or possession, as applicable, superior and prior to the rights of all other Persons therein except for Permitted Liens.

3.3 Locations. **Schedule I** lists as to the Debtor, (i) its exact legal name, (ii) the jurisdiction of its incorporation or organization, its federal tax identification number, and (if applicable) its organizational identification number, (iii) the addresses of its chief executive office and each other place of business and (iv) the address of each location at which any of the Collateral Inventory or Collateral Equipment is kept, except for any new locations established in accordance with the provisions of **Section 4.2**. The Debtor does not presently conduct business under any prior or other corporate or company name or under any trade or fictitious names, except as indicated beneath its name on **Schedule I**, and the Debtor has not entered into any contract or granted any Lien within the past five (5) years under any name other than its legal corporate name or a trade or fictitious name indicated on **Schedule I**.

3.4 No Violations. The signing, delivery and performance of this Agreement by the Debtor is not prohibited or limited by, and will not result in the breach of or a default under, any provision of the certificate of incorporation, bylaws or other formation documents of the Debtor, any material agreement or instrument binding on the Debtor or any Legal Requirement applicable to the Debtor, except for such prohibitions, limitations, defaults or Legal Requirements as would not prevent or impair consummation by the Debtor of the transactions contemplated hereby, the performance by the Debtor of its obligations hereunder or the exercise of the Secured Parties of their rights hereunder. The execution, delivery and performance of this Agreement by the Debtor, the Debtor's compliance with the terms and provisions hereof and the Secured Parties' exercise of any of their rights hereunder, do not and will not conflict with or result in a breach of any of the terms and provisions of or constitute a default or create a termination right under, with or without the passage of time and the giving of notice, any material contract or other instrument or obligation binding or affecting the Debtor, the Royalty Products or the Collateral including, without limitation, that certain agreement dated December 28, 2000 between Tanabe Seiyaku Co., Ltd. and the Debtor (the "Tanabe Agreement"), except as set forth in that certain disclosure letter of even date herewith delivered by the Debtor to ED pursuant to **Section 7** of the Royalty Agreement.

3.5 No Restrictions. There are no statutory or regulatory restrictions, prohibitions or limitations on the Debtor's ability to grant to the Secured Parties a Lien upon and security interest in the Collateral pursuant to this Agreement or (except for the provisions of the federal Anti-Assignment Act (41 U.S.C. 15), as amended and the Anti-Claims Act (31 U.S.C. 3727), as amended) on the exercise by the Secured Parties of their rights and remedies hereunder (including any foreclosure upon or collection of the Collateral), and there are no contractual restrictions on the Debtor's ability to grant such Lien and security interest.

3.6 Accounts. Each Collateral Account is, or at the time it arises will be, (i) a bona fide, valid and legally enforceable indebtedness of the account debtor according to its terms, arising out of or in connection with the sale, lease or performance of goods or services by the Debtor or any of them, (ii) subject to no offsets, discounts, counterclaims, contra accounts or any other defense of any kind and character, other than warranties and discounts customarily given by the Debtor in the ordinary course of business and warranties provided by applicable law,

(iii) to the extent listed on any schedule of Collateral Accounts at any time furnished to the Secured Parties, a true and correct statement of the amount actually and unconditionally owing thereunder, maturing as stated in such schedule and in the invoice covering the transaction creating such Collateral Account, and (iv) not evidenced by any other instrument; or if so, such other instrument (other than invoices and related correspondence and supporting documentation) shall promptly be duly endorsed to the order of the Secured Parties and delivered to the Secured Parties to be held as Collateral hereunder. To the knowledge of the Debtor, there are no facts, events or occurrences that would in any way impair the validity or enforcement of any Collateral Accounts except as set forth above.

ARTICLE 4

COVENANTS

The Debtor agrees that so long as any Obligation remains unpaid:

4.1 Use and Disposition of Collateral. So long as no Event of Default shall have occurred and be continuing, the Debtor may, in any lawful manner not inconsistent with the provisions of this Agreement, use, control and manage the Collateral in the operation of its business, and receive and use the income, revenue and profits arising therefrom and the proceeds thereof, in the same manner and with the same effect as if this Agreement had not been made; provided, however, that the Debtor will not sell or otherwise dispose of (other than sales of Royalty Products in the ordinary course of the Debtor's business), grant any option with respect to or grant any Lien with respect to or otherwise encumber any of the Collateral or any interest therein, except for Permitted Liens, except as may be otherwise expressly permitted in accordance with the terms of this Agreement (including any applicable provisions therein regarding delivery of proceeds of sale or disposition to the Secured Parties) or except in connection with a permitted assignment under **Section 10.7** of the Option and Put Agreement.

4.2 Change of Name, Locations, etc. The Debtor will not (i) change its name, identity or corporate structure, (ii) change its chief executive office from the location thereof listed on **Schedule I**, (iii) change the jurisdiction of its incorporation or organization from the jurisdiction listed on **Schedule I** (whether by merger or otherwise) or (iv) remove any Collateral, or any books, records or other information relating to such Collateral, from the applicable location thereof listed on **Schedule I**, or keep or maintain any Collateral at a location not listed on **Schedule I**, (except for Collateral with an aggregate fair market value not to exceed $250,000 at any time, in the ordinary course of business, including, without limitation, for testing or evaluation purposes) unless in each case the Debtor has (A) given prior written notice to the Secured Parties of its intention to do so, together with information regarding any such new location and such other information in connection with such proposed action as the Secured Parties may reasonably request, and (B) delivered to the Secured Parties, prior to any such change or removal, such documents, instruments and financing statements as may be reasonably required by the Secured Parties, all in form and substance reasonably satisfactory to the Secured Parties, paid all necessary filing and recording fees and taxes, and taken all other actions reasonably requested by the Secured Parties, in order to perfect and maintain the Lien upon and security interest in the Collateral.

4.3 Records; Inspection.

(a) The Debtor will keep and maintain at its own cost and expense satisfactory and complete records of the Collateral Accounts and all other Collateral, and will furnish to the Secured Parties from time to time such statements, schedules and reports (including, without limitation, accounts receivable aging schedules) with regard to the Collateral as the Secured Parties may reasonably request.

(b) The Debtor shall, from time to time at such times as may be reasonably requested and upon not less than seven (7) days' prior notice, permit the Secured Parties to visit its offices or the premises upon which any Collateral may be located (provided that with respect to locations owned or operated by third parties, Debtor shall satisfy its obligations hereunder by making reasonable commercial efforts to secure access to the Secured Parties), inspect its books and records relating to the Collateral and make copies and memoranda thereof, inspect the Collateral, discuss its finances and affairs relating to the Collateral with its officers, employees and independent accountants and take any other actions necessary for the protection of the interests of the Secured Parties in the Collateral, provided that such audit or inspection shall not be conducted more than once per year.

4.4 Accounts. Unless notified otherwise by the Secured Parties in accordance with the terms hereof, the Debtor shall endeavor to collect its Collateral Accounts and all amounts owing to it thereunder in the ordinary course of its business consistent with past practices and shall apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balances thereof, and in connection therewith shall, at the request of the Secured Parties, take such reasonable action as the Secured Parties may deem necessary or advisable (within applicable laws) to enforce such collection. The Debtor shall promptly inform the Secured Parties of any disputes with any account debtor or obligor and of any claimed offset and counterclaim that may be asserted with respect thereto involving, in each case, any material amount, where the Debtor reasonably believes that the likelihood of payment by such account debtor is materially impaired, indicating in detail the reason for the dispute, all claims relating thereto and the amount in controversy.

4.5 Collateral Inventory. Debtor will maintain at all times at least six months' inventory of active pharmaceutical ingredient for Muse.

4.6 Intellectual Property. The Debtor will execute and deliver to the Secured Parties fully completed collateral assignments in the forms requested by the Secured Parties for recordation in the U.S. Copyright Office or the U.S. Patent and Trademark Office with regard to any registered Intellectual Property owned by the Debtor and included among the Collateral. In the event that after the date hereof the Debtor shall acquire any or effect any registration of any such registered Intellectual Property, the Debtor shall promptly furnish written notice thereof to the Secured Parties and execute and deliver to the Secured Parties, as promptly as possible after the date of such acquisition or registration fully completed collateral assignments in the forms requested

by the Secured Parties for recordation in the U.S. Copyright Office or the U.S. Patent and Trademark Office. The Debtor hereby appoints ED its attorney-in-fact to execute, deliver and record any and all such amendments, agreements, instruments and documents for the

foregoing purposes, all acts of such attorney being hereby ratified and confirmed and such power, being coupled with an interest, shall be irrevocable for so long as this Agreement shall be in effect with respect to the Debtor.

4.7 Collateral in Possession of Third Party. Without limiting the generality of any other provision of this Agreement, the Debtor agrees that it shall not permit any Collateral to be in the possession of any bailee, warehouseman, agent, processor or other third party at any time (except for relocations of Collateral with an aggregate fair market value not to exceed $250,000 at any time, in the ordinary course of business, including, without limitation, for testing or evaluation purposes) unless such bailee or other Person shall have been notified of the security interest created by this Agreement (or, if required under applicable law in order to perfect the Secured Parties's security interest in such Collateral, such bailee or other Person shall have acknowledged to the Secured Parties in writing that it is holding such Collateral for the benefit of the Secured Parties and subject to such security interest and to the instructions of the Secured Parties) and the Debtor shall have exercised its commercially reasonable efforts to obtain from such bailee or other Person, at the Debtor's sole cost and expense, the written acknowledgement described above (if not already required by applicable law to perfect the Secured Parties's security interest) and agreement to waive and release any Lien (whether arising by operation of law or otherwise) it may have with respect to such Collateral, such agreement to be in form and substance reasonably satisfactory to the Secured Parties.

4.8 Protection of Security Interest; Further Assurances. The Debtor will, at its expense and in such manner and form as the Secured Parties may reasonably require, execute, deliver, file and record any financing statement, specific assignment or other paper, obtain all necessary consents of third parties and take any other action that may be necessary or desirable, or that the Secured Parties may reasonably request, in order to create, preserve, perfect or validate the security interests granted hereby or to enable the Secured Parties to exercise and enforce their rights hereunder with respect to any of the Collateral. To the extent permitted by applicable law, the Debtor hereby authorizes the Secured Parties to execute and file, in the name of the Debtor or otherwise, Uniform Commercial Code financing statements which the Secured Parties in their sole discretion may deem necessary or appropriate to further perfect the security interests.

ARTICLE 5

5.1 General Authority. Upon the occurrence and during the continuance of an Event of Default, the Debtor hereby irrevocably appoints ED and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact, in the name of the Debtor or its own name, for the sole use and benefit of the Secured Parties, but at the Debtor's expense, at any time and from time to time, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Agreement and, without limiting the foregoing, the Debtor hereby gives the Secured Parties the power and right on its behalf, without notice to or further assent by the Debtor to do the following:

(a) to receive, take, endorse, assign and deliver any and all checks, notes, drafts, acceptances, documents and other negotiable and nonnegotiable instruments taken or received by the Debtor as, or in connection with, the Collateral;

(b) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or in connection with the Collateral;

(c) to commence, settle, compromise, compound, prosecute, defend or adjust any claim, suit, action or proceeding with respect to, or in connection with, the Collateral;

(d) to sell, transfer, assign or otherwise deal in or with the Collateral or any part thereof, as fully and effectually as if the Secured Parties were the absolute owners thereof; and

(e) to do, at their option, but at the expense of the Debtor, at any time or from time to time, all acts and things which the Secured Parties deem necessary to protect or preserve the Collateral and to realize upon the Collateral.

5.2 Rights and Remedies. If an Event of Default shall have occurred and be continuing, the Secured Parties shall be entitled to exercise in respect of the Collateral all of their rights, powers and remedies provided for herein or otherwise available to them by law, in equity or otherwise, including all rights and remedies of a secured party under the Uniform Commercial Code, and shall be entitled in particular, but without limitation of the foregoing, to exercise the following rights, which the Debtor agrees to be commercially reasonable:

(a) To notify any or all account debtors or obligors under any Collateral Accounts or other Collateral of the security interest in favor of the Secured Parties created hereby and to direct all such Persons to make payments of all amounts due thereon or thereunder directly to the Secured Parties or to an account designated by the Secured Parties; and in such instance and from and after such notice, all amounts and proceeds received by the Debtor in respect of any Collateral Accounts or other Collateral shall be received in trust for the benefit of the Secured Parties hereunder, shall be segregated from the other funds of the Debtor and shall be forthwith deposited into such account or paid over or delivered to the Secured Parties in the same form as so received (with any necessary endorsements or assignments), to be held as Collateral and applied to the Obligations as provided herein;

(b) To take possession of, receive, endorse, assign and deliver, in the name of any Secured Party or in the name of the Debtor, all checks, notes, drafts and other instruments relating to any Collateral, including receiving, opening and properly disposing of all mail addressed to the Debtor concerning Collateral Accounts and other Collateral; to verify with account debtors or other contract parties the validity, amount or any other matter relating to any Collateral Accounts or other Collateral, in the name of any Secured Party or in the name of the Debtor; to accelerate any indebtedness or other obligation constituting Collateral that may be accelerated in accordance with its terms; to take or bring all actions and suits deemed necessary or appropriate to effect collections and to enforce payment of any Collateral Accounts or other Collateral; to settle,

compromise or release in whole or in part any amounts owing on Collateral Accounts or other Collateral; and to extend the time of payment of any and all Collateral Accounts or other amounts owing under any Collateral and to make allowances and adjustments with respect thereto, all in the same manner and to the same extent as the Debtor might have done;

(c) To transfer to or register in the name of any Secured Party or the name of any of their agents or nominees all or any part of the Collateral;

(d) To require the Debtor to, and the Debtor hereby agrees that it will at its expense and upon request of the Secured Parties forthwith, assemble all or any part of the Collateral as directed by the Secured Parties and make it available to the Secured Parties at a place designated by the Secured Parties;

(e) To enter and remain upon the premises of the Debtor and take possession of all or any part of the Collateral, with or without judicial process; to use the materials, services, books and records of the Debtor for the purpose of liquidating or collecting the Collateral, whether by foreclosure, auction or otherwise; and to remove the same to the premises of the Secured Parties or any designated agent for such time as the Secured Parties may desire, in order to effectively collect or liquidate the Collateral; and

(f) To sell, resell, assign and deliver, in their sole discretion, all or any of the Collateral, in one or more parcels, at public or private sale, at any of the Secured Parties' offices or elsewhere, for cash, upon credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Secured Parties may deem satisfactory. If any of the Collateral is sold by the Secured Parties upon credit or for future delivery, the Secured Parties shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, the Secured Parties may resell such Collateral. In no event shall the Debtor be credited with any part of the proceeds of sale of any Collateral until and to the extent cash payment in respect thereof has actually been received by the Secured Parties. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right of whatsoever kind, including any equity or right of redemption of the Debtor, and the Debtor hereby expressly waives all rights of redemption, stay or appraisal, and all rights to require the Secured Parties to marshal any assets in favor of the Debtor or any other party or against or in payment of any or all of the Obligations, that it has or may have under any rule of law or statute now existing or hereafter adopted. No demand, presentment, protest, advertisement or notice of any kind (except any notice required by law, as referred to below), all of which are hereby expressly waived by the Debtor, shall be required in connection with any sale or other disposition of any part of the Collateral. If any notice of a proposed sale or other disposition of any part of the Collateral shall be required under applicable law, the Secured Parties shall give the Debtor at least ten (10) days' prior notice of the time and place of any public sale and of the time after which any private sale or other disposition is to be made, which notice the Debtor agrees is commercially reasonable. The Secured Parties shall not be obligated to make any sale of Collateral if they shall determine not to do so, regardless of the fact that notice of sale may have been given. The Secured Parties may, without notice or publication, adjourn

any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each public sale and, to the extent permitted by applicable law, upon each private sale, the Secured Parties may purchase all or any of the Collateral being sold, free from any equity, right of redemption or other claim or demand, and may make payment therefor by endorsement and application (without recourse) of the Obligations in lieu of cash as a credit on account of the purchase price for such Collateral.

5.3 Application of Proceeds.

(a) All proceeds collected by the Secured Parties upon any sale, other disposition of or realization upon any of the Collateral, together with all other moneys received by the Secured Parties hereunder, shall be applied as follows:

(i) first, to payment of the expenses of such sale or other realization, including reasonable compensation to the Secured Parties and their agents and counsel, and all expenses, liabilities and advances incurred or made by the Secured Parties, their agents and counsel in connection therewith or in connection with the care, safekeeping or otherwise of any or all of the Collateral, and any other unreimbursed expenses for which the Secured Parties are to be reimbursed pursuant to **Section 6.1**;

(ii) second, after payment in full of the amounts specified in **clause (i)** above, to payment of the Obligations; and

(iii) finally, after payment in full of the amounts specified in **clauses (i)** and **(ii)** above, any surplus then remaining shall be paid to the Debtor, or its successors or assigns, or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(b) The Debtor shall remain liable to the extent of any deficiency between the amount of all proceeds realized upon sale or other disposition of the Collateral pursuant to this Agreement and the amount of any then outstanding Obligations. Upon any sale of any Collateral hereunder by the Secured Parties (whether by virtue of the power of sale herein granted, pursuant to judicial proceeding, or otherwise), the receipt of the Secured Parties or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Secured Parties or such officer or be answerable in any way for the misapplication thereof.

5.4 Collateral Collection Accounts. Upon the occurrence and during the continuance of an Event of Default, the Secured Parties shall have the right to cause to be established and maintained, at the principal office of any Secured Party or such other location or locations as they may establish from time to time in their discretion, one or more accounts (collectively, "Collateral Collection Accounts") for the collection of cash proceeds of the Collateral. Such

proceeds, when deposited, shall continue to constitute Collateral for the Obligations and shall not constitute payment thereof until applied as herein provided. The Secured Parties shall have sole dominion and control over all funds deposited in any Collateral Collection Account, and such funds may be withdrawn therefrom only by the Secured Parties. Upon the occurrence and during the continuance of an Event of Default, the Secured Parties shall have the right to apply amounts held in the Collateral Collection Accounts in payment of the Obligations in the manner provided for in **Section 5.3**.

5.5 Grant of License. The Debtor hereby grants to the Secured Parties, with effect upon the occurrence and during the continuance of an Event of Default, an irrevocable, non-exclusive license or sublicense (as applicable) of any duration, with right to sublicense (exercisable without payment of royalty or other compensation to the Debtor), in, to and under all Intellectual Property now owned or licensed or hereafter acquired or licensed by the Debtor, wherever the same may be located throughout the world, for any purpose relating to the Royalty Products, subject to applicable law and subject to the requirements of the Tanabe Agreement, including, without limitation, **Section 2.3** thereof.

5.6 Waivers. The Debtor, to the greatest extent not prohibited by applicable law, hereby (i) agrees that it will not invoke, claim or assert the benefit of any rule of law or statute now or hereafter in effect (including, without limitation, any right to prior notice or judicial hearing in connection with the Secured Parties' possession, custody or disposition of any Collateral or any appraisal, valuation, stay, extension, moratorium or redemption law), or take or omit to take any other action, that would or could reasonably be expected to have the effect of delaying, impeding or preventing the exercise of any rights and remedies in respect of the Collateral, the absolute sale of any of the Collateral or the possession thereof by any purchaser at any sale thereof, and waives the benefit of all such laws and further agrees that it will not hinder, delay or impede the execution of any power granted hereunder to the Secured Parties, but that it will permit the execution of every such power as though no such laws were in effect, (ii) waives all rights that it has or may have under any rule of law or statute now existing or hereafter adopted to require the Secured Parties to marshal any Collateral or other assets in favor of the Debtor or any other party or against or in payment of any or all of the Obligations, and (iii) waives all rights that it has or may have under any rule of law or statute now existing or hereafter adopted to demand, presentment, protest, advertisement or notice of any kind (except notices expressly provided for herein).

ARTICLE 6

6.1 Indemnity and Expenses. Debtor agrees:

(a) To indemnify and hold harmless the Secured Parties and each of their directors, managers, officers, employees, agents, members and affiliates from and against any and all claims, damages, demands, losses, obligations, judgments and liabilities (including, without limitation, reasonable attorneys' fees and expenses) in any way arising out of or in connection with this Agreement and the transactions contemplated hereby, except to the extent the same shall arise as a result of the gross negligence or willful misconduct of the party seeking to be indemnified; and

(b) To pay and reimburse Secured Parties upon demand for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) that the Secured Parties may incur in connection with (i) the custody, use or preservation of, or the sale of, collection from or other realization upon, any of the Collateral, including the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, (ii) the exercise or enforcement of any rights or remedies granted hereunder (including, without limitation, under **Article 5**), under the Option and Put Agreement or otherwise available to them (whether at law, in equity or otherwise), or (iii) the failure by the Debtor to perform or observe any of the provisions hereof. The provisions of this **Section 6.1** shall survive the execution and delivery of this Agreement, the repayment of any of the Obligations and the termination of this Agreement, the Option and Put Agreement or any other instruments or documents executed and delivered pursuant to or in connection with this Agreement.

6.2 No Waiver. The Secured Parties' failure at any time or times hereafter to require strict performance by the Debtor of any of the provisions of this Agreement or of the Option and Put Agreement shall not waive, affect or diminish any right of the Secured Parties at any time or times hereafter to demand strict performance therewith and with respect to any other provision of this Agreement, and any waiver of any Event of Default shall not waive or affect any other Event of Default, whether prior or subsequent thereto, and whether of the same or a different type. None of the provisions of this Agreement shall be deemed to have been waived by any act or knowledge of the Secured Parties, their agents, officers or employees except by an instrument in writing signed by an officer of each of the Secured Parties and directed to the Debtor specifying such waiver.

6.3 Binding Effect. This Agreement and all other instruments and documents executed and delivered pursuant hereto or in connection herewith shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.4 Governing Law. This Agreement shall be construed and interpreted in accordance with the internal laws and judicial decisions of the State of Delaware without giving effect to the conflict of laws principles thereof, except to the extent that matters of perfection and validity of the security interests hereunder, or remedies hereunder, are governed by the laws of a jurisdiction other than the State of Delaware.

6.5 Survival of Agreement. All representations and warranties of the Debtor and all obligations of the Debtor contained herein shall survive the execution and delivery of this Agreement.

6.6 Pre-Filing and Filing of Financing Statements. By execution of this Agreement, the Debtor (a) expressly authorizes the Secured Parties to prepare and file or cause to be filed such Uniform Commercial Code financing statements (including attached schedules, exhibits, and addenda) as the Secured Parties may deem reasonably necessary to perfect the security interests and liens granted herein and (b) hereby ratifies and confirms that the Secured Parties were and are authorized to file all such Uniform Commercial Code financing statements

(including attached schedules, exhibits, and addenda) prior to the execution and delivery of this Agreement, and hereby ratifies any such filings.

6.7 Continuing Security Interest; Term; Successors and Assigns; Assignment; Termination and Release; Survival. This Agreement shall create a continuing security interest in the Collateral and shall secure the payment and performance of all of the Obligations as the same may arise and be outstanding at any time and from time to time from and after the date hereof, and shall (i) remain in full force and effect until all of the Obligations have been finally discharged in full, (ii) be binding upon and enforceable against the Debtor and its successors and assigns (provided, however, that the Debtor may not sell, assign or transfer any of its rights, interests, duties or obligations hereunder without the prior written consent of the Secured Parties, except that the Debtor may assign this Agreement without such consent to any successor to all or substantially all of the Debtor's assets or business to which the Option and Put Agreement relates (whether by stock purchase, asset purchase, merger, operation of law or otherwise); provided, however, that any such assignment shall be effective only if the assignee shall have assumed all of the obligations of the Debtor under the Option and Put Agreement and this Agreement), and (iii) inure to the benefit of and be enforceable by the Secured Parties and their successors and assigns. Upon the termination of the security interest created by this Agreement, the security interest in the Collateral granted herein shall terminate and all rights to the Collateral shall revert to Debtor. Upon such termination of the security interest, the Secured Parties hereby authorize the Debtor to file any UCC termination statements necessary to effect such termination and the Secured Parties will execute and deliver to the Debtor any additional documents or instruments reasonably requested by the Debtor to evidence such termination.

6.8 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be (i) delivered by hand, (ii) sent by facsimile transmission, or (iii) sent certified mail or by a nationally recognized overnight delivery service, charges prepaid, to the address set forth below (or such other address for a Party as shall be specified by like notice):

If to the Secured Parties, to:
c/o Deerfield Capital, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Attention: James E. Flynn
Facsimile: (212) 573-8111

Copy to:
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Attention: David J. Clark
Facsimile: (704) 373-3990

If to the Debtor, to:
Vivus, Inc.
1172 Castro Street
Mountain View, California 94040
Attention: Leland F. Wilson
Facsimile: (650) 934-5389

Copy to:
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attention: Ian B. Edvalson
Facsimile: (650) 493-6811

Each such notice or other communication shall be deemed to have been duly given and to be effective (x) if delivered by hand, immediately upon delivery if delivered on a Business Day during normal business hours and, if otherwise, on the next Business Day; (y) if sent by facsimile transmission, immediately upon confirmation that such transmission has been successfully transmitted on a Business Day before or during normal business hours and, if otherwise, on the Business Day following such confirmation, or (z) if sent by certified mail or a nationally recognized overnight delivery service, on the day of delivery if delivered during normal business hours on a Business Day and, if otherwise, on the first Business Day after delivery. Notices and other communications sent via facsimile must be followed by notice delivered by hand or by certified mail or overnight delivery service as set forth herein within five (5) Business Days.

6.9 Severability. To the extent any provision of this Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6.10 Captions. The captions to the sections of this Agreement have been inserted for convenience only and shall not limit or modify any of the terms hereof.

6.11 Counterparts. This Agreement may be executed in two or more counterparts, which when assembled shall constitute one and the same agreement.

6.12 Amendments and Waivers. Any provision of this Agreement may be amended or waived, if, but only if, such amendment or waiver is in writing and is signed by the Debtor and each of the Secured Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, intending to be legally bound, the Debtor has caused this Security Agreement to be duly executed as of the date first above written.

VIVUS, INC.

By: /s/ Timothy E. Morris
Name: Timothy E. Morris
Title: Chief Financial Officer

Accepted:

DEERFIELD ED CORPORATION

By: /s/ Jeff Kaplan
Name: Jeff Kaplan
Title: Treasurer

DEERFIELD PRIVATE DESIGN FUND, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.

By: /s/ James Flynn
Name: James Flynn
Title: General Partner

SCHEDULE I

Name and Jurisdiction of Incorporation:	VIVUS, Inc., a Delaware corporation
Federal Tax Identification Number:	94-3136179
Chief Executive Office:	1172 Castro Street, Mountain View, CA 94040
Other Place of Business:	735 an 745 Airport Road, Lakewood, NJ 08701
Locations of Collateral Inventory and Collateral Equipment:	1172 Castro Street, Mountain View, CA 94040
	735 and 745 Airport Road, Lakewood, NJ 08701
	15 Ingram Boulevard, La Vergne, TN 37086 (Cardinal Health)
	118 Melrich Road, Cranbury, NJ 08512 (E-Beam)
	500 West 4th Street, Lima, OH 45804 (Beam One)
	930 Wanamaker Avenue, Ontario, CA 91761 (Medegen)
	122 Fairfield Road, Fairfield, NJ 07004 (Gibraltor Labs)

EXHIBIT 1

Stockholders

Stockholders
Deerfield Private Design International, L.P., a British Virgin Islands limited partnership
Deerfield Private Design Fund, L.P., a Delaware limited partnership

CONTACT:

VIVUS, Inc.
Timothy E. Morris
Chief Financial Officer
650-934-5200

Trout Group
Ian Clements (SF) 415-392-3385
Brian Korb (NYC) 646-378-2923

FOR IMMEDIATE RELEASE

VIVUS ENTERS INTO $30 MILLION FUNDING COLLABORATION FOR THE PHASE 3 STUDIES OF AVANAFIL FOR ERECTILE DYSFUNCTION

Mountain View, California, April 4, 2008 –VIVUS, Inc. (NASDAQ: VVUS) announced today that it has entered into a $30 million funding collaboration with Deerfield Management ("Deerfield"). Under the terms of the agreements, Deerfield will provide funds for the phase 3 program for avanafil, a fast-acting, highly selective, phosphodiesterase type 5 inhibitor (PDE5i) for the treatment of erectile dysfunction (ED). The $30 million in funding will be provided by Deerfield from two sources: $20 million under a Royalty and Funding Agreement and $10 million from the sale of VIVUS common stock. VIVUS has granted Deerfield a royalty interest on sales of MUSE®, our product currently marketed for the treatment of ED.

"The collaboration with Deerfield allows us to move avanafil into the phase 3 clinical trials on a timely basis. The funding collaboration provides us with financial flexibility and allows us to leverage the MUSE franchise for the benefit of avanafil development. Deerfield is a well-respected healthcare investment organization. Their interest in avanafil for ED and in becoming a shareholder of VIVUS is significant," commented Leland Wilson, President and Chief Executive Officer. "The market for ED therapies continues to grow. In 2007, sales of all PDE5i's exceeded $3 billion, an increase of 15% over the previous year. Given the profile of avanafil and the results seen to date, we believe that if approved, avanafil could offer patients suffering from ED a satisfying treatment alternative."

"Avanafil has a proven mechanism of action and a unique and attractive profile," said Howard Furst, M.D., a partner at Deerfield Management. "We are pleased to have entered into this collaboration with Vivus that provides full funding for phase 3 while avoiding significant shareholder dilution."

Under the terms of the Royalty and Funding Agreement, Deerfield will provide VIVUS $20 million of funding in the first 16 months of the collaboration. In consideration for the funding, Deerfield will receive a royalty on product sales of MUSE and if approved, product sales of avanafil. VIVUS and Deerfield have also entered into a Option and Put Agreement that allows VIVUS to purchase the royalty stream from Deerfield and allows Deerfield, under certain conditions, to require VIVUS to purchase the royalty stream from Deerfield. VIVUS, entirely at its discretion, can buy back the royalty stream at any time in the first three years of the collaboration for $25 million. In the fourth year, the purchase price increases to $28 million. For this purchase right, VIVUS will make a $2 million upfront payment to Deerfield which will be credited to the purchase price if VIVUS exercises its option. Beginning the fourth year, Deerfield will have the right to sell its interests to VIVUS for a minimum of $17 million. Under certain circumstances, including a change in control, the right to sell the interests back to VIVUS held by Deerfield accelerates at amounts consistent with the VIVUS purchase rights. Once the royalty stream has been acquired by VIVUS, no additional royalty payments will be made to Deerfield.

About the Phase 2 Studies of Avanafil

VIVUS previously reported the results of the phase 2 study of avanafil in men with erectile dysfunction (ED) were positive. The phase 2 study was a multicenter, double-blind, randomized, parallel-design study conducted to assess the safety and efficacy of different doses of avanafil for the treatment of ED. Patients were instructed to attempt sexual intercourse 30 minutes after taking avanafil, with no restrictions on food or alcohol consumption. Results showed that up to 84% of avanafil doses resulted in erections sufficient for vaginal penetration, as compared to placebo ($p<0.001$). Following a four-week, non-treatment run-in period, 284 patients were treated for 12-weeks with placebo or avanafil at various doses. The primary endpoints used to assess treatment efficacy included the percentage of erections sufficient for vaginal penetration and the percentage of erections lasting long enough for successful intercourse.

Avanafil produced erections sufficient for vaginal penetration on 76, 79, 80 and 84 percent of sexual attempts on the 50, 100, 200 and 300 mg doses, respectively ($p<0.05$). Erections lasting long enough for successful intercourse were achieved on 54, 59, 62 and 64 percent of attempts, respectively ($p<0.0001$). Avanafil was well tolerated with headache being the most commonly recorded adverse event. No serious adverse events were reported.

About VIVUS

VIVUS, Inc. is a pharmaceutical company dedicated to the development and commercialization of novel therapeutic products. The current portfolio includes investigational products addressing obesity and sexual health. The pipeline includes: Qnexa™, which is in phase 3 for obesity and phase 2 for diabetes; Luramist (Testosterone MDTS®), for which a phase 2 study has been completed for the treatment of Hypoactive Sexual Desire Disorder (HSDD); and avanafil, for which a phase 2 study has been completed for the treatment of erectile dysfunction (ED). MUSE® is approved

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and currently on the market for the treatment of ED. For more information on clinical trials and products, please visit the company's web site at http://www.vivus.com.

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Certain statements in this press release are forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995. These statements may be identified by the use of forward-looking words such as "anticipate," "believe," "forecast," "estimated" and "intend," among others. These forward-looking statements are based on VIVUS' current expectations and actual results could differ materially. There are a number of factors that could cause actual events to differ materially from those indicated by such forward-looking statements. These factors include, but are not limited to, substantial competition; uncertainties of patent protection and litigation; uncertainties of government or third party payer reimbursement; reliance on sole source suppliers; limited sales and marketing efforts and dependence upon third parties; risks related to the development of innovative products; and risks related to failure to obtain FDA clearances or approvals and noncompliance with FDA regulations. As with any pharmaceutical under development, there are significant risks in the development, regulatory approval and commercialization of new products. There are no guarantees that future clinical studies discussed in this press release will be completed or successful or that any product will receive regulatory approval for any indication or prove to be commercially successful. VIVUS does not undertake an obligation to update or revise any forward-looking statement. Investors should read the risk factors set forth in VIVUS' Form 10- K for the year ended December 31, 2007 and periodic reports filed with the Securities and Exchange Commission.