

VIVUS, INC.
COMPENSATION COMMITTEE CHARTER

I. Purpose

The purpose of the Compensation Committee (the “**Committee**”) of the Board of Directors (the “**Board**”) of VIVUS, Inc. (the “**Company**”) is to assist the Board in fulfilling its responsibilities regarding: (a) the establishment and maintenance of compensation and benefit plans, policies and programs designed to attract, motivate and retain personnel with the requisite skills and abilities to enable the Company to achieve superior operating results; (b) the compensation of the Company’s Chief Executive Officer (the “**CEO**”), the Company’s other executive officers, as defined by Rule 3b-7 of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), and the Company’s non-employee directors; and (c) compliance with the compensation rules, regulations and guidelines promulgated by the Nasdaq Stock Market (“**Nasdaq**”), the Securities and Exchange Commission (the “**SEC**”) and other law, as applicable.

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

II. Membership

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

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

- be free from any relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment as a Committee member; and
- meet any other requirements imposed by applicable law, regulations or rules, subject to any applicable exemptions and transition provisions.

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

III. Meetings and Procedures

1. The Committee shall meet as often as it deems necessary, but in no event less than annually. A majority of the members of the Committee shall constitute a quorum.
2. Any member of the Committee or the Board may call a meeting of the Committee.
3. The Chair will set the agenda for Committee meetings and conduct the proceedings of those meetings.
4. The Committee may delegate authority to one or more members of the Committee where appropriate, but no such delegation shall be permitted if the authority is required by law, regulation or applicable listing standards to be exercised by the Committee as a whole.
5. The Committee may request that any directors, officers or employees of the Company, or other persons whose advice and counsel are sought by the Committee, attend any meeting to provide such information as the Committee requests.
6. The CEO and any other officers shall not be present during the portion of a meeting at which their compensation or performance is discussed and determined.
7. The Committee shall fix its own rules of procedure, which shall be consistent with the Bylaws and this Charter.
8. The Committee is governed by the same rules regarding meetings (including meetings in person or by telephone or other similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board.

IV. Duties and Responsibilities

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

The Committee will:

1. Review annually the compensation strategy of the Company, including base salary, incentive compensation and equity-based grants, which includes the ability to adopt, amend and terminate such compensation. In reviewing the compensation strategy of the Company, including whether to adopt, amend or terminate any such plans, the Committee shall consider the results of the most recent stockholder advisory vote on executive compensation required by Section 14A of the 1934 Act and the rules and regulations

promulgated thereunder (“**Say on Pay Vote**”), and assure that it promotes stockholder interests and supports the Company’s strategic and tactical objectives and that it provides for appropriate rewards and incentives for the Company’s management and employees.

2. Obtain information on market trends in executive compensation and shall review the competitiveness of the Company’s executive compensation programs to ensure (a) the attraction and retention of executive officers, (b) the motivation of executive officers to achieve the Company’s business objectives, and (c) the alignment of the interests of executive officers with the long-term interests of the Company’s stockholders.
3. Review and approve annually the corporate goals and objectives applicable to the compensation of the CEO, evaluate at least annually the CEO’s performance in light of those goals and objectives, and determine and approve the compensation level and other terms of employment of the CEO based on this evaluation, including, without limitation, base salary, cash and equity-based incentive compensation, bonus, special benefits, perquisites and incidental benefits and other incentive compensation, and other terms of employment. In determining the long-term incentive component of CEO compensation, the Committee may consider the Company’s performance and relative stockholder return, the value of similar incentive awards given to CEOs at comparable companies and the awards given to the Company’s CEO in past years. In evaluating and determining CEO compensation, the Committee shall consider the results of the most recent Say on Pay Vote as required by Section 14A of the 1934 Act and the rules and regulations promulgated thereunder. The Committee’s decisions regarding performance goals and objectives and the compensation of the CEO shall be reviewed and ratified by the Board.
4. Determine and approve or recommend to the Board for determination and approval the compensation and other terms of employment of the executive officers (other than the CEO) or senior management, as appropriate, taking into consideration the officer’s success in achieving his or her individual performance goals and objectives, the corporate performance goals and objectives deemed relevant to the officer as established by the Committee, and the recommendations of the CEO. In evaluating and determining or making recommendations regarding executive compensation, the Committee shall consider the results of the most recent Say on Pay Vote as required by Section 14A of the 1934 Act and the rules and regulations promulgated thereunder.
5. Review and approve the terms of any employment agreements, severance arrangements, change-of-control protections and any other compensatory arrangements (including, without limitation, perquisites and any other form of compensation) for the CEO, executive officers and other senior management, as appropriate, which includes the ability to adopt, amend and terminate such agreements or arrangements.
6. Establish, review and approve all bonuses, equity incentive awards or other compensation to the extent any such bonus, awards or other compensation is intended to be qualified performance based compensation under Section 162(m) of the Code.
7. Monitor the Company’s compliance with the requirements under the Sarbanes-Oxley Act of 2002 relating to loans to directors and officers, and with all other applicable laws affecting employee compensation and benefits.
8. Review and discuss with management the Company’s disclosures contained under the caption “Compensation Discussion and Analysis” for use in the Company’s annual

reports on Form 10-K, registration statements, proxy statements or information statements and make recommendations to the Board that the Compensation Discussion and Analysis be approved for inclusion in the Company's annual reports on Form 10-K, registration statements, proxy statements or information statements, as required by the 1934 Act, the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

9. Prepare and review the Committee's report on executive compensation to be included in the Company's annual proxy statement in accordance with the rules and regulations promulgated by the SEC.
10. Review the compensation and benefits paid to non-employee directors for their service on the Board and its committees at least once a year and recommend any changes considered appropriate to the full Board for its approval.
11. Oversee and review with management the Company's major compensation-related risk exposures, review and discuss at least annually the relationship between risk management policies and practices and compensation, and evaluate the steps management has taken to monitor or mitigate such exposures, including but not limited to risks related to executive compensation and overall compensation and benefit strategies, plans, arrangements, practices and policies.
12. Review and recommend to the Board for approval the frequency with which the Company will conduct Say on Pay Votes, taking into account the results of the most recent stockholder advisory vote on frequency of Say on Pay Votes required by Section 14A of the 1934 Act and the rules and regulations promulgated thereunder, and review and approve the proposals regarding the Say on Pay Vote and the frequency of the Say on Pay Vote to be included in the Company's proxy statement.
13. Consider and make recommendations to the Board regarding whether to include the seeking of stockholder approval of "golden parachute" arrangements in the annual proxy statement in lieu of (or in addition to) inclusion of any special proxy statement in accordance with the rules and regulations promulgated by the SEC.
14. Oversee the Company's compliance with regulatory requirements associated with compensation of its directors, officers, and employees, and review the Company's compliance program relating to restrictions on and reporting of securities transactions by the Company and its executive officers and directors.
15. Perform any other activities required by applicable law, rules or regulations, including the rules and regulations promulgated under the 1934 Act and rules and regulations of the SEC, and take such other actions and perform and carry out any other responsibilities and duties delegated to it by the Board or as the Committee deems necessary or appropriate consistent with its purpose.

V. Studies and Advisers

The Committee, in discharging its responsibilities, may conduct, direct, supervise or authorize studies of, or investigations into, matters within the Committee's scope of responsibility, with full access to all books, records, facilities and personnel of the Company. The Committee has the sole authority and right, at the expense of the Company, to retain legal counsel, compensation and other consultants,

accountants, experts and advisers of its choice to assist the Committee in connection with its functions, including any studies or investigations. The Committee shall set the compensation, and oversee the work, of such legal counsel, consultants, accountants, experts and advisers. The Company will provide for appropriate funding, as determined by the Committee, for:

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

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

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

Notwithstanding the foregoing, the Committee is not required to conduct an independence assessment for an adviser that acts in a role limited to the following activities: (i) consulting on any broad-based plan that does not discriminate in scope, terms or operation, in favor of executive officers or directors of the Company, and that is available generally to all salaried employees; and/or (ii) providing information that either is not customized for the Company or that is customized based on parameters that are not developed by such adviser, and about which such adviser does not provide advice.

VI. Minutes and Reports

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

VII. Delegation of Duties

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

VIII. Review of Committee Composition, Performance and Charter

The Committee will evaluate its own composition and performance on an annual basis, including its compliance with this Charter, and submit a report to the Board, including any recommendations for changes in procedures or policies governing the Committee. The Committee shall conduct this evaluation in such manner as it deems appropriate. Additionally, the Committee will also review and reassess the

adequacy of this Charter at least annually, and recommend to the Board any changes the Committee determines are appropriate.

IX. Publication

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

As adopted February 20, 2013.

Effective February 20, 2013.