

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

| | |
|-----------------------|-------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT |
| NATURE OF CONVEYANCE: | SECURITY INTEREST |

CONVEYING PARTY DATA

| Name | Formerly | Execution Date | Entity Type |
|-------------|----------|----------------|-----------------------|
| Vivus. Inc. | | 04/09/2013 | CORPORATION: DELAWARE |

RECEIVING PARTY DATA

| | |
|-------------------|--|
| Name: | BioPharma Secured Investments III Holdings Cayman LP |
| Street Address: | Walker House, 87 Mary Street |
| Internal Address: | c/o Walkers Corporate Services Limited |
| City: | George Town, Grand Cayman |
| State/Country: | CAYMAN ISLANDS |
| Postal Code: | KY1-9005 |
| Entity Type: | LIMITED PARTNERSHIP: CAYMAN ISLANDS |

PROPERTY NUMBERS Total: 1

| Property Type | Number | Word Mark |
|----------------------|---------|-----------|
| Registration Number: | 4295224 | QSYMIA |

CORRESPONDENCE DATA

Fax Number: 2028874288
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.

Phone: 202-887-4103
 Email: lgeyer@akingump.com
 Correspondent Name: Laura Talley Geyer
 Address Line 1: 1333 New Hampshire Ave. NW
 Address Line 4: Washington, DISTRICT OF COLUMBIA 20036

| | |
|-------------------------|-------------|
| ATTORNEY DOCKET NUMBER: | 687747.0017 |
|-------------------------|-------------|

DOMESTIC REPRESENTATIVE

Name:
 Address Line 1:

CH \$40.00 4295224

Address Line 2:
Address Line 3:
Address Line 4:

NAME OF SUBMITTER:

Laura Talley Geyer

Signature:

/Laura Talley Geyer/

Date:

04/09/2013

Total Attachments: 10
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PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (the "Security Agreement") is made the 9th day of April, 2013, by and between **VIVUS, INC.**, a Delaware corporation, and its permitted successors and assigns (the "Grantor") and **BIOPHARMA SECURED INVESTMENTS III HOLDINGS CAYMAN LP**, a Cayman Islands exempted limited partnership, and its permitted successors and assigns (the "Secured Party").

RECITALS

WHEREAS, reference is made to that certain Purchase and Sale Agreement ("the Agreement") dated as of March 25, 2013 (and as amended, supplemented, restated, or otherwise modified from time to time), by and between the Grantor and the Secured Party;

WHEREAS, pursuant to the Agreement, the Grantor granted to the Secured Party a security interest in regards to all of Grantor's right, title, and interest in, to, and under the Additional Collateral, whether now owned or hereafter acquired by the Grantor and all of Grantor's rights and privileges with respect thereto;

WHEREAS the Grantor and the Secured Party have agreed to execute all documents to perfect the security interest of the Secured Party in such Additional Collateral of the Grantor, perfected and prior to all other Encumbrances thereon (other than Permitted Encumbrances);

WHEREAS, in connection with the Agreement, the Grantor and the Secured Party have entered into this Security Agreement as of the date hereof (and as amended, supplemented, restated, or otherwise modified from time to time);

WHEREAS, the Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Party with respect to the security interest in the Additional Collateral granted hereby are more fully set forth in the Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

WHEREAS, as a condition, among others, to the terms contemplated by the Agreement in regards to the Additional Collateral, the parties hereto execute this Security Agreement.

NOW THEREFORE, the parties hereto agree as follows:

1. Defined Terms. All capitalized terms used but not otherwise defined herein have the meanings ascribed to them, or incorporated by reference in, the Agreement.

2. Grant of Security Interest. Pursuant to the terms of the Agreement, Grantor hereby grants a security interest in all of its right, title, and interest in, to, and under all of the following Additional Collateral:

(a) all Qsymia Product Rights set forth on Exhibit A to this Security Agreement and all of Grantor's rights and privileges with respect thereto;

(b) all Regulatory Approvals;

(c) all Supporting Obligations (as such term is defined in the UCC) in respect of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing;

(d) all of Grantors's books and records relating to any and all of the foregoing;

(e) all contractual rights of Grantor under any Permitted Partnering Agreement to receive payment of Net Sales; and

(f) all Proceeds (as such term is defined in the UCC) and products of and to any and all of the foregoing;

provided, however, that, "Additional Collateral" shall not include any general intangible, permit, lease, license, contract or other instrument of Grantor included in items (D) through (H) of the definition of Qsymia Product Rights (or any of Grantor's books and records relating thereto, or any Proceeds and products thereof and thereto), if, and only to the extent, the grant of a security interest in such general intangible, permit, lease, license, contract or other instrument in the manner contemplated by this Agreement, under the terms thereof or under Applicable Law, is prohibited and would result in the termination thereof or give the other Persons party thereto the right to terminate, accelerate or otherwise alter Grantor's rights, title and interests thereunder (including upon the giving of notice or the lapse of time or both); provided, further, that (i) any such limitation described above on the security interests granted hereunder shall only apply to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other Applicable Law (including Bankruptcy Laws) or principles of equity and (ii) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any Applicable Law, general intangible, permit, lease, license, contract or other instrument, to the extent sufficient to permit any such general intangible, permit, lease, license, contract or other instrument of Grantor (and the books and records relating thereto and the Proceeds and products thereof and thereto) to become Additional Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such general intangible, permit, lease, license, contract or other instrument (and the books and records relating thereto and the Proceeds and products thereof and thereto) shall be automatically and simultaneously granted hereunder and shall be included as Additional Collateral hereunder.

3. Reference to the Agreement. This Security Agreement has been entered into by the Grantor and the Secured Party solely for purposes as contemplated by the Agreement. In the event of any inconsistency between any of the terms or provisions hereof and the terms and provisions of the Agreement, the terms and provisions of this Security Agreement shall govern.

4. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be an original, but all of which together will constitute one and the same instrument. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Parties by facsimile or other electronic transmission. In such event, such Party will forthwith deliver to the other Parties the counterpart of this Agreement executed by such Party.

5. Governing Law. This Security Agreement shall be construed in accordance with and governed by the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

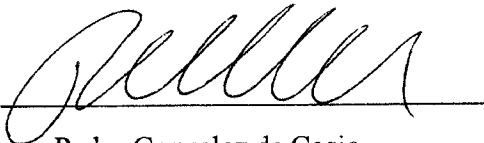
[Signature page follows]

IN WITNESS WHEREOF, the Secured Party and the Grantor have caused this Security Agreement to be duly executed by their respective officers thereunto duly authorized, as of the day and year first set forth above.

**BIOPHARMA SECURED INVESTMENTS III
HOLDINGS CAYMAN LP**, as the Secured
Party

By: Pharmakon Advisors, LP, its
investment manager

By: Pharmakon Management I, LLC, its
general partner

By: 
Name: Pedro Gonzalez de Cosio

Title: Managing Member

VIVUS, INC., as the Grantor

By: _____

Name: Leland F. Wilson

Title: Chief Executive Officer

IN WITNESS WHEREOF, the Secured Party and the Grantor have caused this Security Agreement to be duly executed by their respective officers thereunto duly authorized, as of the day and year first set forth above.

**BIOPHARMA SECURED INVESTMENTS III
HOLDINGS CAYMAN LP**, as the Secured
Party

By: Pharmakon Advisors, LP, its
investment manager

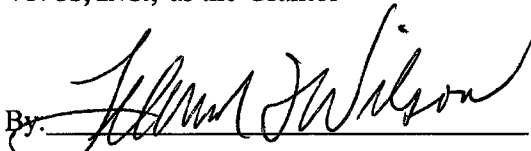
By: Pharmakon Management I, LLC, its
general partner

By: _____

Name: Pedro Gonzalez de Cosio

Title: Managing Member

VIVUS, INC., as the Grantor

By:  _____

Name: Leland F. Wilson

Title: Chief Executive Officer

EXHIBIT A

QSYMIA PRODUCT RIGHTS

“Qsymia Patent Rights” means (i) the Patents and patent applications listed in Schedule I below (including any PCT and/or U.S. utility application claiming priority to such provisional application(s) that are filed on or before the one year conversion date of such application(s)); (ii) any patent or patent application that claims priority to, and is a divisional, continuation, reissue, renewal, reexamination, substitution or extension of, any patent application identified in (i); (iii) any patents issuing on any patent application identified in (i) or (ii), including any reissues, renewals, reexaminations, substitutions or extensions thereof; (iv) any claim of a divisional, continuation or continuation-in-part application or patent (including any reissues, renewals, reexaminations, substitutions or extensions thereof) that is entitled to the priority date of, and is directed specifically to subject matter specifically described in, at least one of the patents or patent applications identified in (i), (ii) or (iii); (v) any foreign counterpart (including PCTs) of any patent or patent application identified in (i), (ii) or (iii) or of the claims identified in (iv); and (vi) any supplementary protection certificates or similar patent term extensions of any patents and patent applications identified in (i) through (v).

“Qsymia Product Rights” means any and all of the following, as they exist throughout the world: (A) Qsymia Patent Rights; (B) rights in the Qsymia Trademarks listed in Schedule II below; (C) regulatory filings, submissions and approvals related to Product; (D) unregistered trademarks, service marks, trade names, trade dress, logos, packaging design, slogans and Internet domain names, and registrations and applications for registration of any of the foregoing, in each case, as related to a Product; (E) copyrights in both published and unpublished works, including without limitation all compilations, databases and computer programs, manuals and other documentation and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above, in each case, as related to a Product; (F) rights in know-how, trade secrets, confidential or proprietary information, research in progress, algorithms, data, databases, data collections, designs, processes, procedures, methods, protocols, materials, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, and the results of experimentation and testing, including samples, in each case, as specifically related to a Product; (G) any and all other intellectual property rights and/or proprietary rights specifically relating to any of the foregoing; (H) claims of infringement and misappropriation against Third Parties relating to a Product; and (I) all contractual rights of Seller under the Third Party Agreements.

SCHEDULE I

LIST OF PATENTS

| <u>Title</u> | <u>Inventors</u> | <u>Country</u> | <u>Patent Number</u> | <u>App. Number</u> | <u>Pub. Number</u> | <u>Status</u> | <u>Filing Date</u> |
|--|------------------|----------------|----------------------|--------------------|--------------------|---------------|--------------------|
| Combination Therapy for Effecting Weight Loss and Treating Obesity | Najarjan | US | 7,056,890 | 10/454,368 | 2004/0002462 | Issued | 6/3/03 |
| | | US | 7,553,818 | 11/385,198 | 2006/0234950 | Issued | 3/20/06 |
| | | US | 7,659,256 | 11/385,199 | 2006/0234951 | Issued | 3/20/06 |
| | | US | 7,674,776 | 11/385,233 | 2006/0234952 | Issued | 3/20/06 |
| | | Australia | 770068 | 200054896 | | Granted | 6/14/00 |
| | | Canada | 2,377,330 | 2377330 | | Granted | 6/14/00 |
| | | Austria | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Belgium | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Cyprus | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Denmark | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Finland | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | France | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Greece | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Germany | 60035870 | 00939884.3 | | Granted | 6/14/00 |
| | | Ireland | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Italy | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Luxembourg | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Monaco | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Netherlands | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Portugal | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Spain | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Sweden | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | Switzerland | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | UK | 1187603 | 00939884.3 | | Granted | 6/14/00 |
| | | EPO | | 07011472.3 | | Pending | 6/14/00 |

| <u>Title</u> | <u>Inventors</u> | <u>Country</u> | <u>Patent Number</u> | <u>App. Number</u> | <u>Pub. Number</u> | <u>Status</u> | <u>Filing Date</u> |
|--|-------------------|----------------|----------------------|--------------------|--------------------|---------------|--------------------|
| Compositions and Methods for Treating Sleep Apnea | Tam et al. | US | | 12/683,353 | 2010/0105765 | Pending | 1/6/10 |
| “ | Tam et al. | EPO | | 10184955.2 | EP1825851 | Pending | 12/6/07 |
| Combination Therapy for the Treatment of Sleep Apnea | Najararian | EPO | | | EP 2305226 | Pending | 9/30/10 |
| Combination Therapy for the Treatment of Hypertension | Najararian | EPO | | 10184959.4 | EP 2308481 | Pending | 9/30/10 |
| Combination Therapy for the Treatment of Diabetes | Najararian | EPO | | 10184977.6 | EP 2305227 | Pending | 9/30/10 |
| Combination Therapy for the Treatment of Hyperlipidemia | Najararian | EPO | | 10184981.8 | EP 2305228 | Pending | 9/30/10 |
| Low Dose Topiramate/Phentermine Composition and Methods of Use Thereof | Najararian et al. | EPO | | 12/481,540 | 2010/0215739 | Pending | 6/9/09 |
| “ | | Australia | | 2009257572 | | Pending | 6/9/09 |
| “ | | Brazil | | PI0914985-6 | | Pending | 6/9/09 |
| “ | | Canada | | 2727319 | | Pending | 6/9/09 |
| “ | | Chile | | 1365-2010 | | Pending | 6/9/09 |
| “ | | China | | 200980130379.5 | | Pending | 6/9/09 |
| “ | | EPO | | 09763479.4 | | Pending | 6/9/09 |
| “ | | India | | 6898/CHENP/2010 | | Pending | 6/9/09 |
| “ | | Israel | | 209874 | | Pending | 6/9/09 |
| “ | | Japan | | 2011-513646 | JP2011522896A | Pending | 6/9/09 |
| “ | | Korea | | 10-2011-7000416 | | Pending | 6/9/09 |
| “ | | Mexico | | MX/a/2010/013503 | | Pending | 6/9/09 |
| “ | | South Africa | 2010/08839 | | | Granted | 6/9/09 |

| <u>Title</u> | <u>Inventors</u> | <u>Country</u> | <u>Patent Number</u> | <u>App. Number</u> | <u>Pub. Number</u> | <u>Status</u> | <u>Filing Date</u> |
|--|------------------|----------------|----------------------|--------------------|--------------------|---------------|--------------------|
| Escalating Dosing Regimen for Effecting Weight Loss and Treating Obesity | Najarian et al. | US | | 12/481,548 | 2009/0304785 | Pending | 6/9/09 |
| " | | Australia | | 2009257573 | | Pending | 6/9/09 |
| " | | Brazil | | PI0914991-0 | | Pending | 6/9/09 |
| " | | Canada | | 2727313 | | Pending | 6/9/09 |
| " | | Chile | | 1366-2010 | | Pending | 6/9/09 |
| " | | China | | 200980130444.4 | | Pending | 6/9/09 |
| " | | EPO | | 09763480.2 | | Pending | 6/9/09 |
| " | | India | | 6897/CHENP/2010 | | Pending | 6/9/09 |
| " | | Israel | | 209875 | | Pending | 6/9/09 |
| " | | Japan | | 2011-513647 | JP2011522897A | Pending | 6/9/09 |
| " | | Korea | | 10-2011-7000417 | | Pending | 6/9/09 |
| " | | Mexico | | MX/a/2010/013505 | | Pending | 6/9/09 |
| " | | South Africa | 2010/08840 | 2010/08840 | | Granted | 6/9/09 |

SCHEDULE II

LIST OF TRADEMARKS

| <u>Country</u> | <u>Trademark</u> | <u>App. Number/ Date</u> | <u>Reg. Number/ Date</u> | <u>Class</u> | <u>Description of Services</u> | <u>Status</u> | <u>Next Renewal Date</u> |
|--------------------------------------|-------------------------|-------------------------------------|-------------------------------------|--|---|----------------------|---|
| US | QSYMIA | 85656775 6/20/2012 | 4295224 2/26/2013 | IC 005. US 006 018 044 046 051 052. | Pharmaceutical preparations for the treatment of obesity, to facilitate weight loss and weight control, to suppress appetite and lower the threshold for satiety. | Registered | 2/26/2023 |
| European Community | QSYMIA | 011405198 12/7/2012 | | IC 005 | Pharmaceutical preparations for the treatment of obesity, to facilitate weight loss and weight control, to suppress appetite and lower the threshold for satiety. | Pending | |
| International- Madrid Protocol | QSYMIA | A0033230 6/20/2012 | 1146156 2/7/2013 | IC 005 | Pharmaceutical preparations for the treatment of obesity, to facilitate weight loss and weight control, to suppress appetite and lower the threshold for satiety. | Registered | 12/14/2022 |
| Canada | QSYMIA | 1606513 12/13/2012 | | IC 005 | Pharmaceutical preparations for the treatment of obesity, to facilitate weight loss and weight control, to suppress appetite and lower the threshold for satiety | Pending | |