



Focus BioMed, LLC. • P.O. Box 419, 59 Glen Ave. • Upton, MA 01568
Phone: 508-529-4990 • Fax: 508-529-0083

MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

AGREEMENT dated July 31, 2002, between Focus BioMed (the “Company”), a Massachusetts corporation having its chief executive offices at 59 Glen Avenue, Upton, Massachusetts 01568 and the party named below (the “Interested Party”).

1. BACKGROUND

The Company and the Interested Party intend to engage in discussions and negotiations concerning the possibility of entering into a business arrangement or transaction. In the course of such discussions and negotiations, it is anticipated that either party may disclose (the “Disclosing Party”) or deliver to the other party (the “Receiving Party”) certain trade secrets or confidential or proprietary information for the purpose of enabling the parties to evaluate the feasibility of such business arrangement or transaction. The Company and the Interested Party have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement.

2. PROPRIETARY INFORMATION

As used in this Agreement, the term “Proprietary Information” shall mean all information about either party’s business, business plans, personnel, customers, strategies, trade secrets, operations, records, finances, assets, technology, data and all information that reveals the processes, methodologies, technology or know how by which either party’s existing or future products, services, applications and methods of operation are developed, conducted or operated and all other confidential or proprietary information designated as such in writing by the Disclosing Party, whether by letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by the Disclosing Party to the Receiving Party or is orally or visually disclosed to the Receiving Party by the Disclosing Party. Information which is orally or visually disclosed to the Receiving Party by the Disclosing Party, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, shall constitute Proprietary Information if (i) it would be apparent to a reasonable person, familiar with the Disclosing Party’s business and the industry in which it operates, that such information is of a confidential or proprietary nature the maintenance of which is important to the Disclosing Party or if (ii) the Disclosing Party, within thirty (30) days after such disclosure, delivers to the Receiving Party a written document or documents describing such information and referencing the place and date of such oral, visual or written disclosure and the names of the employees or officers of the Receiving Party to whom such disclosure was made. In addition, the fact that the Company and the Interested Party are or may be having discussions or negotiations and the content of those discussions and negotiations shall also constitute Proprietary Information for purposes of this Agreement.

3. DISCLOSURE OF PROPRIETARY INFORMATION

For a period of three years from the date hereof (the “Restricted Period”), the Receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) to any person outside its organization, the Proprietary Information. During the Restricted Period, the Receiving Party and its personnel shall use such Proprietary Information only for the purpose for which it was disclosed and shall not use or exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of the Disclosing Party. Without limitation of the foregoing, the Receiving Party shall not cause or permit reverse engineering of any Proprietary Information or recompilation or disassembly of any software programs which are part of the Proprietary Information received by it under this Agreement and shall disclose Proprietary Information only to persons within its organization who have a need to know such Proprietary Information in the course of the performance of their duties and who are bound by a written agreement, enforceable by the Disclosing Party, to protect the confidentiality of such Proprietary information. The Receiving Party shall adopt and maintain programs and procedures which are reasonably calculated to protect the confidentiality of Proprietary Information and shall be responsible to the Disclosing Party for any disclosure or misuse of Proprietary Information which results from a failure to comply with this provision. The Receiving Party shall be fully responsible for any breach of this Agreement by its agents, contractors, representatives and employees. The Receiving Party will promptly report to the Disclosing Party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such violation.

4. LIMITATION ON OBLIGATIONS.

The obligations of the Receiving Party specified in Section 3 above shall not apply, and the Receiving Party shall have no further obligations, with respect to any Proprietary Information to the extent Receiving Party can demonstrate, by clear and convincing evidence, that such Proprietary Information:

- (a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party;
- (b) is in the Receiving Party’s possession at the time of disclosure otherwise than as a result of Receiving Party’s breach of any legal obligation;
- (c) becomes known to the Receiving Party through disclosure by sources other than the Disclosing party having the legal right to disclose such Proprietary Information;
- (d) is independently developed by the Receiving Party without reference to or reliance upon the Proprietary Information; or
- (e) is required to disclosed by the Receiving Party to comply with applicable laws or governmental or regulatory regulations, provided that the Receiving Party provides prior written notice of such disclosure to the Disclosing party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

In the event of a disputed disclosure, the Receiving Party shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions.

5. OWNERSHIP OF PROPRIETARY INFORMATION.

The Receiving Party agrees that the Disclosing Party is and shall remain the exclusive owner of the Proprietary Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.

6. RETURN OF DOCUMENTS.

The Receiving Party shall, upon the termination of this Agreement or the request of the Disclosing Party at any time during the Restricted Period, return to the Disclosing Party all drawings, documents, and other tangible manifestations of Proprietary Information received by the Receiving Party pursuant to this Agreement (and all copies and reproductions thereof). In the event any Proprietary Information is reflected in a report or any analytical materials prepared by the Receiving Party, the Receiving Party shall upon the request of the Disclosing Party at any time during the Restricted Period destroy all copies thereof to the extent they contain such Proprietary Information.

7. MISCELLANEOUS.

- (a) This Agreement supersedes all prior agreements, written or oral, between the Disclosing Party and the Receiving Party relating to the subject matter of this Agreement. This Agreement may not be modified, amended or discharged, in whole or in part, except by an agreement in writing signed by the Disclosing Party and the Receiving Party.
- (b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
- (c) This Agreement shall be construed and interpreted in accordance with the laws of the commonwealth of Massachusetts.
- (d) The provisions of this Agreement are necessary for the protection of the business and goodwill of the Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies which may be available, the Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed under seal by their duly authorized representatives as of the date set forth above.

[THE COMPANY] Focus BioMed

By: **David Olson** _____

Title: President _____

Signature: _____

Date: _____

THE INTERESTED PARTY:

(Print or type name of Interested Party)

By: _____

Title: _____

Signature: _____

Date: _____

Address of Interested Party:

