**MUTUAL CONFIDENTIALITY AGREEMENT**

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into as of the \_day of , 20\_\_ by and between RUSH UNIVERSITY MEDICAL CENTER, an Illinois not-for-profit corporation, having its principal place of business at 1653 W. Congress Parkway, Chicago, Illinois, 60612 (“Rush”), and , a corporation, with a principal place of business at ("Company"). Rush and Company are hereinafter referred to collectively as the "Parties" or individually as a "Party."

To further discussions between Rush and Company relating to \_\_\_\_\_\_\_\_\_\_\_\_\_, (the “**Project**”), a party (the “**Disclosing Party**”) may choose to disclose information to the other party (the “**Receiving Party**”) that the Disclosing Party regards as confidential. The Receiving Party agrees to treat such information as Confidential Information, as defined herein.

**THEREFORE**, in consideration of the mutual promises, covenants and agreements stated below, and intending to be legally bound, the Parties agree as follows:

1. Defined Terms.

a. “**Affiliate**” shall mean any business entity under common control with, or controlling or controlled by, such Party, with “control” meaning direct or indirect ownership of 50% or more of the voting interest in such other entity and, in the case of a partnership, control of the general partner

b. “**Confidential Information**” shall mean any information disclosed by the Disclosing Party, whether orally, in writing or otherwise, and includes, but is not limited to, scientific and proprietary information, research, development, patent and applications thereto, technical information, computer programs, know-how, trade secrets, knowledge, designs, drawings, specifications, concepts, data, material, photographs, products, equipment, reports, methods, processes, documentation, methodology, pricing, marketing plans, sales plans, acquisition plans, actual or potential customer lists and/or identifying information, salaries, business affairs, suppliers, vendors, manufacturers, contacts, profits, markets, sales strategies, unique servicing techniques, and any other information that is valuable, non-public, and sensitive to the Disclosing Party as well as any other information or material that Disclosing Party designates as Confidential Information.

Confidential Information shall not include information that: (i) is already in the public domain at time of disclosure; (ii) becomes part of the public domain through no fault or wrongful act of the Receiving Party or its Representatives; (iii) is rightfully received from a third party without any obligation of confidentiality; or (iv) already known to or independently developed by Receiving Party as evidenced by its written records. Information that the Disclosing Party discloses or makes available to Receiving Party shall be presumed to be Confidential Information and the burden of establishing that such information comes within the foregoing exceptions shall rest with the Receiving Party.

c. **“Party” or “Parties”** shall include the identified individuals, entities, and signatories to this Agreement, as well as the respective current and future directors, employees, agents, Representatives, and Affiliates of each.

d. **“Project”** is defined as \_[**PLEASE INSERT]** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e. “**Representative**” shall mean any employee, director, officer, contractor or consultant of a Receiving Party or its Affiliates who has a need to know Confidential Information for purposes of the Project and who is bound by confidentiality obligations with respect to such Confidential Information that are no less strict than those set forth in this agreement.

2. Restrictions on Use of Confidential Information. The Receiving Party shall not, except as provided herein, use, disclose, disseminate, or publish Confidential Information to any non-Representative in any manner whatsoever, in whole or in part, without the prior written consent of the Disclosing Party. The Confidential Information shall not be reproduced in whole or in part except as needed to further the evaluation between the Parties. All Confidential Information, records and information concerning the Disclosing Party provided to the Receiving Party are and shall remain the property of the Disclosing Party, at all times whatsoever, and this Agreement shall not be construed to grant to the Receiving Party any ownership, title, license, right to use, patent, copyright, trademarks or similar rights to such property.

The Parties agree that, as a condition of receipt of the Confidential Information, and for a period of five years from the date of this agreement, each Party shall:

a. only disclose Confidential Information to that Party’s Representatives and to no other person or entity except with the prior written consent of the Disclosing Party;

b. not allow Confidential Information be used, disclosed, disseminated, or published in any manner whatsoever, in whole or in part, for any purposes other than in connection with the Project and allowed by Disclosing Party;

c. upon completion of the Project, or upon the Disclosing Party’s request, immediately cease all use of the Confidential Information and, if requested, either return or destroy all materials and documentation consisting of or relating to the Confidential Information and certify to the other Party in writing such return or destruction or explain why Confidential Information cannot be returned or destroyed and how the Confidential Information will continue to be protected;

d. take all necessary precautions to protect the confidentiality of the Confidential Information and exercise at least the same degree of care in safeguarding the Confidential Information as such Party would with its own confidential information, but not less than a commercially reasonable degree of care;

e. be liable for any breach by any of its Representatives of the restrictions set forth in this agreement and agrees, at its sole expense, to take reasonable measures to prevent the prohibited or unauthorized disclosure or use of the Confidential Information by its Representatives; and

f. promptly advise the Disclosing Party in writing upon learning of any unauthorized use or disclosure of the Confidential Information.

If the Receiving Party is or expects to be required to disclose the Confidential Information pursuant to an order of a court of competent jurisdiction or duly authorized regulatory agency, then it shall, as soon as practicable prior to such disclosure, give the Disclosing Party sufficient prior notice and reasonable assistance to contest such order. Receiving Party agrees to cooperate fully with Disclosing Party in seeking any protective order.

3. Ownership. Confidential Information shall remain the sole and exclusive property of the Disclosing Party.

4. Disclaimer. Confidential Information is provided "AS-IS" with no express or implied warranties of any kind, including, without limitation, any warranties of merchantability, fitness for a particular purpose or noninfringement of any patent, copyright or other third Party intellectual property right. Neither Party shall have any liability whatsoever to the other or any third Party for any damages arising from either Party's use of Confidential Information.

5. Termination. Each Party shall have the right to terminate this agreement by written notice to the other. Notwithstanding any such termination, all rights and obligations under this agreement shall survive with respect to Confidential Information disclosed prior to the termination.

6. Equitable Relief. The Parties recognize that a breach of this agreement may cause irreparable harm to the Disclosing Party that is inadequately compensable in damages and that, in addition to other remedies a Party may have available at law or equity, each Party agrees that the other may be entitled to injunctive relief for such breach and that irreparable harm and inadequacy of monetary damages are presumed.

7. Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

8. Notices. Any notice that is required or permitted hereunder shall be deemed given only if delivered personally or sent by telecopy (with transmission confirmed) or by registered or certified mail, return receipt requested and postage prepaid, or by a nationally recognized overnight delivery service, addressed to the General Counsel of the Party receiving notice.

9. Waiver. Each Party shall have the right to enforce the provisions of this agreement in strict accordance with its terms. The failure of either Party at any time to enforce its rights hereunder strictly in accordance with the same shall not be construed as having created a custom contrary to the specific provisions hereof or as having in any way modified or waived same.

10. Assignment. This agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns. Neither Party shall assign this agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

11. Entire Agreement. This agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. No amendment or modifications shall be binding unless in writing and duly executed by authorized representatives of both Parties.

12. Severability. The provisions of this agreement shall be several and invalidity or unenforceability of one provision shall not affect any other provision of this agreement.

13. Counterparts. This agreement may be executed in one or more counterpart copies, each of which shall be deemed an original and all of which shall together be deemed to constitute one agreement. The Parties agree that execution of this agreement by industry standard electronic signature software or by exchanging PDF signatures shall have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or relating to this agreement, each Party waives any right to raise any defense or waiver based upon execution of this agreement by means of such electronic signatures or maintenance of the executed agreement electronically.

**IN WITNESS WHEREOF**, the Parties hereto, each by a duly authorized representative, have executed this agreement effective as of the Effective Date.

**Rush University Medical Center** **[Company]**

By: By:

Print Name: Print Name:

Title: Title:

Date: Date:

As read and understood:

BY:

PRINT NAME:

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE: