DATA USE AGREEMENT

This DATA USE AGREEMENT (this "Agreement") is entered into effective the _____ day of _____, 20__ ("Effective Date"), by and between <mark>Meriter Hospital, Inc.</mark>, a Wisconsin not for profit corporation (the "Covered Entity"), and _____, a _____ (the "Data User").

R E C I T A L S

       1.   The Data User performs certain [*research, public health or healthcare operations*] functions (the "Activities").

       2.   The Covered Entity may disclose a Limited Data Set, as defined herein, to Data User for use by Data User in performance of the Activities.

       3.   The Data User agrees to limit its use of the Limited Data Set and protect the Limited Data Set according to the terms and conditions of this Agreement and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the corresponding Regulations, as may be amended from time to time.

       NOW, THEREFORE, the parties agree as follows:

1.   **Definitions.** As used herein:

       a.   **"*Designated Record Set*"** shall mean a group of records as defined in 45 C.F.R. §164.501, which includes Protected Health Information ("PHI") that is maintained, collected, used or disseminated by or for the Covered Entity.

       b.   **"*HIPAA*"** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d to 1320d-7.

       c.   **"*Limited Data Set*"** means PHI that excludes the identifiers as defined by 45 C.F.R. §164.514(e). The following identifiers may be part of a Limited Data Set: town and city, state and zip code; date of service, admission, discharge and death; and date of birth, age or elements of dates indicative of individual's age.

       d.   **"*PHI*"** means Protected Health Information, as defined in 45 C.F.R. §164.501, which is created, obtained or used by Data User in the performance of one or more Activities for Covered Entity.

       e.   **"*Regulations*"** means the final regulations implementing the privacy provisions of HIPAA as amended from time to time. The Regulations are codified at 45 C.F.R. Parts 160 and 164.

       f.   **"*Secretary*"** shall mean the Secretary of the Department of Health and Human Services.

2.   **Purpose.** As outlined in Exhibit A, referenced hereto and incorporated herein, Data User will perform the listed Activities. In order to perform such Activities, Data User will need to use the PHI listed in Exhibit A (the "Limited Data Set") of the Covered Entity.

3.   **Obligations of Data User.**

a.   Use of Limited Data Set. The Data User may use and disclose the Limited Data Set only to perform the Activities set forth in Exhibit A or as otherwise permitted under the terms of this Agreement or as required by law. Data User shall ensure that its directors, officers, employees, contractors and agents do not use or disclose the Limited Data Set in any manner that would constitute a violation of the Regulations if used by the Covered Entity. Data User agrees not to use the Limited Data Set in such a way as to identify any individual and further agrees not to contact any individual.

b.   Minimum Necessary Information. The Data User represents that, to the extent the Data User requests that the Covered Entity disclose PHI to the Data User as described in Exhibit A, such request shall be for the minimum amount of PHI necessary for the performance of the Activities by Data User. Data User shall limit the use or receipt of the Limited Data Set to the individuals or classes of individuals listed in Exhibit A who need the Limited Data Set for the performance of the Activities.

c.   Safeguards Against Misuse of Information. The Data User shall use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as permitted under this Agreement. Data User warrants that it shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Privacy and Security Regulations.

d.   Reporting of Disclosures of Protected Health Information. The Data User shall report to Covered Entity any unauthorized use or disclosure of PHI by Data User, its agents or subcontractors within three (3) business days of discovery by Data User, together with any remedial action taken or proposed to be taken with respect to such improper use or disclosure. Data User shall cooperate with Covered Entity in mitigating any harmful effects of such improper use or disclosure. Data User shall report to Covered Entity any security incident of which it becomes aware. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access use or disclosure, modification or destruction of information or interference with the system operations in an information system. Covered Entity shall provide in such notice the remedial or other actions undertaken to correct the unauthorized Use or Disclosure.

e.   Agreements by Third Parties. The Data User shall obtain and maintain an agreement with each agent or subcontractor that has or will have access to the Limited Data Set, under which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Data User hereunder.

f.   Access to Information. Within three (3) business days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, the Data User shall make available to the Covered Entity such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from the Data User, the Data User shall within three (3)

business days forward such request to the Covered Entity. Any denials of access to the PHI requested shall be the responsibility of the Covered Entity.

g. <u>Availability of PHI for Amendment</u>. Within three (3) business days of receipt of a request from the Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), the Data User shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. Data User is not authorized to independently agree to any amendment of PHI.

h. <u>Notice of Request for Data</u>. The Data User agrees to notify the Covered Entity within three (3) business days of the Data User's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Data User shall cooperate fully with the Covered Entity in such challenge.

i. <u>Injunction</u>. The Data User acknowledges and agrees that the Covered Entity will suffer irreparable damage upon the Data User's breach of this Agreement and that such damages shall be difficult to quantify. The Data User acknowledges and agrees that the Covered Entity may file an action for an injunction to enforce the terms of this Agreement against the Data User, in addition to any other remedy the Covered Entity may have. Data User agrees to waive any requirement for the posting of a bond.

j. <u>Ownership of Information</u>. The Data User acknowledges that, as between the Data User and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity, including any and all forms thereof developed by the Data User in the course of fulfilling its obligations under this Agreement.

k. <u>Indemnification</u>. Data User shall defend, indemnify and hold harmless Covered Entity for any and all costs, including fines, penalties, interest and attorneys' fees related to any claim, liability, suit, or investigation by law enforcement or other governmental or regulatory agency or brought by an Individual related to the acts or omissions of Data User, its employees, agents or subcontractors, whether intentional or negligent, that violates the Privacy Standards regarding access to, use of or disclosure of PHI.

l. <u>Insurance</u>. The Data User shall maintain during the term of the Agreement, liability insurance covering claims based on a violation of the Privacy Standards or any applicable state law or regulation concerning the privacy of patient information and claims based on its obligations pursuant to this Section in an amount not less than $1,000,000 per claim. Such insurance shall be in the form of occurrence based on coverage and shall name the Covered Entity as an additional named insured. Upon request, the Data User shall provide a certificate of insurance evidencing such coverage to the Covered Entity.

4. **Supervening Law.** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Data User, amend this Agreement in such manner as it determines necessary to comply with such law or regulation. If Data User disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days

of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate this Agreement on not less than thirty (30) days written notice to the other.

5. **Termination.**

a. <u>Termination upon Breach of Provisions Applicable to PHI</u>. Any other provision of this Agreement notwithstanding, this Agreement may be terminated by the Covered Entity upon five (5) days written notice to the Data User in the event that the Data User breaches any provision contained in this Agreement, and if such breach is capable of being cured, such breach is not cured within such five (5) day period. Data User acknowledges and agrees that in the event Data User's efforts to cure the breach are unsuccessful, the Covered Entity has a duty to discontinue disclosure of PHI and to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

b. <u>Return or Destruction of PHI upon Termination</u>. Upon termination of this Agreement, the Data User shall either return or destroy all PHI received from the Covered Entity or created or received by the Data User on behalf of the Covered Entity and which the Data User still maintains in any form. The Data User shall not retain any copies of such PHI. Notwithstanding the foregoing, to the extent that the Covered Entity agrees that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement shall survive termination of the Agreement and such PHI shall be used or disclosed solely for such purpose or purposes that prevented the return or destruction of such PHI.

c. <u>The Covered Entity's Right of Cure</u>. At the expense of the Data User, the Covered Entity shall have the right to cure any breach of the Data User's obligations under this Agreement. The Covered Entity shall give the Data User notice of its election to cure any such breach and the Data User shall cooperate fully in the efforts by the Covered Entity to cure the Data User's breach. All requests for payment for such services of the Covered Entity shall be paid within thirty (30) days.

d. <u>Transition Assistance</u>. Following the termination of this Agreement for any reason, upon the request of the Covered Entity, the Data User agrees to provide transition services for the benefit of the Covered Entity, including the continued provision of its services required under this Agreement until notified by the Covered Entity that the alternative provider of services is able to take over the provision of such services and the transfer of the PHI and other data held by the Data User related to its services under this Agreement.

6. **Miscellaneous.**

a. <u>Covered Entity</u>. For purposes of this Agreement, Covered Entity shall include the named Covered Entity and all entities covered by a joint notice of privacy practices with Covered Entity, whether as part of an affiliated covered entity or an organized health care arrangement.

b. <u>Survival</u>. The respective rights and obligations of Data User and Covered Entity hereunder shall survive termination of the Agreement according to the terms hereof and the obligations imposed on Covered Entity under HIPAA.

c.   Amendments Waiver. The provisions of this Agreement may not be modified, waived or amended, except by mutual written agreement of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

d.   No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

[COVERED ENTITY-MERITER]   **[DATA USER]**

<mark>Typically Laurel completes this for Meriter</mark>
By:_____   By:_____

Print Name:_____   Print Name:_____

Print Title:_____   Print Title:_____

Date:_____   Date:_____

EXHIBIT A
TO
DATA USE AGREEMENT

COVERED ENTITY: UnityPoint Health - Meriter

DATA USER: _____

 LIST DATA USER ACTIVITIES:

      a.   _____

      b.   _____

      c.   _____

DESCRIBE PHI DATA USER REQUIRES FOR PERFORMANCE OF ACTIVITIES:
(include system of record, year(s), variables or data points that will be shared, types of
identifiers that will be included i.e. record number, name, address, fax number, health plan
beneficiary number). You may attach a separate sheet with data points.

_____

_____

_____

**LIST INDIVIDUALS OR CLASS OF INDIVIDUALS WHO NEED ACCESS TO LIMITED
DATA SET:** [PI Name, any other key study personnel names]

      a.   _____

      b.   _____

      c.   _____

[COVERED ENTITY]   **[DATA USER]**

By: _____   By: _____

Print Name: Laurel Fleming_____   Print Name: _____

Print Title: UnityPoint Health Privacy Officer   Print Title: _____

Date: _____   Date: _____