



SPQM Services and Business Associate Agreement

This SPQM Services and Business Associate Agreement (the "Agreement") is made and entered into on December 1, 2010, (the "Effective Date") by and between Sedgwick County, Kansas (hereinafter referred to as the "End User"), whose administrative offices are located at 635 North Main, Wichita, Kansas, 67203, and M.T.M. Services, LLC (hereinafter referred to as "MTM"), whose principal offices are located at 3513 Foy Glen Court, Apex, NC, 27539.

This Agreement has been developed pursuant to the privacy requirements at 45 CFR 164.504(e) and 164.514 promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the HITECH Act (defined below) and is intended to (1) establish a confidential agreement for the transmission and analysis of services event data created by the End User for the sole purpose of enhancing the management of the service delivery process to meet applicable compliance, cost-effective, quality and accessibility of care requirements and (2) to ensure End User's and MTM's compliance with HIPAA and the applicable health information privacy and security rules promulgated thereunder.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS:** Capitalized terms used in this Agreement shall have the meanings as set forth below, and any capitalized terms used herein but not defined shall have the meanings ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule.
 - 1.1. "**Documentation**" – means all documents relating to, and provided to End User by MTM as a part of the SPQM product, including without limitation all user manuals, training materials, product descriptions and specifications, technical manuals and supporting materials, whether provided on disk, on-line, in hard copy or by means of any other media.
 - 1.2. "**End User**" – shall mean any organization that directly or indirectly utilizes the SPQM consultation product.
 - 1.3. "**Reporting Software**" – shall mean any and all SPQM data reporting tools developed, owned or licensed from time to time by MTM in

machine executable object code format, including documentation and any updates thereto that are made available to End User by MTM.

- 1.4. **“Updates”** – shall mean any and all enhanced SPQM processes and management consultation including documentation of findings and recommendations.
- 1.5. **“SPQM Reports”** – shall mean the format of all data management reports provided to End User as a part of the Services Process Quality Management consultation product.
- 1.6. **“Service Events”** – shall mean the individually documented/billed services provided by all clinical staff that is utilized to develop claims for payment and service utilization reports to a funding source.
- 1.7. **“Protected Health Information” or “PHI”** – shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by MTM from or on behalf of End User.
- 1.8. **“Limited Data Set”** – shall have the same meaning as “Limited Data Set” in 45 CFR 164.514, (e) (1 – 4), which provides for End User to disclose a limited data set of PHI for the purpose of “health care operations” that excludes the following direct identifiers of the End User’s individual client or relatives, employers, or household members of clients:
 - i. Name;
 - ii. Postal Address information, other than town or city, State, and zip code;
 - iii. Telephone Numbers;
 - iv. Fax numbers;
 - v. Electronic mail addresses;
 - vi. Social Security numbers;
 - vii. Medical record numbers;
 - viii. Health plan beneficiary numbers;
 - ix. Account numbers;
 - x. Certificate/license numbers;
 - xi. Vehicle identifiers and serial numbers, including license plate numbers;
 - xii. Device identifiers and serial numbers;
 - xiii. Web Universal Resource Locators (URLs);
 - xiv. Internet Protocol (IP) address numbers;



- xv. Biometric identifiers, including finger and voice prints; and
- xvi. Full face photographic images and any comparable images.

- 1.9. “*Secretary*” – shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.10. “*Privacy Rule*” – shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, as amended by the HITECH Act, and as further amended from time to time.
- 1.11. “*Security Rule*” – shall mean the Security Standards for the Protection of Electronic Health Information at 45 CFR part 160 and part 164, subparts A and C, as amended by the HITECH Act, and as further amended from time to time.
- 1.12. “*Breach Notification Rule*” – shall mean the Breach Notification Rule at 45 CFR part 160 and part 164, subparts A and D.
- 1.13. “*Individual*” – shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.14. “*Required by Law*” - shall have the same meaning as the term “required by law” in the Privacy Rule.
- 1.15. “*HITECH Act*” – shall mean Division A, Subtitle D of the HITECH Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and any regulations and guidance issued pursuant thereto.

2. **SERVICES:** MTM shall provide, with appropriate Metadata conversion information, technical assistance and software report adjustments and/or modifications to ensure operation of the core SPQM report set. Additionally, MTM will provide End User with the following data measurement and management consultation services:

- 2.1. Provide/Discuss Metadata Format and Transmission protocols with End User.
- 2.2. End User will be provided with an isolated SSL encrypted secure data depot web site that will support service encounter based data submissions. Each End User’s submission will be stored in a unique and distinct data mart within the SPQM Data Warehouse.
- 2.3. MTM receives and reviews End Users’ raw data files.



- 2.4. MTM provides End User Data Transformation and Decoding.
 - 2.5. Core SPQM Report Set is generated.
 - 2.6. SPQM Report set and/or access to report set are provided to End User.
 - 2.7. MTM shall provide a full management review of Basic Report Set.
3. **PROPRIETARY RIGHTS AGREEMENT:** End User's participation in SPQM management consultation services authorizes use of the SPQM software. End User's participation in SPQM does not include a license of a purchase or the SPQM proprietary software utilized in measuring End User's service event data. The SPQM reporting software protocols (and any Updates thereto) and documentation, in whole and in part, and all copies thereof are and shall remain the sole and exclusive property of MTM. The MTM Performance Measurement Enhancement Materials and Documentation (and any update thereto), in whole and in part, and all copies thereof, are and shall remain the sole and exclusive property of MTM. End User further agrees to:
- 3.1. avoid removing, modifying or obscuring any copyright, trademark or other proprietary rights notices that are contained in SPQM licensed software; and
 - 3.2. avoid reverse engineering, decompiling or disassembling SPQM software and or/products licensed via Microsoft Corporation.
4. **SOFTWARE LICENSE REQUIREMENT:** Some versions of SPQM tools operate within third party software such as Microsoft Excel® and Microsoft Internet Explorer. End User holds the MTM harmless from any license fee(s) requirements of Microsoft Corporation to utilize its Excel® or other software.
5. **WARRANTIES:** MTM represents and warrants that adequate secure Data Warehouse storage capacity shall be available during the term of this Agreement to professionally manage and analyze data submitted by End User. Further, MTM warrants that adequate staff shall be available to manage and update proprietary data management software during the term of this Agreement or any renewal hereof. MTM represents and warrants that it shall provide necessary service process management consultation through off site and web based consultations as required by End User during the term of this Agreement and any extension hereof.
6. **HIPAA COMPLIANCE:** MTM acknowledges that, pursuant to HIPAA, End User is a Covered Entity and MTM is a Business Associate. MTM has developed specific processes and protocols to transmit and store in isolated Data Marts, within a Data Warehouse, PHI in a confidential manner. Except



as otherwise specified in this Agreement, MTM may make any and all uses and disclosures of PHI necessary to perform its obligations under this Agreement and any other agreements or contracts between the parties. Unless otherwise limited by this Agreement, MTM may: (a) use the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of MTM; (b) disclose the PHI in its possession to a third party for the purpose of MTM's proper management and administration or to carry out the legal responsibilities of MTM, provided that the disclosures are Required by Law or that MTM has obtained reasonable assurances from the third party to whom PHI is to be disclosed that the PHI will be held confidentially and the third party has agreed to notify MTM of any instances of which it becomes aware in which the confidentiality of the information has been breached; and (c) provide Data Aggregation services relating to the Health Care Operations of End User as permitted by the Privacy Rule. As required by the HITECH Act, MTM may only use and disclose PHI as described above if such use and disclosure is in compliance with 45 C.F.R. § 164.504(e). MTM further agrees to:

- 6.1. not use or further disclose PHI other than as permitted or required by this Agreement, or as Required by Law.
- 6.2. use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing, MTM will:
 - 6.2.1. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (or "E PHI") that it receives from, or creates, receives, maintains, or transmits on behalf of, End User;
 - 6.2.2. ensure that any agent of MTM, including a subcontractor, to whom MTM provides such E PHI agrees, in writing, to implement substantially the same safeguards and other measures to protect such E PHI as set forth in this Agreement; and
 - 6.2.3. report to End User any Security Incident of which MTM becomes aware.
- 6.3. report to End User any use or disclosure of PHI in violation of this Agreement, as well as any incident which, in MTM's view, compromises the security of PHI, of which MTM becomes aware. MTM shall mitigate, to the extent reasonably possible, any deleterious



effects from any use, disclosure, or incident that MTM reports to End User as provided herein.

- 6.4. ensure that any agent, including any subcontractor, to whom MTM provides PHI agrees to the same restrictions and conditions on the use and disclosure of PHI that apply to MTM pursuant to this Agreement.
- 6.5. make available, in the form, time, and manner reasonably requested by End User, any and all PHI required for End User to respond to an Individual's request for access to PHI about them in accordance with 45 C.F.R. § 164.524. MTM acknowledges that, pursuant to the HITECH Act, Individuals may have the right to obtain PHI about them in an electronic format, and MTM will provide PHI in such electronic format as may be reasonably requested by End User to the extent that MTM maintains such PHI in electronic format.
- 6.6. make available, in the form, time, and manner reasonably requested by End User, PHI for amendment and incorporate any such amendment as directed by End User to allow End User to comply with 45 C.F.R. § 164.526.
- 6.7. document any and all disclosures of PHI by MTM or its agents, including subcontractors, as well as any other information related to such disclosures of PHI that would be required for End User to respond to an Individual's request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- 6.8. make available, in the form, time, and manner reasonably requested by End User, any and all information documented in accordance with subsection 6.7.
- 6.9. make available to the Secretary any and all internal practices, books, and records of MTM or its agents, including subcontractors, relating to the use and disclosure of PHI, for purposes of determining End User's compliance with the Privacy Rule.
- 6.10. as required by the HITECH Act, comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 of the Security Rule.
- 6.11. as required by the HITECH Act, determine the Minimum Necessary PHI to be disclosed for uses, disclosures or requests of or for End User's PHI, other than those exempt from the Minimum Necessary requirement specified in 45 C.F.R. § 164.502(b)(2), in order to accomplish the intended purpose of the use, disclosure, or request, consistent with the terms of the Underlying Contract. To the extent practicable, as determined by MTM, the Minimum Necessary shall be



the information contained in a Limited Data Set. At such time as the Secretary issues guidance on what constitutes the “Minimum Necessary” for purposes of the HIPAA Privacy Rule, MTM and End User shall amend this Section 6.k. if necessary.

- 6.12. as required by the HITECH Act, effective not later than six (6) months after the date on which the Secretary publishes applicable final regulations, not, directly or indirectly, receive remuneration in exchange for End User’s PHI unless MTM or End User has obtained an authorization from the subject individual(s) which complies with all applicable requirements, or unless an exception specified in Section 13405(d)(2) of the HITECH Act, codified at 42 U.S.C. § 17935(d)(2) or regulations published by the Secretary, applies.
- 6.13. as required by the Breach Notification Rule, as it may be amended from time to time, maintain systems to monitor and detect a Breach of Unsecured PHI, whether the Unsecured PHI is in paper or electronic form. MTM shall report to End User in writing a Breach of Unsecured PHI within thirty (30) days of the first day the Breach is known, or reasonably should have been known, to MTM, including for this purpose any employee, officer, or other agent of MTM (other than the individual committing the Breach). This written notice shall include the identification of each Individual whose Unsecured PHI was, or is reasonably believed to have been, subject to the Breach and the circumstances of the Breach, as both are known to MTM at that time. To the extent possible, the description of the circumstances of the Breach shall also include: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach; (2) a description of the types of Unsecured PHI that were involved in the Breach; and (3) a brief description of what MTM is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches. Following the written notice to End User, MTM shall conduct such further investigation and analysis as is reasonably required, and shall promptly advise End User of additional information pertinent to the Breach which MTM obtains. MTM shall cooperate with End User to determine whether the Breach “poses a significant risk of financial, reputational, or other harm to the individual,” thereby requiring notice to Individuals, and will cooperate with End User as may be necessary, as determined by End User, to allow End User to provide notification of the Breach to individuals as required by the Breach Notification Rule. End User is responsible for the provision of notice to individuals in a timely manner, provided that End User shall consult with MTM as needed regarding the details of the notice.



- 6.14. not engage in any marketing or fundraising activities on behalf of End User.

End User shall:

- 6.15. notify MTM of any restrictions on uses and disclosures of PHI to which End User agrees that will impact in any manner the use and/or disclosure of that PHI by MTM under this Agreement. The parties acknowledge that the HITECH Act requires that End User comply with a requested restriction if: (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which End User has been paid out of pocket in full. End User agrees to notify MTM of any changes in, or revocation of, permission by an Individual to use or disclose PHI that will impact in any manner the use and/or disclosure of that PHI by MTM under this Agreement. End User agrees to notify MTM of any changes in its Notice of Privacy Practices that will impact in any manner the use and/or disclosure of PHI by MTM under this Agreement.
 - 6.16. if and to the extent that End User's obligations under 45 C.F.R. § 164.528 are amended by Section 13405 of Subtitle D of the HITECH Act and regulations and guidance issued pursuant thereto (that is, if End User is required to account for disclosures of PHI for treatment, payment, and health care operations made through an electronic health record), notify MTM to permit MTM to maintain an appropriate record of disclosures as required by Section 6.7. of this Agreement.
 - 6.17. abide by all specified data transmission protocols required to participate in the SPQM process.
 - 6.18. not request that MTM use or disclose PHI in any manner that would not be permissible under the Privacy Rule or Security Rule if done by End User.
7. **INDEMNITY:** MTM shall indemnify and hold harmless End User, from and against all liability, claims, costs and expenses, including reasonable attorney's fees, arising out of any and all obligations under this Agreement, except that MTM shall not be responsible for indemnifying or holding harmless End User for any liability, claims, damages, costs and expenses, including reasonable attorney's fees, arising out of gross negligence or willful



misconduct of End User, its employees or agents. Further, End User shall indemnify and hold harmless MTM, from and against all liability, claims, damages, costs and expenses including reasonable attorney's fees, arising out of any and all obligations under this Agreement, including third party software licensing, except that End User shall not be responsible for indemnifying or holding harmless MTM for any liability, claims, damages, costs and expenses, including reasonable attorney's fees, arising out of gross negligence or willful misconduct of MTM, its employee or agents.

8. **CONFIDENTIAL INFORMATION:** "*Confidential Information*" means any information disclosed by one party to the other party under this Agreement. MTM agrees that it will not disclose to any third party or use any Confidential Information of the End User, except as expressly permitted in this Agreement or without prior written approval of the End User, and that it will maintain and protect the confidentiality of all such Confidential Information. End User agrees that it will not disclose to any third party any Documentation, Reporting Software, or other Confidential Information provided to End User under this Agreement. Notwithstanding the foregoing, End User is expressly authorized to disclose to any third party, any SPQM Reports that are provided to End User by MTM, or any Confidential Information if such disclosure is required by state Open Records requirements or by direction or order of any federal or state administrative agency or officer or any court or judicial agency or officer.

In addition, notwithstanding the foregoing, the End User shall not have any liability under this paragraph unless it has failed in good faith to take reasonable measures and with good faith to maintain the confidentiality of such Confidential Information.

9. **LIMITATION OF LIABILITY:** Each Party's total liability under this Agreement will be limited to the fees paid to MTM by End User. In no event will either Party be liable to the other for any lost profits, cost of procurement of substitute goods or services, or any special, incidental, or consequential damages, whether based on breach of Agreement, tort (including negligence), product liability, or otherwise, and whether or not such Party has been advised of the possibility of such damage.

9. TERM AND TERMINATION:

- 9.1. **Term:** This agreement shall commence on the "Effective Date" first above written and shall continue for a period of two (2) years ("*Term*"); provided, however, that the obligations of MTM pursuant to Section 6 of this Agreement shall survive for as long as MTM maintains PHI received from or on behalf of End User.



- 9.2. **Termination:** Each party will have the right to terminate this Agreement if: (1) the other party materially breaches any material term or condition, including but not limited to Section 6, of this Agreement and fails to cure such breach within ten (10) days of written notice from the non-breaching party; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of any involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within ten (10) days of filing; or by mutual agreement of the parties. Also, to the extent that any relevant provision of HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule is amended in a manner that materially changes the obligations of MTM or End User that are embodied in the terms of this Agreement, the parties agree to negotiate in good faith appropriate amendment(s) to this Agreement in order to give effect to such revised obligations. If the parties cannot agree on an amendment to this Agreement, either party may terminate this Agreement upon thirty (30) days written notice to the other party or upon such lesser notice as may be required by applicable law.
- 9.3. **Return of Materials:** If this Agreement is terminated, End User shall promptly return to MTM (at MTM's request) or destroy all copies of the reporting software and all copies of the proprietary Service Process Quality Management materials that are in its possession or control, and an officer of End User shall certify to MTM in writing that it has done so.
- 9.4. **Destruction of Protected Health Information.** Upon the termination or expiration of this Agreement for any reason, MTM shall destroy any and all PHI and EPHI in the possession or control of MTM and its agents, including subcontractors, and retain no copies.
- 9.5 **Survival:** The provisions of Section 1 and Sections 4 – 9 will survive termination of this Agreement for any reason.

10: GENERAL:

- 10.1 **Assignment:** This Agreement shall be binding on both parties and their respective successors in interest and assigns, but neither party shall have the power to assign this Agreement without the prior written



consent of the other party, which consent shall not be unreasonably withheld, except that either party shall have the right to assign this Agreement to its affiliates or in connection with a merger, acquisition or reorganization, provided that the successor entity agrees in writing to be bound by the terms of this Agreement.

- 10.2 **Governing Law:** To the extent not preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of Kansas.
- 10.3 **Disputes:** Any disputes arising under the terms of this Agreement, if unable to be resolved by the parties themselves, shall be resolved by arbitration, under the rules of the American Arbitration Association. Any arbitration shall occur within the state of Kansas.
- 10.4 **Severability:** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement shall remain in force.
- 10.5 **Force Majeure:** Except for payments due under this Agreement, neither party shall be responsible for any failure to perform due to causes beyond its reasonable control (each a "Force Majeure"), including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accident, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party. The time for performance shall be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) days.
- 10.6 **Notices:** All notices under this Agreement shall be deemed given when delivered personally, sent by confirmed facsimile transmission, or sent by certified or registered U.S. mail or nationally-recognized express courier, return receipt requested, to the address of MTM and End User as contained in the first paragraph of this Agreement, or as may otherwise be specified by either party to the other in accordance with this section.
- 10.7 **Independent Contractors:** Both parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.



- 10.8 **Waiver.** No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of such rights.
- 10.9 **Entire Agreement:** This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
- 10.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

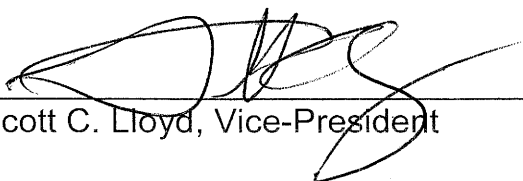
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

END USER:
Sedgwick County, Kansas

David Unruh, Chairman
Sedgwick County Board of County Commissioners

Date

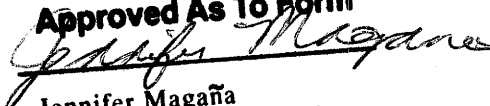
MTM SERVICES, LLC
Federal Tax ID#56-1945597



Scott C. Lloyd, Vice-President

4-7-11

Date

Approved As To Form


Jennifer Magaña
Deputy County Counselor

