

TELEPRESENCE NETWORK USE AGREEMENT

THIS TELEPRESENCE NETWORK USE AGREEMENT (“**Agreement**”) is effective as of the ___ day of _____, 2016, by and between _____, a Minnesota _____ (“**User**”), and ARROWHEAD HEALTH ALLIANCE, a joint powers board of the County of Carlton Public Health and Human Services, County of Cook Health and Human Services, County of Koochiching Community Services, County of Lake Health and Human Services, and County of St. Louis Health and Human Services under Minn. Stat. § 471.59 (“**Alliance**”).

RECITALS

A. The Alliance was formed by the County of Carlton Public Health and Human Services, County of Cook Health and Human Services, County of Koochiching Community Services, and County of Lake Health and Human Services, and the County of St. Louis Health and Human Services departments became a member in 2012 (“**Counties**”).

B. The Minnesota Department of Human Services (“**DHS**”) owns a Vidyo platform (“**Platform**”) allowing two or more entities to connect and interact via audio-visual networks and equipment established for and at each entity’s location (“**Telepresence Visits**”).

C. DHS and MN.IT entered into a charter with the Alliance pursuant to which the Alliance was granted access to the Platform and MN.IT VidyoNow Help Desk (“**MN.IT**”) in order to make the Platform and MN.IT available to interested persons, entities and government agencies in the Counties for Telepresence Visits.

D. The Arrowhead Telepresence Coalition (“**Coalition**”), working through the Alliance as a conduit intermediary, is developing an integrated network utilizing telepresence connectivity to allow mental health providers, schools, jails, rural hospitals, law enforcement, tribal providers and any other users the ability to engage in Telepresence Visits for a variety of purposes.

F. The parties hereto desire to set forth their understanding and agreement relating to the provision and use of the Platform, MN.IT and Telepresence Visits.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Alliance’s Duties.

A. *General Duties.*

1. Work collaboratively with the User and DHS to identify opportunities to

- expand access to services utilizing the Platform and Telepresence Visits;
2. Explore opportunities for innovative use of the telepresence technology;
3. Collect and synthesize data it requests from User;
4. Work collaboratively with User and share lessons learned with other users, DHS and other interested parties;
5. Support User's ongoing goal of using Telepresence Visits to make use of the Platform for such purposes as User may deem appropriate.

B. *Specific Duties.*

1. Provide User access and connection to the Platform and obtain an account from DHS for User's connection and use thereof at no charge to User.
2. Assist User with the initial set-up for use and connection to the Platform at no charge to User.
3. Act as liaison between DHS and User with regard to any substantive (non-technical) matters arising out of the use of the Platform or Telepresence Visits.

2. User's Duties, Representations and Warranties.

A. *General Duties:*

1. Work collaboratively with the Alliance and DHS to identify opportunities to expand access to services utilizing the Platform and Telepresence Visits;
2. Participate in ongoing meetings with the Coalition, Alliance and DHS as requested by the Alliance;
3. With the Alliance, explore opportunities for innovative use of the Platform telepresence technology;
4. Submit to the Alliance, at the dates and times requested by the Alliance, data requested in the format provided by the Alliance;
5. Support staff training, participation and redundancy (multiple staff trained) on use of telepresence equipment for Telepresence Visits;
6. Work collaboratively with the Alliance and share lessons learned with the Alliance, DHS, other users and other interested parties;
7. Provide appropriate onsite resources to ensure that telepresence-related equipment is functioning appropriately;
8. Provide ongoing maintenance, support and or replacement of necessary equipment related to telepresence technology and needs for use of the Platform for Telepresence Visits;
9. Provide ongoing maintenance and support of onsite internet connectivity required for use of the Platform;
10. Provide appropriate onsite professional, administrative and information technology (IT) support necessary to ensure successful telepresence connections for Telepresence Visits.

11. Support the ongoing goal of using telepresence to make a measurable difference in the quality of User's clients and others accessing DHS' Platform.

B. *Representations, Covenants and Acknowledgments of User.*

1. Compliance with Laws. User represents, covenants and warrants that it shall, at all times while this Agreement is in effect, comply with any and all state, federal and local laws, statutes, regulations, rules, ordinances and orders (collectively the "Laws") which apply to User, safety of clients, the type of services provided by User, and the use of the Platform for Telepresence Visits. Such Laws include, but are not limited to, the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191, as amended (HIPAA), the Minnesota Data Practices Act, Minn. Stat. Ch. 13, the Minnesota Health Records Act, Minn. Stat. § 144.291 et seq., the HITECH Act of 2009, 45 C.F.R. Parts 160, 162 and 164, Federal Education Rights & Privacy Act, 20 U.S.C. §§ 1232g and 1232h, 34 C.F.R. Part 99 (FERPA), prisoner recordkeeping requirements of Minn. Stat. §§ 241.06, 241.07 and 241.16, and any State of Wisconsin statutes, rules, regulations, orders and ordinances of the same purview, in addition to any other law in Wisconsin or a political subdivision thereof, which is or may be applicable to clients or businesses located in the State of Wisconsin.
2. Equipment.
 - a. User shall assure that all of its equipment attached to or used in connection with the Platform and Telepresence Visits will meet with the Platform's, DHS, and MN.IT approved standards. If User is, at any time, unsure whether its equipment complies with the approved standards, it will work with DHS and MN.IT through the Alliance to address the matter.
 - b. User acknowledges and understands that the Alliance may provide certain equipment to User for the purpose of promoting use of the Platform and Telepresence Visits. Any such equipment is purchased with grant funds received by the Alliance to promote the Coalition and expansion of use of the Platform and Telepresence Visits. Upon delivery of such equipment to User, the equipment becomes property of the User, and User is responsible for all ongoing maintenance, repair and replacement thereof at its own cost. The Alliance does not retain any ownership of or interest in the equipment and will in no way be responsible for, pay for or provide funds to User for the going maintenance, repair and replacement thereof.

- c. Any equipment User receives from the Alliance shall be promptly inspected for defects or incorrect material and notify the Alliance within ten (10) days of delivery of any equipment of such defects or incorrect material. The Alliance shall, in its sole discretion, take prompt action to remedy such defects or incorrect material or replace the equipment if the defect or incorrect material cannot be remedied.
3. Technical Support. User acknowledges and understands:
 - a. The Alliance provides limited technical support. Specific contact information available in Attachment A.
 - b. All support requests must be directed to the Alliance's Telepresence Coordinator and the VidyoNow Helpdesk. Specific contact information available in Attachment A.
4. Staffing Requirements.
 - a. User shall provide sufficient staff and/or contractors to timely and properly perform its duties and obligations in this Agreement, including but not limited those duties listed in subparts 7 through 10 in Section 3.A. above.
5. Report Requirements. User understands and acknowledges:
 - a. The use of the Platform to provide Telepresence Visits is an exploratory project to identify and respond to opportunities and additional uses which Telepresence Visits may provide and any problems or matters which further need to be addressed in an effort to continue expanding access for a variety of services and business purposes in rural communities of the State of Minnesota.
 - b. The Alliance will be requesting and collecting data from User to synthesize with data collected from other users and report to DHS. The Alliance may require User to complete a survey or questionnaire on an established schedule and/or request ad hoc information from User. User shall comply with and timely respond to all requests for information from the Alliance, regardless of the form in which the request is made. User shall use its best efforts to de-identify any information and data with respect to those people involved in Telepresence Visits and comply with all privacy and disclosure laws relating to the information, data and individuals as required by any of the Laws.

3. Liability Limitation and Indemnification.

- A. User shall protect, indemnify, hold harmless and defend the Alliance and the Coalition, their assignees, participants, officers, employees, board members and agents from and against any and all liabilities, losses, damages (including consequential damages), costs, expenses (including reasonable attorneys' fees and costs), causes of action, suits, claims, demands and judgments of any nature (collectively the "**Claims**") which in any way arise from or relate to (which will be collectively referred to as the "**Actions**"):
1. a breach of this Agreement by User or its employees, officers, members, shareholders, agents, board members or any other person or entity associated or contracted with User;
 2. the loss of life, personal injury, death, or damage to property and brought by or on behalf of any third party, including User's clientele, employees, agents, members, shareholders or board members;
 3. User's use of the Platform;
 4. Telepresence Visits conducted by or on behalf of User, whether or not such visits occur on or off User's owned or leased property and whether or not the employee, agent or a third party had User's express or implied permission to conduct or otherwise engage in any Telepresence Visits.
- B. User shall each promptly give to the Alliance notice in writing of all Claims, commenced, pending or threatened, by or before any court or governmental or regulatory agency affecting User and which arise out of or relate in any way to the Platform, this Agreement or the Telepresence Visits.
- C. User hereby releases and forever discharges all Claims it may now have or hereafter accrue arising out of or relating in any way to (i) any of the Actions, (ii) the performance of the Alliance's duties hereunder, (iii) any technical or other issues experienced by User or anyone associated with User with the Platform or MN.IT, (iv) the unavailability of or loss of connection to the Platform and MN.IT at any time, (v) User's internal equipment or connections or its internet service, and (vi) any Telepresence Visits conducted by or on behalf of User, unless such Claims are solely caused by the gross negligence or intentional misconduct of the Alliance or its officers, employees and agents.

4. Events of Default. Any one or more of the following events is an Event of Default under this Agreement:

- A. If User shall fail to observe or perform any covenant, condition, warranty or other agreement contained in this Agreement and such failure is continuing for a period

of twenty (20) days following written notice thereof to User by the Alliance, unless the Alliance shall agree to an extension of time for such longer period as may be reasonably necessary to remedy such failure provided that User is proceeding with reasonable diligence to remedy same.

- B. If any representation, covenant or warranty of User contained in this Agreement shall prove to be untrue or misleading in any material respect.
- C. If User shall fail to use or otherwise employ the Platform to conduct Telepresence Visits.

5. Remedies. Whenever an Event of Default occurs, the Alliance may exercise any one or more of the following rights, which are in addition to, and shall not limit, any other remedies provided at law or in equity:

- A. Terminate this Agreement upon ten (10) days' written notice to User;
- B. Waive any default or the failure to cure such default.

6. Notices. All notices, consents, requests, demands and other communications hereunder shall be given to or made upon the respective parties hereto at their respective addresses specified below or, as to any party, at such other address as may be designated by it in a written notice to the other party.

IF TO THE ALLIANCE:

Ric Schaefer
Arrowhead Health Alliance
Suite 10 Alworth Building
306 W. Superior Street
Duluth, MN 55802
Fax - 866.822.2598
e-mail – Ric.Schaefer@arrowheadhealthalliance.org

WITH A COPY TO:

Michele L. Miller, Esq.
Johnson Killen & Seiler, P.A.
230 West Superior Street
Duluth, MN 55802

IF TO USER:

7. Miscellaneous.

- A. Amendments, Etc. This Agreement may not be amended or modified, nor may

any of its terms (including without limitation) be modified or waived, except by written instruments signed by the Alliance and User.

- B. Successors. This Agreement shall be binding upon and inure to the benefit of User, the Alliance and their respective legal representatives, successors and assigns; provided, however, that User may not transfer or assign its rights or obligations hereunder without the prior written consent of the Alliance.
- C. Counterparts. This Agreement may be executed in any number of counterparts, and by electronic signature, including PDF and e-mail, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.
- D. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota.
- E. Headings. The descriptive headings for the sections of this Agreement are inserted for convenience only and shall not define or limit any of the terms or provisions hereof.
- F. Term and Termination. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party. The Alliance may terminate this Agreement at any time, with or without prior Notice, if DHS revokes or terminates its charter with the Alliance or if DHS can no longer provide access to the Platform or accounts for use of the Platform. Unless sooner terminated as provided herein, the term of this Agreement shall terminate on December 31, 2018.
- G. Entire Agreement. This Agreement represents the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreements letters, proposals, contracts and understandings are merged herein. This Agreement has been negotiated by the parties with full benefit of counsel and should not be construed against any party as the drafter.
- H. Survival. The parties respective representations, covenants and warranties, and User's obligations under Section 4 above, shall survive the term and termination of this Agreement.

[The remainder of this page intentionally left blank.]

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

ARROWHEAD HEALTH ALLIANCE:

By: _____
Ric Schaefer, Executive Director

[USER NAME]:

By: _____

Its: _____

ATTACHMENT A
to Telepresence Network Use Agreement

Responsibilities of the Alliance's Telepresence Coordinator:

- Assist in recognizing possible uses for Telepresence throughout the region.
- Working with regional stakeholders to develop telepresence priorities.
- Setup, Coordinate, Install, and Test Telepresence Equipment.
- Work with site professionals (Administrative and IT staff) to determine appropriate equipment needed for each location.
- Set up, test, deliver, and install equipment as needed.
- Provide in-person training on use of equipment.
- Coordinate with onsite IT staff and DHS Office of Telecommunity Development Help Desk.
- Testing and usage of equipment to promote comfort with internet telepresence.

Contact information for the Alliance's Telepresence Coordinator:

Abby Lattu

Email: abby.lattu@arrowheadhealthalliance.org

Office: (218) 623-7808

VidyoNow Helpdesk

The VidyoNow Helpdesk is available Monday through Friday 8:00 to 4:30 to assist with Technical Support Issues (some examples listed below).

- Troubleshooting audio/visual issues.
- Troubleshooting connectivity issues especially as it relates to port and firewall connections.
- Assisting with password resets other login related concerns.

The VideoNow Helpdesk can be reached by calling 651-431-2070.