

**WYLD GOVERNANCE CONTRACT BETWEEN
DEPARTMENT OF ADMINISTRATION AND INFORMATION
STATE LIBRARY DIVISION
AND
WYOMING STATE LIBRARY**

Preamble. The Integrated Library System Users Group of WYLD [Group] is a consortium of academic, public, school and special libraries with a common vision for maximizing library and information technologies for residents of the state and for enabling efficient operations of the libraries. The Group provides online computer access to the members' collective bibliographic database and serves as a gateway to the evolving global information community. The Wyoming State Library operates the WYLD Integrated Library System [WYLD Network] on behalf of Group members. For management and policy issues the Wyoming State Library acknowledges the advice and consent responsibilities of the Governing Board as described in the Bylaws of the Group. A member in the Group is an entity which utilizes primary subsystems of the WYLD Network, adds records to the database and is willing to lend to other WYLD Network libraries.

1. **Parties.** This Contract is entered into by and between the Wyoming State Library [Agency], whose address is 2800 Central Avenue, Cheyenne, Wyoming 82002 and Wyoming State Library [Member], whose address is 2800 Central Avenue, Cheyenne, Wyoming 82002.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the relationship between the Agency and Member with respect to: a) cost sharing - what percent of the maintenance and operating expenses will be borne by each party; b) membership fees - the fees paid by the members; and c) ownership of the WYLD Network database, software, components, licenses, and other related items.
3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted [Effective Date]. The term of the Contract will not expire unless terminated in accordance with the applicable provisions hereof.
4. **Payment.**
 - A. Member agrees to pay the fees, posted on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html>, to the Agency for the services described in Section 5 below.
 - B. Payment of the fees shall be made when invoiced by the Agency.
 - C. Prepayment of the fees may be negotiated.

- D. With the concurrence of the Governing Board, the Agency may assess a three percent (3%) penalty on membership fee payments delinquent more than ninety (90) calendar days.
- E. The fees are non-refundable. Even if the Member withdraws its membership, the Member's fees will not be refunded.

5. **Responsibilities of Agency.** Agency agrees to:

- A. Maintain the confidentiality of system proprietary software/hardware.
- B. Provide training for use of the WYLD Network system as upgrades and system modules are brought online. This training shall be scheduled by the WYLD Office in collaboration with the Group Training Committee and will be free of charge to Group members. Additional training for individual libraries may be available at a negotiated price with the WYLD Office.
- C. Provide maintenance of WYLD Network system hardware and software to achieve minimal downtime; monitor the resolution of data transmission problems between the host computer and member sites; and to communicate proprietary issues to appropriate vendor and monitor problem resolution.
- D. Provide communications, readily and easily accessible by all members through system documentation, tech notes, planning documents, calendars and other information sources related to operations.
- E. Act as Group agent in negotiation of Group contracts and licenses with vendors.
- F. Maintain a help desk Monday through Friday, 8:00 a.m. to 5:00 p.m., for all hardware, software, and application inquiries of members and maintain standby support at all other hours of the week including holidays, for hardware and software, data transmission problems and system wide problems.
- G. Assure response time based on vendor contract guarantees.
- H. Provide to members upon request an extract from the shared database of holdings in machine readable form.
- I. Abide by the Bylaws of the Group as posted on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html>.
- J. Publish and revise Database Guidelines with input from the Group Online Quality Committee.

6. **Responsibilities of Member.** Member agrees to:

- A. Conform to the policies, procedures and protocols of the Group, as set forth on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html>.
- B. Provide, maintain, and share bibliographic data according to standards and guidelines for database quality, as set forth in Database Guidelines posted on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html>.
- C. Not connect to WYLD Network system any equipment and/or software without approval from the Agency staff.
- D. Use equipment and software that meets standards as posted on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html> and as recommended by the Agency staff in consultation with Group members.
- E. Maintain the confidentiality of system proprietary software/hardware.
- F. Be responsible for security of software and hardware.
- G. Be responsible for maintenance of its own equipment, peripherals, wiring, and internal software that is connected to the WYLD Network system.
- H. Participate in Group activities and abide by the Bylaws of the Group as posted on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html>.
- I. Pay Agency for any training which is beyond the scope described in Section 5(B) above. The Cost of any additional training shall be determined and agreed upon by the parties prior to any training taking place.

7. **Special Provisions.**

- A. **Ownership.**
 - (i) The Agency owns:
 - (a) The shared database in trust for the Group members.
 - (b) The servers, disk drives and central telecommunications equipment.
 - (c) All equipment purchased by the Agency.
 - (d) All software, licenses, etc. purchased by the Agency.
 - (ii) The Member owns:

- (a) Copies of the records which reflect its holdings.
- (b) All equipment purchased by Member to connect to the WYLD Network. If equipment is purchased, in whole or part, with federal or state money, the Member agrees to dispose of the equipment in accordance with federal and state regulations.

B. Cost Sharing.

- (i) The Agency and Member shall share costs in accordance with the cost-sharing formulas as posted on the Group Members homepage at <http://will.state.wy.us/wyld/wyldco.html>.

C. Services and Membership Fees.

- (i) The services and the annual membership fee structure may be redefined with the recommendation and/or approval of the Group Governing Board and the State Librarian.
- (ii) Services and fees may be redefined with the Group Members' recommendation and approval.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.
- B. Applicable Law.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. Neither party shall use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.
- D. Audit/Access to Records.** Agency and any of its representatives shall have reasonable access to any books, documents, papers, and records of Member which are pertinent to this Contract.

- E. Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify Member at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Contract in order to acquire similar services from another party. The Availability of Funds clause will also apply to member libraries.
- F. Award of Related Contracts.** The Agency may undertake or award supplemental or successor contracts for work related to this Contract. Member shall cooperate with other contractors and the Agency in all such cases.
- G. Compliance with Laws.** All parties to this Contract shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.
- H. Confidentiality of Information.** The State Library and Member shall, to the extent allowed by law, maintain confidentiality of all proprietary documents, data compilations, reports, computer programs, photographs and any other work provided to or produced by Member in the performance of this Contract unless written permission is granted by the Agency for its release.
- I. Disputes/Remedies.** Any dispute or claim arising out of or relating to this Contract other than those specifically deferred in the Bylaws may be assigned to non-binding mediation upon mutual agreement of the parties, in accordance with the Wyoming Supreme Court's rules for alternative dispute resolution. The parties to the dispute shall bear their respective costs for the mediation. The rights and remedies of the parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.
- J. Entirety of Contract.** This Contract, consisting of seven (7) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- K. Indemnification.** Each party to this Contract shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- L. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an

employee of the Agency for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the Agency or to incur any obligation of any kind on the behalf of the Agency.

- M. Notice.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail or delivery in person.
- N. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing, approved by the Office of the Attorney General, filed with and approved by the Department of Administration and Information, and approved by the Governor of the State of Wyoming if required by Wyo. Stat. § 9-2-1016(b)(iv)(D).
- O. Sovereign Immunity.** The State of Wyoming and Agency do not waive sovereign immunity by entering into this Contract and the Contractor does not waive governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, et seq., and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity.
- P. Termination of Contract.** Member may withdraw its membership in the Network upon six (6) months written notice to the State Librarian and the Network President. Either party may terminate this Contract immediately for cause for the other party's failure to perform in accordance with the terms of this Contract.

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9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

DEPARTMENT OF ADMINISTRATION AND INFORMATION

Dean Fausset, Director

Date

WYOMING STATE LIBRARY

Lesley D. Boughton, State Librarian

Date

WYOMING STATE LIBRARY

Lesley D. Boughton, State Librarian

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Kristin M. Nuss, Senior Assistant Attorney General

Date