

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

Preamble. The WYLD Network (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 (ILS) 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.** The parties to this Contract are the Wyoming Department of Administration and Information, State Library Division (Agency), whose address is: 2800 Central Avenue, Cheyenne, Wyoming 82002, and **Member Library** (Member), whose address is **XYZ**.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the relationship between the Agency and Member with respect to: a) responsibilities; b) cost sharing and membership fees; and c) ownership of the WYLD Network database, software, components, licenses, and other related items.
3. **Term of Contract.** This Contract is effective when all parties have executed it (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 WYLD Network Information homepage at <https://library.wyo.gov/services/wyld-network/> 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.
- B. Provide training for use of the WYLD Network system as upgrades and system modules are brought online. This training shall be coordinated by the WYLD Office 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 Integrated Library System and related software to achieve minimal downtime; Communicate proprietary issues to appropriate vendor and monitor problem resolution.
- D. Provide communications, readily and easily accessible by all members through technical documentation, 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 software and application inquiries of members and maintain standby support at all other hours of the week including holidays for 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 <https://library.wyo.gov/services/wyld-network/>.
- J. Publish and revise Cataloging Standards 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 <https://library.wyo.gov/services/wyld-network/>.

- B. Provide, maintain, and share bibliographic data according to standards and guidelines for database quality, as set forth in Cataloging Standards posted on the Group Members homepage at <https://library.wyo.gov/services/wyld-network/>.
- C. Not connect to WYLD Network system any equipment and/or software without approval from the Agency staff.
- D. Train staff on statutes, rules, policies, and procedures related to patron privacy and confidentiality.
- E. Deny volunteers, vendors, or others not employed by the library access to portions of the Integrated Library System that contain patron data unless granted written permission from the Wyoming State Library.
- F. Take financial and notification responsibility for any security breach or misuse of patron data from the Integrated Library System. This only applies to Members who add Personal Identifying Information [as defined by Wyoming Statute] to patron records beyond name, address, phone number, and email address.
- G. Take financial and notification responsibility for any security breach or misuse of Integrated Library System patron data by vendors engaged by the Member for services.
- H. Use equipment and software that meets standards as posted on the Group Members homepage at <https://library.wyo.gov/services/wyld-network/> and as recommended by the Agency staff in consultation with Group members.
- I. Maintain the confidentiality of system proprietary software.
- J. Be responsible for security of software and hardware.
- K. Be responsible for maintenance of its own equipment, peripherals, wiring, and internal software that is connected to the WYLD Network Integrated Library System.
- L. Participate in Group activities and abide by the Bylaws of the Group as posted on the Group Members homepage at <https://library.wyo.gov/services/wyld-network/>.
- M. 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) All equipment purchased by the Agency.
 - (c) 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 <https://library.wyo.gov/services/wyld-network/>.

C. Services and Membership Fees.

- (i) The services and the 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 by all parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

- C. Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Member shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.
- D. Audit and Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data, and records of the 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 and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance 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 the 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.
- F. Award of Related Contracts.** The Agency may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Member shall cooperate fully with other contractors and the Agency in all such cases.
- G. Compliance with Laws.** The Member 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.** Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Member in the performance of this Contract shall be kept confidential by the Member unless written permission is granted by the Agency for its release. If and when Member receives a request for information subject to this Contract, Member shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.
- I. Entirety of Contract.** This Contract, consisting of nine (9) pages, represents the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

- J. Ethics.** Member shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Member's profession.
- K. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein.
- L. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- M. Indemnification.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- N. Independent Contractor.** The Member shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Member shall be free from control or direction over the details of the performance of services under this Contract. The Member shall assume sole responsibility for any debts or liabilities that may be incurred by the Member 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 Member or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on behalf of the State of Wyoming or the Agency. The Member agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Member or the Member's agents or employees as a result of this Contract.
- O. Nondiscrimination.** The Member shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
- P. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.

- Q. Ownership and Return of Documents and Information.** Agency is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Member in the performance of this Contract. Upon termination of services, for any reason, Member agrees to return all such original and derivative information and documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers.
- R. Patent or Copyright Protection.** The Member recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Member or its subcontractors will violate any such restriction. The Member shall defend and indemnify the Agency for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- S. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).
- T. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Member, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.
- U. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- V. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Contract and the Member expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.

- W. Taxes.** The Member shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- X. 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. The WYLD Network may terminate this Contract through provisions found in their Bylaws. 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.
- Y. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- Z. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- AA. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- BB. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- CC. Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Member of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

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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.

The Effective Date of this Contract is the date of the signature last affixed to this page.

AGENCY:

Wyoming Department of Administration and Information, State Library Division

Tricia Bach, Director
Department of Administration and Information

Date

Jamie Markus, State Librarian
State Library Division

Date

MEMBER:

Member Library

Member Library, Library Director

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Tyler M. Renner, Senior Assistant Attorney General

Date