

Wyoming Department of Health

Wyoming Immunization Registry (WyIR)

End User License Agreement and Terms of Use

Version Date: February 2012

This End User License Agreement and Terms of Use (this "Agreement") for the Wyoming Department of Health (WDH) Wyoming Immunization Registry (the "WyIR") website governs the use of all software, applications, tools, and data provided or accessible at this site <https://wyir.health.wyo.gov>. Please read this Agreement carefully before proceeding. **Clicking on the "Accept" button at the end of this Agreement constitutes your acceptance of the terms of this Agreement and creates a binding and enforceable contract between the user and the WDH.** This Agreement can be accessed at any time by clicking on the *User Agreement* link at <https://wyir.health.wyo.gov>. Failure to follow the terms and conditions for use of this WyIR, whether listed below or in bulletins posted at various points in this WyIR, may result in suspension or termination of access to this WyIR with or without notice.

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms are specified as defined below:

- (a) **Authorized User** means an individual named by the provider who has been issued a subscriber login and password by WDH to access the WyIR.
- (b) **HIPAA** means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, including all implementing regulations and all amendments.
- (c) **HITECH** means the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, §§ 13001-13424, including all implementing regulations and all amendments.
- (d) **Intellectual Property** means all intangible rights to the products of intellect, regardless of the method of expression or storage, which concern the business, processes, techniques, or affairs of WDH, including, without limitation, intellect that is known by the general public or is generally unavailable to the public at large. WDH asserts any rights relating to Intellectual Property regardless of whether the information was, is, or will be disclosed to Provider's by WDH, its agents, clients, providers, or others.
- (e) **Larger Work** means a work that combines any of the Software or portions thereof with code, software, or processes not governed by the terms of this Agreement.
- (f) **Services** means any one or more of the following:

- Access to the WylR, which is a web-based electronic immunization registry hosted by WDH or its vendor, and made available to Wyoming health care providers who are granted access to the WylR through the process specified by Wyoming the Wyoming Immunization Section, including acceptance of this Agreement.
- Access to certain immunization data held by WDH about WylR participants, but only including data that (i) pertains to a WylR participant with whom the Authorized User has a treatment relationship, (ii) is not suppressed by the WylR or the WylR participant's directive which is held by WDH within the WylR.

(g) **Software** means all programs, programming languages, and digitally stored data, tools, and applications, including, but not limited to, digital images, medical and fiscal records, and reports made available for download, or accessible from the WylR.

2. ACCESS TO SERVICES

The WylR is offered to Authorized Users by WDH who owns and operates the WylR. Scientific Technologies Corporation (STC), the vendor, under the terms of the contract, provides support and maintenance to the WylR. Authorized WDH employees and contractors may access the WylR to the extent permitted by HIPAA, HITECH, and applicable state and federal law or regulations, for purposes of verifying participant provider and vaccination data. The License granted to Authorized Users by this Agreement is for the purpose of verifying vaccination data, preventative health information, assessments, quality performance indicators and disease monitoring.

3. LICENSE

WDH grants the Authorized User a limited, non-transferable, non-sub-licensable, non-exclusive, terminable license to access and use the WylR, the Services, and the Software for the Authorized User's use of assigned participants only. The license granted by this Section is subject to the terms of this Agreement and the provisions of HIPAA, HITECH, and other applicable state and federal intellectual property and other substantive law. Authorized Users may not use, copy, translate, modify, deploy, disassemble, decompile, create, or attempt to create by reverse engineering or otherwise, the Software or Services, the tools or applications used to access the WylR, the Software, or the Services, or use any Intellectual Property to create a Larger Work or a derivative work of any kind or for any purpose.

The term of this Agreement and the license granted to a particular Authorized User by this section runs from the date the Authorized User electronically accepts the terms and conditions of this Agreement and remains in effect until this Agreement is terminated by any of the following:

- (a) The Authorized User notifies WDH of its intention to stop using the WylR to access and use the Services, or
- (b) The authorized User is suspended or terminated as an approved WylR user, or

(c) WDH terminates this Agreement pursuant to the rights of termination described in Section 16.

If the Authorized User terminates this Agreement under subsection (a), the Agreement and the License granted by this Section will also terminate.

As specified in Section 20, certain provisions of this Agreement survive the term and termination of this Agreement, however, upon expiration of the term, the license granted by this Section 3 will terminate immediately and automatically and the Authorized Users will no longer have access to the WyIR.

4. RESPONSIBILITIES OF AUTHORIZED USERS

Authorized Users must provide all computer hardware, internet browser software, and internet access necessary to access the WyIR and the Services and WDH has no duty to take any action to facilitate an Authorized User's access to the WyIR and the Services. WDH is not obligated to provide any corrections, upgrades, modifications, enhancements to, or new versions of the WyIR or the Services, but may do so at its sole discretion, with reasonable notice to Authorized Users.

5. ISSUANCE AND USE OF SITE PASSWORDS

The Authorized Users right and license to use the WyIR, the Services, and the Software is personal to the Authorized User. The Authorized User is responsible for all use or activity under their account.

6. REPORT OF UNAUTHORIZED USE

Each Authorized User agrees to report to WDH any use or disclosure of the Services not provided for by this Agreement immediately following the discovery of such unauthorized use or disclosure. **Each Authorized User agrees that upon any event which may compromise the security of his or her account, including without limitation, the loss, theft, or unauthorized disclosure or use of a subscriber login and password, that the Authorized User will immediately change his or her password and immediately call:**

- **The WDH Information Technology Service Desk at 1-307-777-5940, and**
- **The WDH Compliance Office at 1-307-777-8664 or 1-866-571-0944.**

7. AGREEMENT PERSONAL TO USER

The Authorized User may not sublicense, transfer, sell, or assign any of its rights or obligations under this Agreement or the Authorized Users use of the WyIR, the Software, or the Services to any third party without WDH's prior written approval, which may be withheld at the sole discretion of WDH. Any attempt to sublicense, transfer, sell, or assign this Agreement will be null and void *ab initio* and is a material breach of this Agreement. The Authorized User may not use this Agreement or any portion thereof for collateral for any financial obligation without the prior written permission of WDH which may be withheld at the sole discretion of WDH.

8. AMENDMENTS

WDH reserves the right to amend this Agreement at any time. Authorized Users will be notified of any change to this Agreement when logging on to the WyIR and continued access to the WyIR after such notice will constitute the Authorized User's acceptance of the changes. The date of the most recent amendment will appear on this Agreement and this Agreement will be available for review at the WyIR Site.

9. AUDIT AND ACCESS TO RECORDS

The Authorized User grants WDH and its authorized agents the right, upon reasonable advance notice, to audit and inspect any Authorized User's access and use of the WyIR, the Services, or the Software in order to verify compliance with this Agreement.

10. DISPUTES AND REMEDIES

Any dispute or claim arising out of or relating to this Agreement 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. WDH does not waive sovereign immunity, as described in Section 18 of this Agreement, including any applicable notice requirements, by participating in such non-binding mediation. The parties to the dispute shall bear their respective costs of 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 Agreement.

11. INDEMNIFICATION

The Authorized User releases, indemnifies, and holds harmless the State of Wyoming, WDH, and their officers, agents, employees, successors, and assignees from any cause of action or claims or demands arising out of the Authorized Users use of the WyIR, Services, and the Software. Without limiting the foregoing, this indemnification specifically applies to use or disclosure of protected health information, as that term is defined by HIPAA.

12. INFRINGEMENT

If any portion of functionality implemented by the WyIR, the Services, or the Software becomes the subject of a claim of infringement, WDH may, in its sole discretion, attempt to procure the rights necessary to continue use of the WyIR, Services, or Software, modify the WyIR, Services, or Software so that it is no longer infringing, or suspend Authorized User's rights to use the WyIR, Services, or Software until a final determination of the infringement claim is made and WDH lifts the suspension. A suspension of Authorized Users' rights to use is effective immediately upon WDH's posting of a notice to that effect on the WyIR.

13. PUBLICITY

Any publicity given to the WyIR, including, but not limited to notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for WDH, must identify WDH as the sponsoring agency and may not be released without prior written approval from WDH.

14. PRIVACY AND PROTECTION OF PERSONAL INFORMATION

The Services contain information protected from disclosure by HIPAA, HITECH, Wyo. State. § 42-4-112 and other federal and state laws and regulations. By using these Services, the Authorized User, agrees to be bound by and comply with all applicable federal and state privacy laws and regulations. Without limiting the foregoing, Authorized User agrees to maintain as confidential and not disclose any of the Services or Software, including Protected Health Information, to any third party without WDH's prior consent and authorization, unless otherwise permitted by this Agreement, or permitted or required by law. The Authorized User agrees to use appropriate safeguards to prevent use or disclosure of the Services other than as allowed by this Agreement.

15. NOTICE SPECIFIC TO SOFTWARE AND SERVICES

The Authorized User obtains no rights of ownership or control over the WyIR, Services, Software, or Intellectual Property contained in or that are otherwise a part of the WyIR. The Authorized User will be unable to access any Software or Services unless they agree to the terms of this Agreement. Access shall likewise be limited until the Authorized User accepts the terms of any amendments to this Agreement.

The Software is made available for use by Authorized Users according to this Agreement. Authorized Users may not, in any way, make unauthorized use of the WyIR, Services, Software, material, data processes, electronic documentation, or Intellectual Property obtained through this site, by publication, duplication or copying, re-transmission, distribution, performance, caching or otherwise. Any reproduction or redistribution of the Software, associated web pages and screens, or downloadable documentation is expressly prohibited by law, and may result in civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED.

The Authorized User agrees not to disrupt, modify, or interfere with this WyIR, or its associated software, hardware, and/or servers in any way, and agrees not to impede or interfere with other users' use of this WyIR. The Authorized User further agrees not to alter or tamper with any information or materials on or associated with this WyIR.

Other than connecting to the servers hosting any part of the WyIR, the Services, or the Software by https requests using a Web browser, the Authorized User may not attempt to gain access to those servers by any means, including, without limitation, by using administrator passwords or by masquerading as an administrator.

16. TERMINATION

WDH shall have the right to terminate all or any portion of an Authorized User's access to the WyIR, the Services, or the Software, all or any portion of this Agreement, or all or any portion of the license

granted by Section 3 of this Agreement, automatically and immediately, for any reason, with or without notice. No penalty accrues to WDH if this termination provision is exercised and WDH is not obligated or liable for any damages as a result of the termination.

Upon the termination or expiration of this Agreement, the Authorized User must (a) immediately cease attempts to access the WylR or use the Services or Software; (b) within twenty-four (24) hours irretrievably delete and remove the WylR access codes and passwords from the Authorized User's WylR computer terminals, workstations, and application servers, and destroy all copies of the access codes and passwords, and (c) upon request by WDH, certify in writing to WDH that the Authorized User has performed the foregoing.

17. EXPRESS DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

WDH expressly disclaims all warranties or conditions express or implied, including but not limited to the implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose and non-infringement of third party rights. WDH does not warrant the functions contained in the WylR, Services, or Software will meet the Authorized User's requirements, that the operation of the WylR, Services or Software will be uninterrupted or error free, or that the defects in the WylR, Services or Software will be corrected. No oral or written information or advice given by WDH or a WDH authorized representative shall create any warranty by WDH.

The WylR, Services, and Software are provided "as is." WDH makes no warranty or representation regarding the accuracy of the Services, including the accuracy of Immunization data viewed or obtained through the WylR. The Authorized User bears all risk arising out of use or performance of the WylR, the Services, or the Software.

The Authorized User acknowledges that it is using the services and software at its own risk. In no event shall WDH be liable for any special, incidental, consequential, or indirect damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or data, computer failure or malfunction, work stoppage, loss of good will, exemplary or punitive damages, or any other commercial tort or pecuniary loss) arising out of or relation to or based on the Authorized User's use of the WylR, the Services, or the Software, or out of this Agreement. This limitation of liability applies whether the alleged damages arise under a theory of contract, warranty, tort (including without limitation, negligence or medical malpractice), whether or not WDH has been advised of the possibility of damages and notwithstanding the failure of essential purpose of any other remedy.

WDH makes no representation that the WylR, Services, or Software is appropriate, available, or legal in any particular location. Authorized Users who choose to access the WylR or use the Services or Software do so on their own initiative and are responsible for compliance with all laws, including applicable local laws.

The Authorized User hereby agrees to release WDH, its affiliates and third party service providers, and each of their respective directors, officers, employees, and agents from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed (collectively referred to as "claims") arising out of or in any way connected with the Authorized User's use of the WYIR, the Services, or the Software.

18. JURISDICTION AND VENUE

Authorized User agrees that this Agreement, for all purposes, is governed and construed in accordance with the laws of the State of Wyoming and that the Courts of the State of Wyoming have jurisdiction over this Agreement and the parties, and the venue is the First Judicial District, Laramie County, Wyoming.

19. SOVEREIGN IMMUNITY

The parties intend and agree that the State of Wyoming and WDH do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state laws. The parties intend and agree that the State of Wyoming and the WDH do not waive sovereign immunity by performing any duty or obligation under this Agreement, including without limitation, any actions taken for purposes of dispute resolution or determining remedies under Section 9 of this Agreement.

20. SURVIVABILITY

The provisions of Section 9--Audit/Access to Records; Section 14--Privacy and Protection of Personal Information; Section 17--Express Disclaimer of Warranty and Limitation of Liability; Section 19--Sovereign Immunity; and Section 25-- Injunctive Relief, shall survive expiration or termination of this Agreement.

21. FORCE MAJEURE

WDH shall not be liable for delays in performing or failure to perform this Agreement or any obligations hereunder, for any reason beyond WDH's control, including but not limited to, acts of God, fires, terrorism, strikes, labor disputes, war, acts or intervention by any governmental authority, failure of a common carrier, supplier, hardware, software, browser, or communications equipment, or network failure, congestion, or malfunction, or any other reason.

22. HEADINGS

All headings are for reference only and shall not affect interpretation of this Agreement.

23. THIRD-PARTY BENEFICIARIES

There are no intended third-party beneficiaries of this Agreement.

24. INTERPRETATION

If any term, condition, or provision of this Agreement is determined by a court of competent jurisdiction in a final judgment or decree to be invalid, unlawful, or unenforceable, such finding shall in no way

affect the remaining obligations and all other provisions shall survive, and the invalid or unenforceable provision shall be interpreted to accomplish the intent of the parties, and to provide the parties with the benefits of this Agreement, as determined by such court.

25. INJUNCTIVE RELIEF

The Authorized User agrees that (a) a remedy at law for a breach or threatened breach of this Agreement by an Authorized User, will be inadequate by its nature; (b) that WDH shall be entitled to obtain an injunction and other appropriate remedies at law or in equity (without posting bond) to stop any ongoing breach, and prevent any future breach, by an Authorized User, and (c) that obtaining such an injunction or other relief at law or in equity shall not constitute an election of remedies by WDH.

26. ELECTRONIC SIGNATURE AND EXECUTION

The Authorized User agrees that acceptance of this Agreement by electronic means constitutes a valid formation of a contract in accordance with the Wyoming Uniform Electronic Transactions Act (Wyo.Stat. § 40-21-101, *et seq.*) and that this Agreement has been properly executed.

