WyIR Provider Enrollment Agreement

Name of Provider/Organization:					
Street Address:		City:		Zip Code:	
Phone Number:		Extension:		Fax Number:	
WyIR Primary Contact:		Email of WyIR Primary Contact:			
Reporting Method:	Direct Data Entry	Internet Access Type:	Cable Modem	Organizational Type:	Private
Number of Clinic Sites/Facilities in Organization:	1				
Name of Clinic/Facility #1:					
Street Address:		City:		Zip Code:	
Phone Number:		Extension:		Fax Number:	
Facility #1 Contact - Name		Email of WyIR Facility #1 Contact:			
Name of Clinic/Facility #2:					
Street Address:		City:		Zip Code:	
Phone Number:		Extension:		Fax Number:	
Facility #2 Contact - Name		Email of WyIR Facility #2 Contact:			
Name of Responsible Clinician for Provider/Organization:					

Wyoming Department of Health

Wyoming Immunization Registry

End User License Agreement and Terms of Use for Provider

Version Date: March 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. **Digitally signing 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 the WyIR, whether listed below or in bulletins posted at various points in the WyIR, may result in suspension or termination of access to the 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 Provider** is an immunization provider that agrees to submit immunization information to the Wyoming Department of Health through the WyIR. Authorized Providers shall be responsible for all users who access the system under their direction or control.

(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 WyIR, which is a web-based electronic immunization registry hosted by WDH or its vendor, and made available to Wyoming healthcare providers who are granted access to the WyIR through the process specified by the Wyoming Immunization Section, including acceptance of this Agreement.

- Access to certain immunization data held by WDH about WyIR participants, but only including data that (i) pertains to a WyIR participant with whom the Authorized Provider has a treatment relationship, (ii) is not suppressed by the WyIR or the WyIR participant's directive which is held by WDH within the WyIR.

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

2. ACCESS TO SERVICES

The WyIR is offered to Authorized Providers by WDH who owns and operates the WyIR. Scientific Technologies Corporation (STC), the vendor, under the terms of the contract, provides support and maintenance to the WyIR. Authorized WDH employees and contractors may access the WyIR 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 Providers by this Agreement is for the purpose of verifying vaccination data, preventive health information, assessments, quality performance indicators and disease monitoring.

3. LICENSE

WDH grants the Authorized Provider a limited, non-transferable, non-sub-licensable, non-exclusive, terminable license to access and use the WyIR, the Services, and the Software for the Authorized Provider. 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 Providers 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 WyIR, 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 Provider by this section runs from the date the Authorized Provider 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 Provider notifies WDH of its intention to stop using the WyIR to access and use the Services, or

(b) The Authorized Provider is suspended or terminated as an approved WyIR user, or

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

If the Authorized Provider 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 Providers will no longer have access to the WyIR.

4. RESPONSIBILITIES OF AUTHORIZED PROVIDERS

Authorized Providers 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 Provider'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 Providers.

Users shall strive to furnish the following information, at a minimum, within the WyIR on each encounter to ensure data quality as required per statute 42 US Code 300aa-25 and Section 8, Reporting Guidelines of the WyIR Rules and Regulations:

a. **Patient** - First Name, Middle Name, Last Name, Date of Birth, Gender, WyVIP Eligibility, Street Address, City Address,

State Address, Zip Code, County, and Phone Number.

b. **Vaccination** - Type of Vaccine, Date Administered, Lot Number, Manufacturer, Vaccinator, WyVIP Eligibility, Date of VIS, and Date VIS given.

If Authorized Provider does not provide the information specified under Section 8, Reporting Guidelines, WyIR Rules and Regulations for the Wyoming Immunization Registry, access may be terminated.

5. ISSUANCE AND USE OF SITE PASSWORDS

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

6. REPORT OF UNAUTHORIZED USE

Each Authorized Provider 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 Provider 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 Provider 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 PROVIDER

The Authorized Provider may not sublicense, transfer, sell, or assign any of its rights or obligations under this Agreement or the Authorized Providers 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 Provider 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 Providers 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 Provider'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 Provider grants WDH and its authorized agents the right, upon reasonable advance notice, to audit and inspect any Authorized Provider'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 Provider 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 Provider's 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 Provider'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 Providers' 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 Provider, agrees to be bound by and comply with all applicable federal and state privacy laws and regulations. Without limiting the foregoing, Authorized Provider 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 Provider 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 Provider 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 Provider 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 Provider accepts the terms of any amendments to this Agreement.

The Software is made available for use by Authorized Providers according to this Agreement. Authorized Providers 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 Provider agrees not to disrupt, modify, or interfere with the 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 Provider further agrees not to alter or tamper with any information or materials on or associated with the WyIR.

Other than connecting to the servers hosting any part of the WyIR, the Services, or the Software by Hypertext Transfer Protocol Secure (HTTPS) requests using a Web browser, the Authorized Provider 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 Provider'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 or cause. 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 Provider must (a) immediately cease attempts to access the WyIR or use the Services or Software; (b) within twenty-four (24) hours irretrievably delete and remove the WyIR access codes and passwords from the Authorized Provider's WyIR, 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 Provider has performed the foregoing.

17. EXPRESS DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

WDH expressly disclaims all warranties or conditions expressed 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 WyIR, Services, or Software will meet the Authorized Provider's requirements, that the operation of the WyIR, Services or Software will be uninterrupted or error free, or that the defects in the WyIR, 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 WyIR, 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 WyIR. The Authorized Provider bears all risk arising out of use or performance of the WyIR, the Services, or the Software.

The Authorized Provider 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 related to or based on the Authorized Provider's use of the WyIR, 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 WyIR, Services, or Software is appropriate, available, or legal in any particular location. Authorized Providers who choose to access the WyIR 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 Provider 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 Provider's use of the WyIR, the Services, or the Software.

18. JURISDICTION AND VENUE

Authorized Provider 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 Provider agrees that (a) a remedy at law for a breach or threatened breach of this Agreement by an Authorized Provider, 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 Provider, 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 Provider 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.

Responsible Clinician for Provider/Organization:

_____ _____

Signature of Responsible Clinician Date