

## INFOLIBRARIAN METADATA INTEGRATION APPLIANCE LICENSE AND WARRANTY AGREEMENT

THIS AGREEMENT (this "Agreement") made effective as of the \_\_\_\_\_ (the "Effective Date") by and between InfoLibrarian Corporation, a New York corporation with its principal place of business located at 160 Linden Oaks Office Park, Rochester, New York 14625 ("InfoLibrarian" or "Licensor") and \_\_\_\_\_ ("Customer") sets forth the terms and conditions under which InfoLibrarian agrees to license to Customer and Customer agrees to license from InfoLibrarian the InfoLibrarian Metadata Integration Appliance™, including the software, hardware and related documentation (the "Appliance") as more particularly described on Attachment A hereto.

1. **License.** Licensor hereby grants to Customer, and Customer hereby accepts, a nonexclusive, nontransferable license to use the Appliance in accordance with the terms and conditions set forth in this Agreement.

Customer's use of the Appliance will be limited to the computer system described in and at the location specified in Attachment A. Customer may transfer its use of the Appliance to a replacement computer system owned and operated by Customer on a temporary or permanent basis, provided that Customer discontinues its use on the original computer system identified in Attachment A. Customer may also make copies of the printed documentation supplied with the Appliance as necessary to support its authorized use of the Appliance. Customer shall provide Licensor with advance, written notice of any transfer of the Appliance authorized by this Agreement.

2. **Term.** This Agreement shall remain in full force and effect for a perpetual period, subject to termination as set forth in Paragraph 10 below (the "Term"). Upon termination of this Agreement for any reason, Customer shall, within five (5) days of the date of termination, return to Licensor the Appliance in accordance with Licensor's instructions at Licensor's sole cost and expense.

3. **No Permission to Modify, Copy or Reverse Engineer.** The Appliance, including the related software, hardware and documentation, provides Customer with a turn-key metadata solution in a "plug in and operate" format and may not under any circumstances be sublicensed, rented, leased, copied, modified, decompiled, disassembled or reverse engineered by Customer. Customer shall not at any time, directly or indirectly, make any attempt to discover the source code of the software contained in the Appliance or creative derivative works from the software or the Appliance or otherwise use the Appliance in any manner not expressly contemplated by this Agreement.

4. **Confidentiality.** Customer will not permit use of or otherwise provide access to the Appliance, including the software, hardware and related documentation, to any person or entity, other than Customer employees, without Licensor's prior written consent. Customer shall not disclose to others or permit any use not expressly contemplated by this Agreement of

any trade secrets of Licensor that are identified by written notice or otherwise embodied in the Appliance and related software and documentation. Customer's obligations under this Paragraph will not apply to any materials or information that were or become part of the public domain, that are previously known to Customer from a source with the legal right to disclose such information, that are independently developed by Customer, or that are apparent from the normal operation of the Appliance and the software in object code form.

5. **Title.** Licensor warrants that it is the owner and/or licensee of the Appliance, including the related software and documentation, with the right to sublicense, and that the license of the Appliance, including the related software and documentation and Customer's use of the Appliance and related software and documentation as permitted by this Agreement will not infringe any proprietary rights (including patents, copyrights, trademarks, and trade secrets) of any other person or entity.

6. **Ownership.** Customer acknowledges that Licensor claims ownership of the Appliance and all related intellectual property, including any copyrights associated with the software and related documentation.

7. **Warranties.** Licensor warrants that for a period of one (1) year from the date of delivery the Appliance shall perform in accordance with the printed documentation furnished to Customer by Licensor, including any user manual. In the event of a material variation of the performance of the Appliance from the written documentation, Licensor shall provide to Customer, at no cost to Customer and upon Customer's request, a new, replacement Appliance. The warranties contained in this Agreement will not apply to in the event that the Appliance or its software or hardware has been abused, mishandled, misused, altered, supplemented, upgraded or modified in any way or has been repaired except by Licensor or its designee or in the event that Customer fails to follow applicable use or operations instructions or manuals or refuses to permit Licensor or its designee to implement any corrects or modifications to the Appliance made available to Customer by Licensor. Licensor does not warrant that the Appliance will meet Customer's requirements or that operation of the Appliance will be uninterrupted or error free.

**LICENSOR'S WARRANTIES ARE LIMITED TO THOSE SET FORTH IN THIS AGREEMENT AND DO NOT INCLUDE ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. CUSTOMER'S SOLE REMEDY PURSUANT TO THIS AGREEMENT IS REPLACEMENT OF THE APPLIANCE AT NO COST TO CUSTOMER AS STATED ABOVE. THIS WARRANTY GIVES CUSTOMER SPECIFIC RIGHTS; CUSTOMER MAY HAVE OTHER RIGHTS THAT MAY VARY FROM STATE TO STATE IN THE USA.**

**SOME STATES IN THE USA AND SOME COUNTRIES INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA TO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE BELOW EXCLUSION MAY NOT APPLY TO YOU.**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE IN NO EVENT WILL INFOLIBRARIAN OR ITS LICENSORS BE LIABLE TO CUSTOMER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE APPLIANCE OR ITS SOFTWARE EVEN IF LICENSOR HAS BEEN ADVISED OF SUCH DAMAGES. IN NO CASE SHALL INFOLIBRARIAN'S OR ITS LICENSOR'S LIABILITY EXCEED THE PURCHASE PRICE FOR THE APPLIANCE. THE LIMITATIONS AND DISCLAIMERS SET FORTH ABOVE APPLY REGARDLESS OF ACCEPTANCE OF THE APPLIANCE AND/OR ITS SOFTWARE BY CUSTOMER.**

**8. Protection Against Viruses and Disabling Procedures.** Licensor warrants that the Appliance does not and will not contain, at the time issued or delivered by Licensor to Customer, any program routine, device, or other undisclosed feature, including, without limitation, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, trojan horse, or trap door, that is designed to delete, disable, deactivate, interfere with or otherwise harm the Appliance or its operating system.

**9. Updates and New Releases.** During the Term of this Agreement, Licensor will provide at no cost to Customer all "Updates" to the Appliance. For purposes of this Agreement, "Updates" is defined to mean updates, modifications, or changes to the version of the Appliance licensed to Customer that may enhance performance of that version of the Appliance but that do not add new functionality to the version of the Appliance licensed to Customer and that are disseminated to all customers of Licensor at no cost ("Updates").

Notwithstanding the foregoing, unless Customer elects to contract separately with Licensor for continuing support and maintenance for the Appliance under the Licensor's Purchase Support and Maintenance Agreement as set forth in Paragraph 12 of this Agreement, it is at all times understood and agreed by the parties that Customer's right to Updates at no charge shall not include any new versions of the Appliance that provide new functionality ("New Releases"). Licensor shall notify Customer in writing in the event that Licensor develops a New Release of the Appliance, in which event Customer shall have the right, but not the obligation, to license the New Release of the Appliance at a 10% discount from Licensor's then advertised list price. In the event that Customer licenses a New Release of the Appliance, Customer shall return to Licensor the old version of the Appliance at Licensor's sole cost and expense within five (5) business days of receipt of the New Release. Customer acknowledges that Licensor has no continuing obligation to update or otherwise support earlier versions of the Appliance upon issuance of a New Release, regardless of whether or not Customer elects to license the New Release.

**10. Termination.** This Agreement may be terminated at any time by Customer for any reason upon thirty (30) days written notice to Licensor, in which event Customer shall return the Appliance to Licensor in accordance with the requirements of Paragraph 2 of this Agreement.

In addition, either Customer or Licensor may terminate this Agreement at any time based on the other party's alleged, material breach of the terms and conditions of this Agreement, by

written notice, which written notice shall be given by the aggrieved party to the breaching party no less than thirty (30) days prior to an effective date of termination specified in such written notice. The written notice shall also state in detail the nature of any such breach. If such breach is cured to the satisfaction of the aggrieved party by the breaching party prior to the effective date of termination specified in the written notice, this Agreement shall not terminate and will continue in full force and effect. If such breach is not cured by the breaching party to the aggrieved party's satisfaction prior to the effective date of termination specified in the written notice, then this Agreement shall terminate and Customer shall return the Appliance to Licensor in accordance with the requirements of Paragraph 2 of this Agreement.

**11. Affiliates of Customer.** References to Customer may, at Customer's option, include one or more "Affiliates." For purposes of this Agreement, an "Affiliate" means any business organization, foreign or domestic, at least fifty percent (50%) of whose capital, assets, voting stock, profits, interests, or similar participation rights are owned or controlled, directly or indirectly, by Customer (hereinafter referred to as "substantial control"), and shall include any successor to all or any substantial portion of the business and operations of Customer or such an Affiliate. In the event that an Affiliate ceases to be under the substantial control of Customer for any reason, Licensor agrees to authorize the Affiliate to continue to use the Appliance under the terms of this Agreement, with full credit for charges previously paid and usage previously authorized.

**12. Maintenance Agreement.** Customer may also elect to contract separately with Licensor for continuing support and maintenance with respect to the Appliance on the terms and conditions set forth in Licensor's standard Product Support and Maintenance Agreement, a copy of which is attached as Exhibit A. Notwithstanding anything to the contrary contained in this Agreement, so long as Customer maintains in full force and effect a continuing Product Support and Maintenance Agreement with Licensor, Customer shall receive New Releases of the Appliance at no additional cost.

**13. US Government Restricted Rights.** RESTRICTED RIGHTS LEGEND. All InfoLibrarian products and documentation are commercial in nature. The Appliance and its related software and documentation are "Commercial Items" as that term is defined in 48 CFR Paragraph 2.101 consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as such terms are defined in 48 CFR Paragraph 252.227-7014(a)(5) and 48 CFR Paragraph 252.227-7014(a)(a) and as used in 48 CFR Paragraph 12.212 and 48 CFR Paragraph 227.7202, as applicable. Consistent with 48 CFR Paragraph 12.212, 48 CFR Paragraph 252.227-7015, 48 CFR Paragraph 227.7202 through 227.7202-4, 48 CFR Paragraph 52.227-14 and other relevant sections of the US Code of Federal Regulations, as applicable, InfoLibrarian's Appliance and related software and software documentation are licensed to US Government end users with only those rights as granted to all other end users according to the terms and conditions contained in this Agreement. Manufacturer is InfoLibrarian Corporation, 160 Linden Oaks Office Park, Rochester, New York USA 14625.

**14. Entire Agreement.** The terms and conditions of this Agreement, together with the terms and conditions set forth on Attachment A hereto, constitute the entire Agreement between Customer and Licensor with respect to license of the Appliance. This Agreement

shall be governed by the laws of the State of New York and each party hereby submits to the in personam and subject matter jurisdiction of the federal and/or New York state courts of the Seventh Judicial District, Western District of New York for such purposes. This Agreement may not be modified, amended or changes absent a writing signed by both parties. Customer hereby acknowledges and agrees that in the event of a breach of this Agreement by Customer, particularly with respect to the provisions contained in Sections 3, 4 and 6 of this Agreement, money damages alone are an inadequate remedy and that Licensor may accordingly seek injunctive relief, in addition to any and all other remedies, without the necessity of posting a bond. The provisions contained in Sections 3, 4, 6 and 7 of this Agreement shall expressly survive termination. In the event that legal proceedings are commenced to enforce the terms and conditions of this Agreement by either party, the prevailing party shall be entitled to recover from the unsuccessful party all costs and expenses incurred, including but not limited to attorneys fees.

IN WITNESS WHEREOF, the authorized representatives of Licensor and Customer have executed and delivered this Agreement, under seal, effective as of the Effective Date above.

InfoLibrarian Corporation (Licensor)

\_\_\_\_\_ (Customer)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

**INFOLIBRARIAN METADATA INTEGRATION APPLIANCE  
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**ATTACHMENT A**

**DESCRIPTION OF INFOLIBRARIAN METADATA INTEGRATION APPLIANCE:**

Model# MR1000

Serial No. \_\_\_\_\_

InfoLibrarian Administrator Installation CD (Client Tools)  
InfoLibrarian Books Online Electronic Documentation  
InfoLibrarian Online Portal Help Electronic Documentation

**TERM OF LICENSE:** Perpetual, subject to termination as stated in Sections 2 and 10

**DESCRIPTION OF CUSTOMER COMPUTER SYSTEM AND LOCATION:**