

AGREEMENT FOR MUSEUM DATABASE SOFTWARE APPLICATION SERVICES

THIS AGREEMENT FOR MUSEUM DATABASE SOFTWARE APPLICATION SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **IT UNLIMITED, INC. D/B/A CATALOGIT**, a foreign profit organization duly organized and authorized to do business in the state of Florida (EIN: 85-1681144) ("Vendor").

WHEREAS, in accordance with the City of Ocala's contracting and procurement policies and procedures, the City Contracting Officer has the authority to exempt the procurement of certain services from competitive procurement requirements where said services have been benchmarked, compared, or otherwise reviewed by the City's Contracting Officer and determined to be based on best value for the City; and

WHEREAS, It Unlimited, Inc.'s quotation was formally benchmarked against several other agencies offering the same service and found by the City's Contracting Officer to have the best and lowest rate; and

WHEREAS, It Unlimited, Inc. was selected as the intended awardee for the provision of providing a museum database software application for the City's art collection pieces.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Vendor shall only include this Agreement and those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

Exhibits to Agreement: The Exhibits to this Agreement are as follows:

Exhibit A: End User License Agreement (A-1 through A-8)

3. **SCOPE OF SERVICES.** Vendor shall provide all materials, labor, supervision, tools, accessories, equipment, and permits necessary for Vendor to perform its obligations under this Agreement as set forth the attached **Exhibit A – End User License Agreement** and Contract Documents. The Scope of Work under this Agreement may only be adjusted by written amendment executed by both parties.
4. **COMPENSATION.** The highest total compensation payable to Vendor by City under this Agreement for the timely and satisfactory performance of services in compliance with the

Contract Documents and the Unit Pricing set forth below over the course of the Initial Contract Term shall not exceed **TWO THOUSAND, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$2,250)** (the "Contract Sum"). The allowability of compensation sought under this Contract is expressly made subject to the terms of this Contract and any pertinent Federal and State law.

- A. **Unit Pricing.** The pricing under this Agreement may only be adjusted by written amendment executed by both parties.

Number Entries	GB Storage	Number Users	Annual Price	Monthly Price
25,000	100	8	\$449.99	\$44.99

- B. **Renewal Pricing Increases.** Pricing shall remain firm and fixed during the Initial Term of this Agreement. Any renewal price adjustment shall be subject to negotiation and must be approved by the City of Ocala. Vendor shall submit a written request for price adjustment identifying the reason for the price increase, and attach suitable documentation in support of same, no less than **NINETY (90) DAYS** prior to the expiration of the then existing Contract Term. No retroactive price adjustments will be allowed. Pricing increases shall not exceed the lesser of: (i) the amount of the percentage increase reflected in the Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted, based upon the most recent **TWELVE (12) MONTH** period; or (ii) **THREE PERCENT (3%) ANNUALLY** unless there are mitigating market conditions.
- C. **Invoice Submission.** All invoices submitted by Vendor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Vendor shall submit the original invoice through the responsible City Project Manager at: **Ocala Cultural Arts and Sciences Division**, 223 SW Broadway Street Ocala, Florida 34471 Attn: **Laura Walker**, E-Mail: lwalker@ocalafl.org; Telephone: (352) 629-8442.
- D. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
- E. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Vendor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Vendor within **THIRTY (30)** calendar days of the Vendor's remedy or resolution of the inadequacy or defect.

- F. **Excess Funds.** If due to mistake or any other reason Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Vendor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.
- G. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.
5. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective and commence on **JANUARY 13, 2023** and continue for a term of **FIVE (5) YEARS**, through and including **JANUARY 12, 2028**. This Agreement may be renewed for **TWO (2)** additional **ONE-YEAR (1-Year)** periods by written consent between City and Vendor.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
- A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof as soon as it becomes aware.
- B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Vendor performance shall be extended for a number of days equal to the duration of the force majeure.
- C. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

6. **INSPECTION AND ACCEPTANCE OF THE WORK.** All services, work, and materials provided by Vendor under this Agreement shall be provided under the direction and to the satisfaction and approval of the Project Manager.
 - A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials, the rate of progress of the work, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Vendor in its Bid. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the Services.
 - B. Neither the Project Manager's review of Vendor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Vendor's work in progress or for the means, methods, techniques, sequences, or safety precautions or programs incident to Vendor's provision of Services under this Agreement.
7. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
 - A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Vendor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Vendor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
 - (1) Vendor's performance or workmanship falls below acceptable City or trade standards;
 - (2) Vendor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
 - (3) Vendor provides material that does not meet the specifications of the Agreement;
 - (4) Vendor fails to complete the work required within the time stipulated in the Agreement; or

- (5) Vendor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement.
- B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
- C. **City's Remedies Upon Vendor Default.** In the event Vendor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
- (1) City shall be entitled to terminate this Agreement without further notice;
 - (2) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
 - (3) City shall be entitled to recover from Vendor all damages, costs, and attorney's fees arising from Vendor's default prior to termination; and
 - (4) City shall be entitled to recovery from Vendor any actual excess costs by: (i) deduction from any unpaid balances owed to Vendor; or (ii) any other remedy as provided by law.
- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Vendor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
- E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Vendor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Vendor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in

conformity with this Agreement; and/or (2) such other costs incurred by Vendor as permitted under this Agreement and approved by City.

8. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.
9. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Vendor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of **ONE (1)** year and bid debarment for a period of up to **THREE (3)** years for serious contract failures.
10. **VENDOR REPRESENTATIONS.** Vendor expressly represents that:
 - A. Vendor has read and is fully familiar with all of the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Vendor under this Agreement.
 - B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
 - C. Vendor has had an opportunity to visit, has visited, and has had an opportunity to examine and ask questions regarding the sites upon which the work is to be performed and is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Vendor's own investigation.
 - D. Vendor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - E. **Public Entity Crimes.** Neither Vendor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Vendor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant

under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

11. **VENDOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:
 - A. Vendor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Vendor shall be solely responsible for the means, methods, techniques, sequences, or procedures, and safety precautions or programs incident thereto.
 - C. Vendor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
 - D. Vendor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
 - E. Vendor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Vendor and City may otherwise agree in writing.
12. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Vendor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
13. **STORAGE OF MATERIALS/EQUIPMENT.** Vendor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of equipment and materials (whether furnished by Vendor or City) to be utilized in the performance of or incorporated into the work.
14. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Vendor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement adequate workers' compensation and employer's liability insurance covering all of its employees in at least such amounts as required by Chapter 440, Florida Statutes, and all other state and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable. Vendor shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Vendor shall waive and shall ensure that Vendor's insurance carrier waives, all subrogation rights against

the City of Ocala and its officers, employees, and volunteers for all losses or damages. Vendor's policy shall be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or its equivalent. **Exceptions and exemptions to this Section may be allowed at the discretion of the City's Risk Manager on a case-by-case basis in accordance with Florida Statutes and shall be evidenced by a separate waiver.**

15. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Vendor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Vendor shall not be interpreted as limiting Vendor's liability or obligations under this Agreement. City does not in any way represent that these types or amounts of insurance are sufficient or adequate enough to protect Vendor's interests or liabilities or to protect Vendor from claims that may arise out of or result from the negligent acts, errors, or omissions of Vendor, any of its agents or subcontractors, or for anyone whose negligent act(s) Vendor may be liable.
- B. No insurance shall be provided by the City for Vendor under this Agreement and Vendor shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention to include any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation.
- C. Certificates of Insurance. No work shall be commenced by Vendor under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Vendor allow any subcontractor to commence work until all similarly required certificates and endorsements of the subcontractor have also been provided. Work shall not continue after expiration (or cancellation) of the Certificate of Insurance and work shall not resume until a new Certificate of Insurance has been provided. **Vendor shall provide evidence of insurance in the form of a valid Certificate of Insurance (binders are unacceptable) prior to the start of work contemplated under this Agreement to: City of Ocala. Attention: Procurement & Contracting Department, Address: 110 SE Watula Avenue, Third Floor, Ocala Florida 34471, E-Mail: vendors@ocalafl.org.** Vendor's Certificate of Insurance and required endorsements shall be issued by an agency authorized to do business in the State of Florida with an A.M. Best Rating of A or better. The Certificate of Insurance shall indicate whether coverage is being provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

- D. City as an Additional Insured. The City of Ocala shall be named as an Additional Insured and Certificate Holder on all liability policies identified in this Section with the exception of Workers' Compensation and Professional Liability policies.
 - E. Notice of Cancellation of Insurance. Vendor's Certificate of Insurance shall provide **THIRTY (30) DAY** notice of cancellation, **TEN (10) DAY** notice if cancellation is for non-payment of premium. In the event that Vendor's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Vendor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the certificate holder. Additional copies may be sent to the City of Ocala at vendors@ocalafl.org.
 - F. Failure to Maintain Coverage. The insurance policies and coverages set forth above are required and providing proof of and maintaining insurance of the types and with such terms and limits set forth above is a material obligation of Vendor. Vendor's failure to obtain or maintain in full force and effect any insurance coverage required under this Agreement shall constitute material breach of this Agreement.
 - G. Severability of Interests. Vendor shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
18. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
19. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Vendor, subcontractor, or of any of their agents or employees.

nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.

20. **INDEPENDENT CONTRACTOR STATUS.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Vendor in its performance of its obligations under this Agreement.
21. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor to perform its obligations under this Agreement.
22. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
23. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Vendor under this Agreement be abandoned, or should Vendor become insolvent, or if Vendor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
24. **PUBLIC RECORDS.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or

copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency.
- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

- 25. **AUDIT.** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
- 26. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
- 27. **E-VERIFY.** Pursuant to section 448.095, Vendor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Vendor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the

duration of this Agreement. By entering into this Agreement, Vendor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Vendor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Vendor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Vendor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.

28. **CONFLICT OF INTEREST.** Vendor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Vendor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
29. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
30. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
31. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its agents, and employees.

32. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
33. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Vendor:

It Unlimited, Inc.
Attention: Dan Rael
9760 Stinchfield Woods Rd.
Pinckney, MI 48169
Phone: 510-842-7706
E-mail: dan@catalogit.app

If to City of Ocala:

Daphne M. Robinson, Esq. - Contracting Officer
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8343
E-mail: notices@ocalafl.org

Copy to:

William E. Sexton, Esq., City Attorney
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-401-3972
E-mail: cityattorney@ocalafl.org

34. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including,

without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

35. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

36. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

37. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

38. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
39. **MUTUALITY OF NEGOTIATION.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
40. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
41. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
42. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
43. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
44. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
45. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

46. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on 02 / 15 / 2023.

ATTEST:

Angel B. Jacobs

Angel B. Jacobs
City Clerk

CITY OF OCALA

Ken Whitehead

Ken Whitehead
Assistant City Manager

Approved as to form and legality:

William E. Sexton

William E. Sexton
City Attorney

IT UNLIMITED, INC.

Daniel Rael

By: It Unlimited, Inc.
(Printed Name)

Title: Chief Financial Officer
(Title)

CatalogIt End User License Agreement

Please read the following End User License Agreement (the "EULA") carefully before using the CatalogIt application (the "App") as it contains the legal terms and conditions that you agree to when you access the App or the services provided to you through the App. For the purposes of this EULA, "you" means you, the person using the App, as well as any persons that you authorize to use your account. By using the App and the information and services available through the App, you (so, the person using the App as well as any persons that you authorize to use your account) agree to follow and be bound by the EULA. If you do not agree to the EULA, do not use the App.

The App is owned by It Unlimited, Inc., ("It Unlimited"). It Unlimited reserves the right, at its discretion, to modify the EULA at any time, and any such modification will be effective immediately upon posting the modification. We suggest that you check the EULA periodically for modifications. If you use the App after we post modifications to the App, then you will be bound by such modifications.

DATA, INFORMATION, AND CONTENT

You alone will bear the sole responsibility of evaluating the merits and risks associated with the use of any data, information, or content on the App before making any decisions based on such data, information, or content.

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Modify or use the pages, text, images, or content from the App, other than pages, text, images, or content you have uploaded to the App, for any other purpose outside the App- doing so is a violation of It Unlimited's copyrights and other proprietary rights;

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and

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You are solely responsible for maintaining the confidentiality of any account information, user names, access permissions, and passwords that you use to access the App or any product or service available through the App. You are also solely responsible for restricting access to your computer(s). You agree to accept responsibility for all activities occurring under your accounts, user names, or passwords that are due to your conduct, inaction, or negligence. If you become aware of any suspicious or unauthorized conduct concerning your account, you agree to contact us immediately.

You must register and be a valid user of the App to submit material to your account. At all times, you are solely responsible for the content of any material you submit to your App account. You may not submit or transmit any material that contains a virus or other harmful component.

It Unlimited does not screen, and is not responsible for screening material publicly posted or shared through the App for defamation; fraud; falsity or inaccuracy; obscenity; invasion of privacy; copyright or trademark infringement, or violation of intellectual property rights of another party. However, if it comes to the attention of It Unlimited that a user has posted or shared through the App any content which constitutes defamation, fraud, false or inaccurate information, obscenity, invasion of privacy, copyright or trademark infringement, or other violation of intellectual property rights, such action will be deemed to violate the It Unlimited content standards and will constitute a breach of this EULA. It Unlimited, in its sole discretion, may terminate the registration of any App account where a user of that account directly or indirectly violates any of the terms of this EULA, including through posting or sharing such content.

By posting material of any kind through the App, you grant to It Unlimited, or warrant that the owner of the copyright in such material expressly has granted to It Unlimited, a perpetual,

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The subscription fees for the services provided through the App will be posted on the CatalogIt website, www.catalogit.app (the “Website”) and depend on the particular plan you select. Fees are subject to change, but that change will not be implemented without prior notice to you via the email address you provided to create your CatalogIt account.

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Because of the global nature of the Internet, you agree to comply with all local rules regarding online conduct, including all laws, rules, codes, and regulations of the country in which you reside and the country from which you access the App. In addition, you agree to comply with all applicable laws, rules, codes, and regulations regarding the transmission of technical data exported from the United States.

TERMINATION

The rights granted to you herein terminate immediately upon any violation by you of this EULA. It Unlimited reserves the right to terminate your access to the App at any time, without notice, for any reason whatsoever. You agree that It Unlimited shall not be liable to you or any third party for any termination of your access to the App. In the event of termination by It Unlimited, It Unlimited will use reasonable efforts to return to the principal user all user content stored for the user account; provided that It Unlimited reserves the right to destroy any content deemed in violation of the It Unlimited account standards.

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It Unlimited has established a Privacy Policy to explain how your personal information is collected and used. Please view the Privacy Policy, located at <https://www.catalogit.app/privacy>, for full details. In short, it is the policy of It Unlimited to respect the privacy of individuals who visit the Website, create accounts to use the App and/or provide comments to us. We collect addresses, names and other identifying and contact information from users of the App and the Website in order to correspond with customers about any questions relating to the services provided through the App or to communicate transactional information to users of the App. Occasionally we may use this information to send users information about specials and promotions that we may be passing along to customers. You may choose not to receive this information by updating your account profile and de-selecting the option to receive specials and promotions. We may also collect identifying information about you through a log of all traffic in the App and on our Website and aggregate that information into App functionality data. Our purpose for collecting the information is to analyze the use of the App and our Website and improve their formats and functionality. We do not disclose any personally identifiable information except under limited circumstances, specifically set forth in the Privacy Policy.

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5. ANY OTHER MATTER RELATING TO THE APP.

INDEMNITY

You agree to indemnify, defend, and hold harmless It Unlimited, its subsidiaries and affiliates, and the officers, directors, employees, and agents of It Unlimited and its subsidiaries and affiliates, from and against any and all claims, liabilities, damages, losses, or expenses, including attorney's fees and costs, arising out of or in any way connected with your access to or use of the App.

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If any provision of this EULA is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from this EULA and will not affect the validity and enforceability of the remaining provisions. This EULA represents the entire agreement between It Unlimited and the user relating to the subject matter herein.

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ACKNOWLEDGEMENT

You and It Unlimited acknowledge that the EULA is concluded between you and It Unlimited only, and It Unlimited is solely responsible for the App and the content thereof.

SCOPE OF LICENSE

The license granted to you for the App is limited to a non-transferable license to use the App on any applicable device that you own or control.

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It Unlimited is solely responsible for providing any maintenance and support services with respect to the App, as specified in this EULA, or as required under applicable law. You and It Unlimited acknowledge that no other party has any obligation whatsoever to furnish any maintenance and support services with respect to the App.

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It Unlimited is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, or such other digital distribution platform on which the App was purchased, and Apple or such other platform will refund the purchase price for the App to you; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of It Unlimited.

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LEGAL COMPLIANCE

You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

DEVELOPER NAME AND ADDRESS

Your questions, complaints or claims with respect to the App should be directed to It Unlimited via telephone at (510) 842-7706 or via email at support@catalogit.app.

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You must comply with applicable third party terms of agreement when using the App; e.g., you must not be in violation of the service agreement with your Internet service provider when using the App.

THIRD PARTY BENEFICIARY

You and It Unlimited acknowledge and agree that Apple, or such other digital distribution platform on which the App was purchased or obtained, and any of their respective subsidiaries, are third party beneficiaries of this EULA, and that, upon your acceptance of the terms and conditions of this EULA, Apple or such other digital distribution platform on which the App was purchased or obtained, will have the right (and will be deemed to have accepted the right) to enforce the EULA against you as a third party beneficiary thereof.

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We reserve the right to amend this EULA and will notify you in advance if changes are made. Your continued use of the App constitutes acceptance of any amendments, additions, or modifications to the EULA.

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Sent for signature to It Unlimited, Inc. (dan@catalogit.app), William E. Sexton (wsexton@ocalafl.org), Ken Whitehead (kwhitehead@ocalafl.org) and Angel Jacobs (ajacobs@ocalafl.org) from biverson@ocalafl.org
IP: 216.255.240.104



VIEWED

02 / 14 / 2023

16:00:43 UTC-5

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