

VA-241030-TCTL EXHIBIT F-1 LICENSE AGREEMENT ADDENDUM

The Virginia Information Technologies Agency (“**VITA**”), pursuant to § 2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (“**Commonwealth**”), has entered into a contract with ThunderCat Technology LLC (“**Supplier**”), for certain information technology goods and/or services pursuant to Virginia Contract Number VA-241030-TCTL (the “**Virginia Contract**”). As part of its obligations under the Virginia Contract, Supplier is providing certain software products from Smartling, Inc, a third-party software publisher (“**Software Publisher**”).

The use of Software Publisher’s products is governed by an End-User License Agreement (“**EULA**”), provided by the Software Publisher, as modified by this License Agreement Addendum. As used in this License Agreement Addendum, the term “**EULA**” means the Software Publisher’s standard form contract and exhibits and attachments thereto; and the term “**Agreement**” means this License Addendum (Exhibit F-1) and the Service Agreement (Exhibit F-2) taken together. The term(s) “**Customer**”, “**You**” or “**you**” as used in the EULA and this LAA mean(s), as applicable, VITA or the Commonwealth, or any of their officers, directors, agents or employees.

This License Agreement Addendum (“**LAA**”), duly signed by VITA and the Software Publisher (each a “**LAA Party**”), and acknowledged by Supplier, is attached to and made a part of the EULA by incorporation. This LAA, with the EULA, governs the use of any and all Smartling Software (“**Software**”) licensed under the Virginia Contract and provided by Software Publisher, whether or not specifically referenced in the order document. The EULA, including all exhibits and attachments thereto, is attached to this LAA and incorporated by reference.

Software Publisher represents and warrants that it is a Delaware corporation authorized to do business in Virginia. If Software Publisher is not a U.S.-based entity, Software Publisher shall maintain a registered agent and a certification of authority to do business in Virginia.

Any and all licenses granted or provided pursuant to the Agreement will be held by:

- i. the Commonwealth, if VITA is an agency as defined by [§ 2.2-2006](#) of the Code; or a legislative, judicial, or independent agency of the Commonwealth; or a board, commission, or other state entity;
- ii. the applicable public body, if VITA is a locality, municipality, school, school system, college, university, local board, local commission, or other local entity; or
- iii. the applicable private institution of higher education, if VITA is a private institution of higher education (see [§ 2.2-2012\(F\)](#) of the Code and <https://cicv.org/Our-Colleges/Profiles.aspx.html>).

Software Publisher’s standard-form EULA is generally acceptable to VITA, with the exceptions noted in this LAA below. Despite the general acceptability of the EULA, certain standard clauses may appear in, or be incorporated by reference into, the EULA which cannot be accepted by VITA. In consideration of the convenience of using Software Publisher’s standard form EULA without the necessity of specifically negotiating a separate contract document, the LAA Parties specifically agree that if any of the following provisions appear in or are contained in the EULA, any such provisions are deemed void, and will not have any effect or be enforceable against VITA or the Commonwealth, nor any of their officers, directors, employees, or agents:

1. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the EULA;
2. Requiring or permitting that any dispute under the EULA be resolved in any court other than the courts of the Commonwealth of Virginia;
3. Requiring any total or partial compensation or payment for lost profit or liquidated damages if the EULA is terminated before the end of its ordinary term;

4. Imposing any interest charge(s) inconsistent with applicable Commonwealth law, including [§ 2.2-4347](#) *et seq.* of the Code;
5. Requiring VITA to maintain any type of insurance;
6. Granting Software Publisher a security interest in any property of VITA;
7. Requiring VITA to indemnify, defend, or hold harmless the Software Publisher;
8. Establishing a time period within which claims can be made or actions can be brought that is inconsistent with applicable Commonwealth law;
9. Binding VITA to any arbitration or to the decision of any arbitration board, commission, panel, or other entity (see [§ 2.2-4366](#) of the Code);
10. Obliging VITA to pay costs of collection or attorney's fees;
11. Requiring claims or dispute resolution procedure(s) inconsistent with applicable law, including [§ 2.2-4363](#) of the Code;
12. Permitting Software Publisher to use or access any Commonwealth or VITA records or data, except as required by law or court order and after notification to VITA;
13. Permitting Software Publisher to use any information or data provided by VITA except for Software Publisher's own internal administrative purposes;
14. Requiring VITA to limit or waive its rights in an action at law or in equity, including the right to a trial by jury;
15. Bestowing any right, or incurring any obligation, that is beyond the authority of VITA to bestow or incur under applicable law;
16. Permitting Software Publisher to assign, subcontract, delegate or otherwise convey the EULA, or any of its rights and obligations under the EULA, to any entity without the prior written consent of VITA;
17. Enforcing the United Nations Convention on Contracts for the International Sale of Goods, UCITA, and all other laws and international treaties or conventions relating to the sale of goods, which are expressly disclaimed and shall apply to this Agreement only to the extent required by applicable law;
18. Requiring that the Commonwealth or VITA waive sovereign immunity, including under the Eleventh Amendment to the United States Constitution;
19. Requiring VITA to be responsible for payment of any taxes, duties, or penalties from which the Commonwealth is tax exempt;
20. Requiring the use of any currency other than United States Dollars in connection with the EULA;
21. Obliging VITA beyond appropriated and available funding;
22. Permitting unilateral modification or termination of the EULA by the Software Publisher, or the licenses granted pursuant to the EULA, or permitting suspension of services by Software Publisher, except as required by applicable law and after notification to VITA;
23. Requiring or stating that the terms of the Software Publisher's standard form EULA will prevail over the terms of this LAA in the event of conflict;
24. Requiring further purchases in order for VITA to receive or maintain the benefits of Software Publisher's indemnification against any claims of infringement on any third-party intellectual property rights;
25. Prohibiting VITA from transferring or assigning to any successor Commonwealth public entity the EULA or any license to Software granted pursuant to the EULA;
26. Granting Software Publisher or an agent of Software Publisher the right to audit or examine the books, records, or accounts of VITA.

In addition to the provisions set forth above, the LAA Parties further agree as follows:

27. Software Publisher shall comply with the applicable mandatory contractual provisions required by Commonwealth law or policy located at the following URL and which are hereby incorporated into this LAA by reference: <https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/>.
28. Software Publisher warrants that it is the owner of the Software or otherwise has the right to grant to VITA the license to use the Software granted under the EULA without violating or infringing any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party.
29. All payment obligations from Virginia public bodies are subject to the availability of funds (including any combination of federal, state, or local appropriations). In the event of non-appropriation of funds for goods or services under the Virginia Contract, VITA may terminate, in whole or in part, the Virginia Contract or any order for which funds have not been appropriated. This may extend to renewals of licenses or services. VITA shall provide written notice to the Software Publisher as soon as possible after legislative action is completed. There will be no time limit for termination due to termination for lack of appropriations.
30. Software Publisher shall indemnify and defend the Commonwealth, or VITA, their officers, directors, agents and employees (collectively, "**Commonwealth's Indemnified Parties**") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "**Claim**" and collectively, "**Claims**"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent the Claims in any way relate to, arise out of or result from: (i) any negligent act, negligent omission, or intentional or willful conduct of any employee or subcontractor of Software Publisher, (ii) any breach of any representation, warranty or covenant of Software Publisher contained in the Agreement, (iii) any defect in the Software, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. Software Publisher will be solely responsible for all reasonable costs and expenses associated with the defense against any third party Claim. Pursuant to [§ 2.2-510](#) and [§ 2.2-514](#) of the Code, the selection of counsel and approval of any settlement will be subject to the approval of the Commonwealth. In the event of a settlement between Software Publisher and a private institution of higher education who is an Authorized User of this EULA, the settlement will be subject to the approval of that institution.
31. Payments for Software license fees, including subscription fees, and support services are only authorized to be made to the Supplier who has a direct contractual relationship with the Commonwealth via the Virginia Contract. Payments by VITA will only be made to the Supplier via an order or Statement of Work issued pursuant to the Virginia Contract. Direct payment to the Software Publisher is not authorized, and any such invoice to VITA will not be paid.

The Agreement, consisting of the EULA and this LAA, constitute the entire agreement between the LAA Parties and may not be waived or modified except by a written agreement between the LAA Parties signed by each of the LAA Parties.

This LAA may be signed in one or more counterparts, and by facsimile, PDF, or other electronic signature, all of which taken together constitute a single agreement. Each signed counterpart, including a signed counterpart reproduced by reliable means (including facsimile and PDF), will be considered as legally effective as an original signature.

[SIGNATURE PAGE(S) TO FOLLOW]

Contract Number:

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

Smartling, Inc.



By: _____
(Signature)

Name: Tim Kirby
(Print)

Title: Chief Revenue Officer

Date: October 25, 2024

**VITA, on behalf of the
COMMONWEALTH OF VIRGINIA**

By: Jeanne C. Mertens
(Signature)

Name: Jeanne C. Mertens
(Print)

Title: Strategic Sourcing Consultant

Date: 10/28/2024

Acknowledged by:
ThunderCat Technology LLC

By: 
(Signature)

Name: Jean Kim
(Print)

Title: Contracts Manager

Date: 10/28/2024