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**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems and Services Officer  
Susan Beltz, Chief Technology Officer

**Board Meeting Date** March 11, 2020

**Subject** Ratification by the Board of Education of the Master Services Agreement between Smartcat Platform Inc. and Oakland Unified School District for the latter to provide Translation Services in an amount not to exceed \$5,034.00 and for the period January 30, 2020 to January 29, 2021.  
Contractor: Smartcat Platform Inc.  
Services For: January 30, 2020 - January 29, 2021

**Action Requested and Recommendation** Ratification by the Board of Education of the Master Services Agreement between Smartcat Platform Inc. and Oakland Unified School District for the latter to provide Translation Services in an amount not to exceed \$5,034.00 and for the period January 30, 2020 to January 29, 2021.

**Background** Smartcat Platform Inc. will provide translation and related Services (editing, post-editing, proofreading, interpreting, etc.) with respect to materials provided by Client ("Client Materials") as detailed in one or more service orders placed by Client through Client's account dashboard on the Platform or otherwise, as mutually agreed ("Service Tasks"). Smartcat Platform Inc. will provide supplementary Services selected by Client as set forth in the Annexes hereto. Client's use of the Platform in connection with receipt of the Services shall be governed by the terms of service set forth in Exhibit A (the "TOS").

**Discussion** No. Professional Services Agreement of less than \$92,600.00

**Fiscal Impact** \$5,034.00 from 2019-20 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

**Attachments**

- Master Services Agreement
- Exhibit A: Smartcat Platform Inc. Terms of Service
- Invoice

## SMARTCAT PLATFORM INC.

### MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "Agreement") is being entered into effective as of this January 30, 2020 (the "Effective Date") by and between Smartcat Platform Inc., a Delaware corporation ("Smartcat"), and Oakland Unified School District ("Client"). Each of Smartcat and Client may be referred to as a "Party" and together, the "Parties."

### RECITALS

A. Smartcat is the owner and provider of an online platform located at <https://www.Smartcat.ai> (the "Platform") for translation services and translation project management (the "Services"); and

B. Client is a translation agency or an end-customer interested in the Services.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

#### 1. SERVICES

1.1 **Translation Services.** Smartcat will provide translation and related Services (editing, post-editing, proof reading, interpreting, etc.) with respect to materials provided by Client ("Client Materials") as detailed in one or more service orders placed by Client through Client's account dashboard on the Platform or otherwise, as mutually agreed ("Service Tasks").

1.2 **Supplementary Services.** Smartcat will provide supplementary Services selected by Client as set forth in the Annexes hereto.

1.3 **Platform Terms of Service.** Client's use of the Platform in connection with receipt of the Services shall be governed by the terms of service set forth in Exhibit A (the "TOS").

#### 1.4 **Delivery of Translated Works; Acceptance.**

(a) Client accepts and acknowledges that Smartcat relies solely on the use of automation and software quality control tools to perform quality control over translation Services provided to Client under this Agreement. Client takes full and final responsibility for its review of the quality of the completed translation of Client Materials ("Translated Works") and for acceptance of such Translated Works by Client pursuant to subsection (b) below.

(b) Smartcat will submit Translated Works to Client for Client's review as to compliance with requirements and specifications identified in the applicable Service Task ("Acceptance Review"). Client will complete its Acceptance Review within five (5) business days unless another period is agreed upon by the Parties ("Review Period"). Prior to the expiration of the Review Period, Client shall



provide Smartcat with notice through Client's account dashboard on the Platform of Client's Acceptance of the Translated Works ("Acceptance") or of the Translated Works' failure to meet Client's acceptance criteria ("Rejection"), provided however, that failure by Client to deliver any notice in accordance with this section during the Review Period, will constitute automatic Acceptance of the subject Translated Works by Client. Failure by Smartcat to deliver Translated Works to Client within the timeframe identified therefore in the applicable Service Task may constitute cause for a Rejection of such Translated Works by Client.

(c) In the event of a justified Rejection by Client, Smartcat will, at the option of Client, either: (i) use reasonable commercial efforts to correct and remedy the failure(s) or deficiency(ies) identified by Client (using the same or another Subcontractor (as defined in Section 1.5(a)) in Client's discretion), or (ii) negotiate with Client in good faith a discount to the fees for the Services relating to the Translated Works which were the subject of a Rejection. With respect to a Rejection resulting solely from a delay in delivery, the maximum discount that Smartcat may offer will be capped at 15%.

(d) Smartcat's obligations under subsection (c) comprise Client's sole and exclusive remedy and Smartcat's sole obligation and liability for a Rejection of Translated Works by Client for any reason.

#### 1.5 Subcontractors.

(a) Smartcat in each case will engage the services of such subcontractors registered on the Platform as Smartcat deems necessary to perform the Services required by this Agreement ("Subcontractors").

(b) Smartcat shall be wholly responsible for payment to the Subcontractors of their fees in connection with performing the Services. In no event shall Subcontractors be considered employees of Client.

(c) Client may request that Smartcat either (i) use, replace or assign additional Subcontractors to a Service Task or (ii) not use or remove specific Subcontractors from a Service Task, and Smartcat will use reasonable commercial efforts to accommodate Client requests.

(d) Client may invite Subcontractors to register on the Platform via an invitation link. Smartcat does not provide any additional services to such Subcontractors (including, but not limited to, listing Subcontractor's profile on the Platform search) except those services that are required to establish and maintain efficient collaboration and delivery of the results of the Service Task.

(e) Client agrees, during the term of this Agreement and for three (3) years thereafter, not to solicit any Subcontractors (except for Subcontractors invited by the Client as per par.1.5(d) above) for employment or consulting, directly or indirectly, for Client or for any business or organization in which Client, or any of the beneficial owners of Client, if Client is a legal entity, has an ownership interest of any kind. For the avoidance of doubt, Subcontractors are considered to be invited by Client if: (i) such Subcontractor's account was not viewed on the Platform by Client prior to invitation (ii) the Subcontractor's account on the Platform was registered by the invitation link generated from Client's account with the Platform.

**1.6 Delays.** In the event of (a) a delay by Client in delivering Client Materials or responding to questions relating to Client Materials, (b) a delay due to Client's request for changes to Client Materials

or any other terms of the applicable Service Task, (c) a dispute in good faith between the parties as to whether Translated Works meet the requirements specified in the applicable Service Task, (d) a delay due to any third party's act, failure to act or delay in performing any obligation whatsoever, other than the act, failure to act or delay by a Subcontractor, or (e) any other delay incurred as a result of Client's actions, the delivery schedule set forth in the Service Task shall be deemed postponed for an equivalent period. No such delay shall relieve or suspend Client's obligation to pay Smartcat under Section 2 hereof and, in addition to such payment obligations, Client shall pay for all reasonable expenses incurred by Smartcat in connection with any such delay. In the event of delay due to the act, failure to act or delay in performing obligations by one or more Subcontractors, Client's sole recourse shall be to request that such Subcontractors shall be replaced and Smartcat's duties shall be considered met upon so replacing the Subcontractors, as applicable.

## 2. PAYMENT TERMS

2.1 **Service Fees.** Client agrees to pay the fees for the Services as set forth in one or more Service Tasks or Annexes hereto.

2.2 **Additional Fees.** Client agrees to pay Smartcat additional fees, calculated as set forth in the applicable Service Tasks in each of the following cases, or as otherwise agreed between Smartcat and Client:

(a) Client makes changes in the Client Materials after the execution of a Service Task with respect thereto; or

(b) Client requests changes to Translated Works after delivery thereof to Client because of Client's preferences as to style or vocabulary, and such changes are not required for accuracy; or

(c) Client requests delivery of Translated Works in a file and text format not agreed upon.

2.3 **Invoices.** Smartcat shall invoice Client as provided in Annexes hereto.

2.4 **Payments.** All invoiced fees are due immediately upon receipt of the invoice and in no event any later than thirty (30) calendar days following the invoice date.

2.5 By selecting ACH debit or credit card as its preferred payment method and by linking Client's bank account or credit card to the online payment service integrated with the Platform, Client authorizes Smartcat to automatically debit the bank account or credit card provided by Client for the amounts owed for Premium Services during the term thereof.

## 3. TERM AND TERMINATION

### 3.1 **Term; Renewal.**

(a) Unless earlier terminated as set forth below, this Agreement commences on the Effective Date and shall continue for a term of twelve (12) months.



(b) Client may terminate this Agreement at any time upon 30 calendar days advance written notice to Smartcat.

(c) Notwithstanding the foregoing, this Agreement may not be terminated pursuant to this Section 3.1 in the event that there are any Service Tasks that will not have been completed as of the date of such termination.

(d) In the event of termination of any subscription-based Supplementary Service by Client prior to its expiration period, the Client shall pay Smartcat a difference between (i) the price of a standard 1-month subscription multiplied by the number of months of actual usage till termination date and (ii) the total amount paid/payable by the Client for the period of actual usage under the selected subscription period at initial purchase.

(e) Smartcat may terminate the Platform TOS (as defined above) on the grounds specified in Section 4 of TOS.

### **3.2 Effect of Termination.**

(a) In the event of termination of this Agreement pursuant to Section 3.1(a) for breach by Smartcat, Client shall only be responsible for the payment to Smartcat of the fees for Services performed through the date of such termination.

(b) In the event of termination of this Agreement pursuant to Section 3.1(a) for breach by Client, including, without limitation, for failure to pay the invoiced fees for Services, Section 5 hereof shall be considered null and void, and Smartcat shall retain the rights to all translations that have not been paid for by Client.

(c) In the event of termination of any Service Task or Annex by Client prior to its completion, in the absence of breach by Smartcat, Client will be required to pay for the Services actually provided till the date of termination.

(d) Notwithstanding anything to the contrary herein, Client will not be entitled to a refund of any fees covering Services that have already been performed by Smartcat as of the termination date of this Agreement, any Service Task or Annex.

**3.3 Survival.** With the exception of those provisions which by their terms remain in effect only during the term of this Agreement, and subject to Section 3.2 (Effect of Termination), all provisions of this Agreement will survive any termination of this Agreement.

## **4. CONFIDENTIALITY AND NON-DISCLOSURE**

4.1 **Restrictions.** Smartcat acknowledges that, in order to perform the Services, it shall be necessary for Client to disclose to Smartcat certain Confidential Information (defined below) of Client. Smartcat agrees that it shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any third parties, except as authorized by Client. Client hereby authorizes Smartcat to provide Confidential Information to Subcontractors, translation service providers, marketing services providers and infrastructure and development service providers, including those located in jurisdictions

without adequate protection of personal data, on the terms established by Smartcat provided that Smartcat shall implement technical and organizational security measures in respect of processing of such data.

4.2 **Definition.** Information disclosed by Client, including, but not limited to, information that relates to existing and future products or services, designs, business plans, business opportunities, finances, research, development, know-how, personnel, personal data or third party confidential information will be considered and referred to collectively in this Agreement as “**Confidential Information.**” Confidential Information, however, does not include information that (a) is now or subsequently becomes generally available to the public through no fault or breach by Smartcat; (b) Smartcat can demonstrate to have rightfully had in its possession prior to disclosure by Client; or (c) Smartcat rightfully obtains from a third party who has the right to transfer or disclose it.

4.3 **Smartcat Proprietary Information.** Client shall treat as confidential and agrees not to disclose to any third party without the prior written consent of Smartcat, any information learned by Client within the scope of the Services relationship with Smartcat that would appear to a reasonable person to be confidential or proprietary. Names and rates of Subcontractors will be considered confidential information of Smartcat pursuant hereto.

4.4 **Personal Data.** The Parties shall comply with the terms of Smartcat’s Data Processing Agreement located at <https://www.Smartcat.ai/dpa/> (the “**Data Processing Agreement**”) and incorporated herein by reference if, and to the solely to the extent, that the Services require personal data processing by the Parties. Smartcat may modify the terms of Data Processing Agreement unilaterally at any time with or without notice to Client, provided, however, that such modifications shall become effective and binding on Client upon the earlier of (a) notice to Client, or (b) access by Client of its account on the Platform. Notwithstanding anything in the Agreement to the contrary, if Client does not accept such modified terms of the Data Processing Agreement, Client may terminate the Agreement unilaterally for convenience within two (2) weeks following the effective date thereof (as determined in accordance with the preceding sentence.

## 5. **ASSIGNMENT OF TRANSLATED WORKS**

5.1 **Assignment by Smartcat.** Subject to payment by Client of the fees as set forth in Section 2 hereof, Smartcat hereby does and will irrevocably assign to Client all of Smartcat’s right, title and interest in and to any and all Translated Works.

5.2 **Assignment by Subcontractors.** Smartcat covenants, represents and warrants that each Subcontractor who performs Services under this Agreement has or will have a written agreement with Smartcat that provides Smartcat with all necessary rights to fulfill its obligations under this Agreement, including but not limited to the obligations of this Section 5.

## 6. **NON INFRINGEMENT WARRANTY AND INDEMNIFICATION**

6.1 **Client Warranty.** Client warrants that it is the lawful owner of Client Materials, that such Client Materials have been lawfully developed or acquired by Client, and that such Client Materials will not infringe on any third party intellectual property.



6.2 **Indemnification.** The Parties agree to indemnify and hold each other harmless from any and all losses, claims, damages, expenses or liabilities (including reasonable attorneys' fees) which the respective Party may incur as the result of violation of this Agreement by the other Party.

## 7. **DISCLAIMERS**

7.1 **General.** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SMARTCAT DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXPRESS OR IMPLIED, WITH RESPECT TO ANY INFORMATION, SERVICES, PRODUCTS, AND MATERIALS, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. SMARTCAT IS NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS REGARDLESS OF SOURCE.

7.2 **Third-Party Services.** All translation Services pursuant to this Agreement will be performed by Subcontractors of Smartcat. Smartcat disclaims all liability for any errors, omissions, or ambiguities in the translations provided by Smartcat and Client's reliance on any such translation is at Client's sole risk. Smartcat shall not be liable for any losses caused by reliance on the accuracy or reliability of translations provided by it to Client.

## 8. **LIMITATION OF LIABILITY**

8.1 **No Indirect Damages.** In no event will Smartcat be liable to Client for consequential, incidental, indirect, punitive or special damages, or loss of profits, data, business or goodwill, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose, or otherwise, and even if advised of the likelihood of such damages. Smartcat shall not bear any responsibility for changes made to any Translated Works following delivery thereof by Smartcat to Client.

8.2 **Limitation Cap.** Any and all liabilities of Smartcat resulting from this Agreement are, without exception, limited to and at a maximum equal to the lesser of (a) \$10,000 or (b) the total payments made by Client to Smartcat hereunder within one (1) month immediately preceding any such claim. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

9. **CALL RECORDING CONSENT.** Client acknowledges that it is a business practice of Smartcat to record telephone conversations with its customers, including its telephone conversations with Client, in order to maintain a high level of Services and to minimize miscommunication. Client hereby expressly gives its consent to such recording by Smartcat and to the use of recordings in the event of any dispute arising out of this Agreement between Smartcat and Client.

## 10. **MISCELLANEOUS**

10.1 **Entire Agreement.** This Agreement together with any schedules, exhibits, Annexes and Service Tasks appended hereto constitutes the entire agreement of the parties hereto and supersedes all oral and written agreements and understandings made or entered into by the parties hereto prior to the

date hereof.

10.2 **Severability**. In the event of any conflict between any provision hereof and any applicable laws to the contrary, the latter shall prevail, but this Agreement shall be deemed modified only to the extent necessary to remove such conflicts and the remaining provisions of this Agreement shall remain in full force and effect.

10.3 **Amendments; Waiver**. No amendment, change or modification of this Agreement shall be valid unless it is made in writing and signed by both parties hereto, and any waiver of a failure to perform or a breach shall not operate to waive any subsequent failure to perform or breach.

10.4 **Governing Law**. This Agreement shall be construed, interpreted and enforced in accordance with and shall be governed by the laws of the State of California applicable to agreements entered into and to be wholly performed therein without regard to conflict of law principles that would result in the application of any law other than the law of the State of California.

10.5 **Arbitration**. Any unresolved controversy or claim arising out of or relating to this Agreement shall be submitted to arbitration by one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed by the American Arbitration Association (the "AAA"), then by one arbitrator having reasonable experience in commercial transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in Oakland, California, in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses, and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with California law, the arbitrator shall be required to provide in writing to the parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

10.6 **Notices**. All notices required or permitted under this Agreement shall be in writing addressed to the respective parties at their addresses set forth in the signature page hereto, unless another address shall have been designated, and shall be delivered by hand or by registered or certified mail, postage prepaid or by electronic mail with confirmation of receipt.

10.7 **Force Majeure**. Smartcat shall not be liable to Client for any failure or delay caused by events beyond Smartcat's control including, without limitation, Client's failure to furnish necessary information, sabotage, failure or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials or equipment, or technical failures.

10.8 **Presumption**. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either of the parties.

10.9 **Attorneys' Fees**. In the event of any dispute with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs and expenses incurred in resolving such dispute.





10.10 **Counterparts**. This Agreement may be executed in counterparts, each of which, when so executed and delivered, will be deemed an original, and all of which together shall constitute one and the same agreement. Counterparts may be executed and delivered by facsimile, electronic mail (including PDF) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.


[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

<p>Oakland Unified School District</p> <p>By: <u></u> Name: Susan Beltz Title: Chief Technology officer Address: 1000 Broadway, Suite 300 Oakland, CA 94607</p> <p>Email:</p>	<p>SMARTCAT PLATFORM INC.</p> <p>By: <u></u> Name: Ivan Smolnikov Title: CEO Address: 179 South Street, 6th Floor, Room 2, Boston MA 02111 Email: <a href="mailto:hello@Smartcat.ai">hello@Smartcat.ai</a></p>
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OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:  2/3/20  
Joshua R. Daniels, General Counsel

 3/12/2020  
Jody London  
President, Board of Education

 3/12/2020  
Kyla Johnson-Trammell  
Secretary, Board of Education



## EXHIBIT A

### PLATFORM TERMS OF SERVICE

#### 1. GENERAL PROVISIONS

- A. The Platform represents a website and technology platform for translation workflow automation, allowing a registered User to automate translation processes and make use of technologies available on the Platform. A “User” means any person accessing the Platform. The Platform provides all Users with access to free features available on the Platform and paying Users with access to additional Platform services including but not limited to text translation tools (the “Additional Services”), which Additional Services may be added or removed by a User in such User’s account on the Platform.
- B. User is free to use the Platform except for the Additional Services. Subject to the terms and conditions of this TOS, User is hereby granted a non-exclusive, limited, non-transferrable, freely revocable right to use the Platform during the term of this TOS. Smartcat reserves all rights not expressly granted herein in the Platform.
- C. By using the Platform, User: (i) agrees to be bound by this TOS; (ii) acknowledges and agrees that User is not relying on any representation, guarantee, or statement to access the Platform or to utilize Premium Service, other than as expressly set forth in TOS; and (iii) represents and warrants that User is lawfully able to enter into contracts. In addition, the person agreeing to this TOS on behalf of a business or other legal entity hereby represents and warrants that such person authorized and lawfully able to bind that business or entity to this TOS.

#### 2. REGISTRATION

- A. User agrees to provide true, accurate and complete information as prompted by the registration form and any other forms that User may access on the Platform, and to update this information to maintain its truthfulness, accuracy and completeness. Smartcat use of information provided by Users is governed by our Privacy Policy located at <https://www.smartcat.ai/privacy-policy/>, and User consent to all actions that Smartcat takes with respect to User information consistent with such Privacy Policy. User is responsible for maintaining the confidentiality of User’s account password.
- B. User is fully responsible for all activities that occur on User’s account. User represents and warrants to Smartcat that any person using the Platform with User’s username and password is authorized to act for User. User agrees to notify Smartcat immediately if User suspects any unauthorized use of User’s account. Smartcat does not assume any responsibility for the accuracy or reliability of the identity information or any other information provided by a User through the Platform. Smartcat will not be liable for any loss that User may incur as a result of someone else using User’s username or password, either with or without User’s knowledge.
- C. When interacting with other Users on the Platform, User should exercise caution and common sense to protect User’s personal safety, proprietary information and property. Neither Smartcat nor its affiliates or licensors shall be responsible for the conduct, whether online or offline, of any User of the Platform, and User hereby releases Smartcat and its affiliates or licensors from any liability related thereto.

#### 3. BILLING AND PAYMENT

- A. The fee for each Additional Service purchased on the Platform and fee currency is as indicated in the specific section of the Platform or agreed otherwise. The fee may be paid to Smartcat by payment methods available through the Platform or as agreed otherwise.
- B. Smartcat has the right to seek reimbursement from Client, and Client will reimburse Smartcat, if Smartcat discovers a fraudulent transaction, erroneous or duplicate transaction.
- C. To the maximum extent available pursuant to applicable law, Client hereby waives the right to seek a refund for some or all of the fees paid in connection with any Additional Service purchased on the Platform.
- D. The Platform operates in various currencies. Smartcat is not responsible for currency fluctuations that occur when billing or crediting a credit or debit card denominated in a currency other than the currency indicated on the Platform, nor is Smartcat responsible for currency fluctuations that occur when sending payment via wire transfer, check or automated clearinghouse to and from Client's bank account, credit card account, e-wallet account or any other payment method. Foreign currency conversion is processed at a foreign currency conversion rate which is set in the Platform. The exchange rate is updated on a daily basis, but may not be identical to the real-time market rate.
- E. The fees for specific Additional Services are indicated in User's account on the Platform and may be changed by Smartcat in its own discretion with at least contemporaneous notice thereof, with such changes having prospective effect only.

#### 4. TERMINATION

- A. Smartcat reserves the right, in Smartcat's sole discretion, to refuse, suspend, or terminate User's access to the Platform and any Premium Services at any time by providing the User with a written or email notice of such termination (a) upon reasonable demand of a state authority and (b) in case of User's violation of paragraph 1.5(e) of the Master Services Agreement.
- B. Smartcat reserves the right, in Smartcat's sole discretion, to refuse, suspend, or terminate User's access to the Platform and any Premium Services at any time by providing the User with a written or email notice of such termination in case of (a) uploading content to the Platform by the User that contains calls for terrorism, coup d'état or promotes child pornography, violates any applicable law, content that advocates, endorses, condones or promotes racism, bigotry, hatred or physical harm of any kind against any individual or group of individuals, or (b) in the event User materially violates any limitations under section 5 (b) below, provided that such violation is not cured by User within 2 days after receiving a notice on violation.
- C. If Smartcat terminates User's access to the Platform for violation of this TOS, User will not be entitled to any refund of unused balance in User's account. If Smartcat terminates User's account for any reason, User is prohibited from registering and creating a new account under User's name, a fake or borrowed name, or the name of any third party, unless Smartcat gives express consent thereto. In addition to terminating or suspending User's account, Smartcat reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.
- D. Upon termination, all provisions of this TOS, which, by their nature, shall survive termination, including, without limitation, warranty disclaimers, indemnity and limitations of liability.

#### 5. LIMITATIONS



- A. The Platform may contain profiles, e-mail systems, blogs, message boards, chat areas, newsgroups, forums, communities and/or other message or communication facilities ("Public Areas") that allow a User to communicate with other Users. User may only use such community areas to send and receive messages and materials that are relevant and proper to the applicable forum.
- B. User agrees not to engage in any of the following conduct on the Platform:
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as, but not limited to, rights of privacy and publicity) of others, including Smartcat staff.
  - Publish, post, upload, distribute or disseminate any profane, defamatory, infringing, obscene or unlawful topic, name, material or information.
  - Upload content that is offensive and/or harmful, including, but not limited to, content that advocates, endorses, condones or promotes racism, bigotry, hatred or physical harm of any kind against any individual or group of individuals.
  - Use the Platform for any illegal purpose, including, but not limited to posting materials in violation of local, state, national, or international law.
  - Modify, adapt, appropriate, reproduce, distribute, translate, create derivative works or adaptations of, publicly display, sell, trade, or in any way exploit the Platform, except as expressly authorized by this TOS.
  - Upload files that contain software or other material that violates the intellectual property rights (or rights of privacy or publicity) of any third party.
  - Upload files that contain viruses, Trojans, corrupted files, or any other similar software that may damage the operation of another computer.
  - Post or upload any content to which User have not obtained any necessary rights or permissions to use accordingly.
  - Remove, circumvent, disable, damage or otherwise interfere with any security-related features of the Platform or features that enforce limitations on the use of the Platform.
  - Advertise or offer to sell any goods or services for any commercial purpose through the Platform which are not relevant to the services offered through the Platform.
  - Use the Platform to solicit for any other business, website or service, or otherwise contact Users for employment, contracting or any purpose not related to the use of the Platform as set forth herein.
  - Conduct or forward surveys, contests, pyramid schemes, or chain letters.
  - Impersonate another person or a User or allow any other person or entity to use User's identification to post or view comments.
  - Restrict or inhibit any other User from using and enjoying the Public Areas.
  - Imply or indicate that any statements User makes are endorsed by Smartcat, without Smartcat's prior written consent.
  - Use any robot, spider, site search/retrieval application, or other automated device, process or means to access, retrieve, scrape, or index any portion of the Platform.
  - Reverse engineer any portion of the Platform.
  - Hack or interfere with the Platform, its servers or any connected networks or disobey any requirements, procedures, policies or regulations of networks connected to the Platform.
  - Adapt, alter, license, sublicense or translate the Platform for User's own personal or commercial use.
  - Remove or alter, visually or otherwise, any copyrights, trademarks or proprietary marks or rights owned by Smartcat.
  - Upload content that provides materials or access to materials that exploit people under the age of 18 in an abusive, violent or sexual manner.
  - Use the Platform to collect usernames and/or email addresses of Users by electronic or other means.
  - Register under different usernames or identities, after User's account has been suspended or terminated.

- C. The Platform also provides functionalities, tools and API integration and interoperability features as set forth in the Smartcat API documentation available at <https://www.Smartcat.ai/api/>, to enable Client to create custom integrations with the Platform as a Premium Service. Client shall be solely responsible for enabling the interoperability of features with the Platform.

## 6. USER CONTENT

- A. Users are solely responsible for their content uploaded on the Platform. Smartcat is not responsible for the content uploaded by a specific User, however Smartcat reserves the right to investigate and take appropriate legal action against anyone who, in Smartcat's sole discretion, violates this provision, including, without limitation, removing the offending content from the Platform, suspending or terminating the account of such violators and reporting User to the law enforcement authorities.
- B. Any User that uploads its content on the Platform, grants Smartcat, its affiliates, subsidiaries and suppliers, a non-exclusive, royalty-free, transferable right to use, display, reproduce, distribute, and publish such content in connection with the features available on the Platform. Client hereby also grants Smartcat the right to refer to Client as a client in promotional materials by Client name and using Client logo in its unaltered form.
- C. Any User that uploads its content on the Platform acknowledges and agrees that Smartcat may preserve content and may also disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal processes, applicable laws or government requests; (ii) enforce this TOS; (iii) respond to claims that any content violates the rights of third parties; or (iv) protect the rights, property, or personal safety of Smartcat or the public.

## 7. DATA PROTECTION

- A. User understands that the technical processing and transmission of the Platform, including such User's content, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.
- B. User's content is encrypted as follows: Platform uses an HTTPS/TLS protocol to protect data in transit between User's computer and Smartcat servers, and a 256-bit Advanced Encryption Standard (AES) to protect data at rest.

## 8. INTELLECTUAL PROPERTY

- A. All Smartcat intellectual property rights such as text, graphics, editorial content, data, formatting, graphs, designs, HTML, look and feel, photographs, music, sounds, images, software, videos, designs, typefaces and other content (collectively "Proprietary Material") that Users see or read through the Platform is owned by Smartcat, excluding any User-generated content licensed to Smartcat pursuant to this TOS. Proprietary Material is protected in all forms, media and technologies now known or hereinafter developed. Smartcat owns all Proprietary Material, as well as the coordination, selection, arrangement and enhancement of such Proprietary Materials as a collective work under the applicable intellectual property legislation. The Proprietary Material is protected by the domestic and international laws on copyright, patents, and other proprietary rights and laws. User may not copy, download, use, redesign, reconfigure, or retransmit anything from the Platform without Smartcat's express prior written consent and, if applicable, the holder of the rights to the User content. Any use of such Proprietary Material, other than as permitted therein, is expressly prohibited without Smartcat prior permission and, if applicable, the holder of the rights to the User content.



- B. Smartcat service marks and trademarks, including, without limitation, Smartcat logos are service marks owned by Smartcat. Any other trademarks, service marks, logos and/or trade names appearing on the Platform are the property of their respective owners. User may not copy or use any of these marks, logos or trade names without the express prior written consent of the owner.

9. DISCLAIMER OF WARRANTY

- A. USER'S USE OF THE PLATFORM IS AT USER'S SOLE RISK. ALL SERVICES ON THE PLATFORM, INCLUDING PREMIUM SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SMARTCAT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
- B. UNLESS OTHERWISE PROVIDED IN A SEPARATE AGREEMENT BETWEEN SMARTCAT AND CLIENT, SMARTCAT MAKES NO WARRANTY THAT (I) THE PLATFORM WILL MEET USER'S REQUIREMENTS, (II) THE PLATFORM WILL BE UNINTERRUPTED, TIMELY (UP-TO-DATE), OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PLATFORM WILL BE ACCURATE OR RELIABLE, OR (IV) THE QUALITY OR FITNESS OF ANY DOCUMENTS, PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY USER THROUGH THE PLATFORM WILL MEET USER'S EXPECTATIONS.
- C. THE PLATFORM IS SECURED BY TAKING APPROPRIATE ADMINISTRATIVE, PHYSICAL, AND TECHNICAL MEASURES FOR PROTECTION OF THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF USER DATA, INCLUDING, BUT NOT LIMITED TO USING CERTIFIED SECURED DATA PROTOCOLS AND ENCRYPTING SENSIBLE DATA ("SMARTCAT SECURITY"). SMARTCAT SECURITY IS PROVIDED "AS IS" AND "AS AVAILABLE," AND SMARTCAT MAKES NO WARRANTIES THAT THE LEVEL OF SMARTCAT SECURITY SHALL BE RESISTANT TO POSSIBLE DDOS AND ANY OTHER TYPES OF ATTACKS ON THE PLATFORM AND CONSECUTIVELY BEARS NO LIABILITY WHATSOEVER IF THE AVAILABLE LEVEL OF SMARTCAT SECURITY IS NOT SUFFICIENT TO WITHSTAND ANY OF THE ABOVE MENTIONED ATTACKS.

10. LIMITATION OF LIABILITY

- A. IN NO EVENT SHALL SMARTCAT AND ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, OWNERS, INFORMATION PROVIDERS, AGENTS, LICENSEES, LICENSORS ("RELEASED PARTIES") BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA) WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EQUITY OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE PLATFORM, INCLUDING, WITHOUT LIMITATION, ANY ERRORS, OMISSIONS, INTERRUPTIONS, DEFECTS, DELAYS IN TRANSMISSION, ETC.
- B. UNLESS OTHERWISE PROVIDED IN A SEPARATE AGREEMENT BETWEEN SMARTCAT AND CLIENT, IN NO EVENT WILL SMARTCAT'S TOTAL LIABILITY TO A USER FOR DAMAGES, LOSSES OR CAUSES OF ACTION RESULTING FROM THE USE OF THE PLATFORM UNDER THIS TOS EXCEED \$100.
- C. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL

DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO A USER. IF A USER IS DISSATISFIED WITH ANY PORTION OF THE PLATFORM, USER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE THE USE OF THE PLATFORM.

11. RELEASE

- A. If the event of a dispute between Users, each User agrees to release the Released Parties from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute.
- B. USER HEREBY WAIVES CALIFORNIA CIVIL CODE §1542 (AND ANY ANALOGOUS LAW IN ANY OTHER APPLICABLE JURISDICTION) WITH RESPECT TO ANY SUCH DISPUTE BETWEEN USERS, WHICH PROVIDES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

12. INDEMNITY

User agrees to indemnify, defend and hold Released Parties harmless from and against any and all liabilities, claims, costs, including reasonable attorneys' fees, incurred by the Released Parties in connection with any third party demand, claims, action, suit, or loss arising as a result of, in connection with, or for (A) any breach by User of this TOS or any use by User of its account or the Platform; (B) any fraud or manipulation by User; (C) infringement based on information, data, files or other content submitted by User; (D) credit card fraud based on any information submitted by User; or (E) breach of payment obligations. User agrees to use User's best efforts to cooperate with Smartcat in the defense of any demand, claim, action or suit. Smartcat reserves the right to assume the exclusive defense of any matter subject to indemnification by User at Smartcat's own expense.

13. NO WAIVER

No waiver of any term of this TOS shall be deemed a further or continuing waiver of such term or any other term, and Smartcat's failure to assert any right or provision under this TOS shall not constitute a waiver of such right or provision.

14. ASSIGNMENT

This TOS, and any rights and licenses granted hereunder, may not be transferred or assigned by User, but may be assigned by Smartcat without restriction or notice.

15. THIRD PARTY LINKS

The Platform may contain links to third-party websites, advertisers, services, special offers, or other events or activities ("Third Party Services") that are not owned or controlled by Smartcat. Smartcat does not endorse or assume any responsibility for any such Third Party Services or their operators. If User accesses a Third Party Service from the Platform, User does so at User's own risk, and User understands that this TOS does not apply to User's use of such Third Party Service. User expressly releases Smartcat from any and all liability arising from User's use of any Third Party Service. Additionally, User's dealings with or



participation in Third Party Services found on the Platform, including payment and delivery of goods, and any other terms (such as warranties) are solely between User and the operators of such Third Party Services. User agrees that Smartcat shall not be responsible for any loss or damage of any sort relating to User's dealings with such Third Party Services operators.

#### 16. FEEDBACK

Smartcat welcomes User feedback about Premium Services and the Platform. Unless otherwise expressly declared, any communications sent to us by Users are deemed to be submitted on a non-confidential basis. User agrees that Smartcat may decide to publicize such contents at its own discretion. User agrees to authorize Smartcat to make use of such contents for free, and revise, modify, adjust and change contextually, or make any other changes as Smartcat may deem appropriate.

#### 17. CALIFORNIA USERS AND RESIDENTS

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about Smartcat must be addressed to our agent for notice and sent via certified mail to: Smartcat Platform Inc., 179 South Street, 6th Floor, Room 2, Boston MA 02111.

California users are also entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.



SmartCAT Platform Inc.  
490 Post Street, Ste. 526 San Francisco, CA 94102

**Invoice No. IVC-20-00560US**

Invoice Date: 24.02.2020  
Payer: Oakland Unified School District  
Payer legal address: 1000 Broadway, Oakland CA 94607  
Contact person of the Payer: Angel Ho  
EIN: -  
Client ID: f2edf1d5-bb95-4db7-a2d5-4c50a66fd163

Service	Name of the Order (project)	Unit	Number	Price per unit, USD, exclusive of VAT	Total cost of services, USD, exclusive of VAT
<b>Translation services</b>					
Smartcat Subscription	Smartcat Subscription (Essential - Annual)	MONTH	12	404	4848.00
Additional service	OCR	PAGE	5000	0.019	93.00
Additional service	Machine Translation	PAGE	5000	0.019	93.00
<b>Total:</b>					<b>5034.00</b>

Questions or concerns regarding this invoice? Please contact [support@smartcat.ai](mailto:support@smartcat.ai).



Payment Details:

Payee:	SmartCAT Platform Inc.
Bank:	Bank of America
SWIFT:	BOFAUS3N
Account number:	325041039883
ACH Routing number:	121000358
Wire Routing number:	026009593
Beneficiary account name:	SmartCAT Platform Inc.