

Platform Terms

PLEASE READ THESE ENTERPRISE TERMS (“**TERMS**”) CAREFULLY BEFORE USING THE PLATFORMS OFFERED BY CLOSEGAP INC. (“**CLOSEGAP**”). BY MUTUALLY EXECUTING ONE OR MORE SIGN-UP FORMS WITH CLOSEGAP WHICH REFERENCE THESE TERMS (EACH, A “**SIGN-UP FORM**”), YOU (“**PARTNER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL SIGN-UP FORMS, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS. IN ADDITION, ANY ONLINE SIGN-UP FORM WHICH YOU SUBMIT VIA CLOSEGAP’S STANDARD ONLINE PROCESS AND WHICH IS ACCEPTED BY CLOSEGAP SHALL BE DEEMED TO BE MUTUALLY EXECUTED. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND SUCH ENTITY TO THE TERMS OF THIS AGREEMENT. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. Sign-Up Forms: Access to the Platform. Upon mutual execution, each Sign-Up Form shall be incorporated into and form a part of the Agreement. For each Sign-Up Form, subject to Partner’s compliance with the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Sign-Up Form) Closegap grants Partner a nonexclusive, limited, personal, nonsubicensable, nontransferable right and license to internally access and use the Closegap product(s) and/or service(s) specified in such Sign-Up Form (collectively, the “**Platform**,” or “**Platforms**”) during the applicable Sign-Up Form Term (as defined below) for the internal business purposes of Partner, only as provided herein and only in accordance with Closegap’s applicable official user documentation for such Platform (the “**Documentation**”).

2. Access and Account Setup.

2.1. Partner Accounts. Closegap will provide Partner with access privileges that permit Partner to access and manage its Platform account (a “**Partner Account**”) and access, analyze and download Partner Data. Partner will identify an administrative username and password that will be used to set up Partner’s account. Partner must provide accurate and complete information and keep the Partner Account information updated. Partner is solely responsible for the activity that occurs on the Partner Account, and for keeping the Partner Account password secure. Partner may never use another person’s user account or registration information for Closegap’s Platforms without permission. Partner must notify Closegap immediately of any change in Partner’s eligibility to use Closegap’s Services (including any changes to or revocation of any licenses from state authorities), and of any discovered or otherwise suspected breach of security or unauthorized use of the Partner Account. Partner shall be responsible for the acts or omissions of any person who accesses the Platform using passwords or access procedures provided to or created by Partner.

2.2. Student Accounts. Subject to the terms and conditions herein, Closegap shall provide access to the platform to those individual students identified by Partner and who have agreed to be bound by Closegap’s User Agreement set forth at <https://www.closegap.org/user-agreement> (each,

a “**Student**”). A “**Named Student Account**” is defined as an account used for accessing the Platform which is associated with an individual User (regardless of whether such individual is actively using the Platform at any given time). Named Student Accounts may not be shared between individuals or used by any individual other than the individual associated with such Named Student Account.

3. Implementation. Upon payment of any applicable fees set forth in each Sign-Up Form, Closegap agrees to use reasonable commercial efforts to provide standard implementation assistance for the Platform (“**Implementation Assistance**”).

4. Platform Updates. From time to time, Closegap may provide upgrades, patches, enhancements, or fixes for the Platforms to its Partners generally without additional charge (“**Updates**”), and such Updates will become part of the Platforms and subject to this Agreement; provided that Closegap shall have no obligation under this Agreement or otherwise to provide any such Updates. Partner understands that Closegap may make improvements and modifications to the Platforms at any time in its sole discretion; provided that Closegap shall use commercially reasonable efforts to give Partner reasonable prior notice of any major changes.

5. Modification of Terms. Closegap reserves the right to change these Terms at any time, and if Closegap does so, Closegap will place a notice on its website, send Partner an email, and/or notify Partner by some other reasonable means. Any such changed Terms will apply to Partner upon the commencement of Partner’s next Renewal Term (as defined below). If Partner does not agree with the new Terms, Partner may reject them; but will no longer be able to use the Platforms. If Partner uses the Platforms in any way after a change to the Terms is effective, that means Partner agree to all of the changes. Except for changes by Closegap as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both Partner and Closegap.

6. Ownership: Feedback. As between the parties, Closegap retains all right, title, and interest in and to the Platforms, and all software, products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Closegap for the purposes of this Agreement, including any copies and derivative works of the foregoing. Any software which is distributed or otherwise provided to Partner hereunder (including without limitation any software identified on a Sign-Up Form) shall be deemed a part of the “**Platforms**” and subject to all of the terms and conditions of this Agreement. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Partner may (but is not obligated to) provide suggestions, comments or other feedback to Closegap with respect to the Platform (“**Feedback**”). Closegap acknowledges and agrees that all Feedback is provided “**AS IS**” and without warranty of any kind. Notwithstanding anything else, Partner shall, and hereby does, grant to Closegap a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. Nothing in this Agreement will impair Closegap’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform

the same or similar functions as, or otherwise compete with any products, software or technologies that Partner may develop, produce, market, or distribute.

7. Fees: Payment. Partner shall pay Closegap fees as set forth in each Sign-Up Form (“**Fees**”). Unless otherwise specified herein or in a Sign-Up Form, all Fees shall be invoiced annually in advance and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from date of invoice. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. Partner shall be responsible for all taxes associated with the Platform (excluding taxes based on Closegap’s net income). All Fees paid are non-refundable and are not subject to set-off. If Partner exceeds any user or usage limitations set forth on a Sign-Up Form, then (i) Closegap shall invoice Partner for such additional users or usage at the overage rates set forth on the Sign-Up Form (or if no overage rates are set forth on the Sign-Up Form, at Closegap’s then-current standard overage rates for such usage), in each case on a pro-rata basis from the first date of such excess usage through the end of the Sign-Up Form Initial Term or then-current Sign-Up Form Renewal Term (as applicable), and (ii) if such Sign-Up Form Term renews (in accordance with the section entitled “**Term; Termination**”, below), such renewal shall include the additional fees for such excess users and usage.

8. Restrictions. Except as expressly set forth in this Agreement, Partner shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Platform (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Platform; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Platform; (iv) use the Platform for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Platform or any portion thereof; (vi) use the Platform to build an application or product that is competitive with any Closegap product or service; (vii) interfere or attempt to interfere with the proper working of the Platform or any activities conducted on the Platform; or (viii) bypass any measures Closegap may use to prevent or restrict access to the Platform (or other accounts, computer systems or networks connected to the Platform). Partner is responsible for all of Partner’s activity in connection with the Platform, including but not limited to uploading Partner Data (as defined below) onto the Platform. Partner (a) shall use the Platform in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Partner’s use of the Platform (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (b) shall not use the Platform in a manner that violates any third party intellectual property, contractual or other proprietary rights.

9. Confidential Information. From time to time during the Term (as defined below), either party may disclose or make available to the other party nonpublic information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information (collectively, “**Confidential**

Information”). For the avoidance of doubt, Closegap’s Confidential Information includes without limitation the Platforms and any product roadmap information. Confidential Information does not include information that, at the time of disclosure is: (a) generally available to the public; (b) known to the receiving party at the time of disclosure without restriction; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party without access to or use of the Confidential Information. As the receiving party, each party will (a) hold Confidential Information in confidence and not disclose it to any person or entity, except to the receiving party’s employees, consultants, agents or representatives who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and (b) only use Confidential Information to fulfill its obligations and exercise its rights under this Agreement. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order will first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party’s rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving party will promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party’s Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party’s obligations with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date such Confidential Information is first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations will survive for as long as such Confidential Information remains subject to trade secret protection under applicable law.

10. Data.

10.1. Partner Data. For purposes of this Agreement, “**Partner Data**” will mean any data, information or other material uploaded or submitted by Partner to Closegap, including to the Platform, in the course of using the Platform. Partner shall retain all right, title and interest in and to the Partner Data, including all intellectual property rights therein. Partner, not Closegap, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Partner Data. Partner represents and warrants that it has all rights necessary to provide the Partner Data to Closegap as contemplated hereunder, in each case without any infringement, violation or misappropriation of any third party rights (including, without limitation, intellectual property rights and rights of privacy). Partner is responsible for the use of the Platform by any person to whom Partner has given access to the Platform or any person who accesses the Platform using a Partner account. Partner agrees and acknowledges that Partner Data may be irretrievably deleted if Partner’s account is ninety (90) days or more delinquent. To the extent that the Partner



Data includes any personal information, (i) Closegap will process, retain, use, and disclose such personal information only as necessary to provide the Platforms hereunder and as otherwise permitted under this Agreement, which constitutes a business purpose, (ii) Closegap agrees not to sell such personal data, to retain, use, or disclose such personal data for any commercial purpose other than the foregoing purposes, or to retain, use, or disclose such personal data outside of the scope of this Agreement. Closegap understands its obligations under applicable data protection laws and will comply with them.

10.2. Closegap's Use of Partner Data. Closegap may (i) use and modify Partner Data for the purposes of (A) providing the Platform to Partner, (B) testing, improving and operating Closegap's products and services, and (C) generating Aggregated Anonymous Data (as defined below), and (ii) freely use and make available Aggregated Anonymous Data for Closegap's business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing Closegap's products and services). "**Aggregated Anonymous Data**" means data submitted to, collected by, or generated by Closegap in connection with Partner's use of the Platform, which may include Student Data, but only in aggregated, de-identified form which can in no way be linked specifically to Partner. In the event that Closegap becomes aware that any data or Partner Data has been accessed, processed, used, transmitted or destroyed in an unauthorized manner, then Closegap shall promptly (a) notify Partner of such incident, (b) investigate such incident, (c) commence using its best efforts to resolve such incident and prevent its recurrence, and (d) reasonably cooperate with Partner on any associated investigation and damage mitigation efforts. Closegap will use commercially reasonable efforts in accordance with generally-accepted industry practices to secure the Platform and Partner Data contained therein, if any, against unauthorized access or disclosure and to protect against breaches of such security.

11. Privacy.

11.1. Closegap's Data Processing. Closegap processes Personal Information in accordance with applicable portions of Closegap's Privacy Policy (Privacy Policy), which can be accessed at <https://www.closegap.org/privacypolicy>. Personal Information means information that identifies, could reasonably identify, or otherwise relates to a natural person that is protected under applicable privacy laws, including voice audio. Closegap shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Personal Information received from, or on behalf of Partner or its students.

11.2. Privacy Law Compliance. Partner will at all times comply with all applicable international, federal, state, and local laws, rules, and regulations, including any related to the privacy, confidentiality, and/or security of protected Personal Information. Partner is responsible for providing all disclosures and obtaining all necessary and required consents from parents and pupils to: (i) deploy and use the Platform in its classrooms and facilities; (ii) share, enable the provision of, or otherwise make available Educator and Student information to Partner, including Personal Information and Content; and (iii) permit Closegap to use Partner, Educator, and Student information, including Personal Information,

each as necessary to provide the particular service or offering.

11.3. Family Education Rights and Privacy Act (FERPA). To the extent Partner is subject to FERPA, Partner determines that Closegap has a "legitimate educational interest" in carrying out its duties in performance of this Agreement and agrees to designate Closegap as a "school official" as the term is used in FERPA 34 CFR Section 99.31. Closegap shall remain under the direct control of the Partner with respect to the use and maintenance of student "personally identifiable information" from "education records," (each as defined in, and subject to the exceptions of, FERPA), shall perform an institutional service or function for which the Partner would otherwise use employees, and shall use and share student personally identifiable information, including voice audio, only for the limited purpose of providing the Closegap Platform and the services consistent with in 34 CFR 99.33 (a). Closegap agrees not use or disclose data regulated by FERPA and received from or on behalf of Partner (or its students) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by Partner.

11.4. Children's Online Privacy Protection Act (COPPA). Partner represents and warrants that it will act as an agent for parents or guardians of students under thirteen (13) years of age for purposes of COPPA and has obtained advance written consent from all such parents or guardians consistent with COPPA's requirements such that Partner is duly authorized to provide the students' data to Closegap for processing based on having obtained parental or guardian consent where necessary. Partner is responsible for understanding how Closegap's Platform may collect and use information of users of the Platform, including children. When obtaining consent from parents or guardians, Partner must provide them with Closegap's Privacy Policy located at <https://www.closegap.org/privacypolicy>. Partner must keep all consents on file and provide them to Closegap if Closegap requests them. If Partner is entering into this agreement on behalf of a school or school district, Partner will only grant access codes to teachers and staff members who are current employees of Partner's school or district. Upon termination of a teacher or other staff member's employment with Partner, Partner will require such individual to return and cease using all access codes he or she has in his or her possession. If at any time Partner learns a user of the Platform claims to be affiliated with Partner's school or district who is not, in fact, affiliated with your school or district, Partner will notify Closegap immediately. For more information on COPPA, please see <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/children%27s-privacy>.

12. Third Party Materials. Partner acknowledges and agrees that: (i) the Platform may incorporate certain information, data and materials received from Closegap's third party mental health professionals, licensors and data vendors ("**Third Party Materials**"); (ii) Third Party Materials may only be used in conjunction with the Platform; and (iii) Partner's use of the Third Party Materials shall be subject to (and Partner agrees it is bound by) any additional terms and conditions applicable to use of such Third Party Materials, as they may be provided and/or modified from time to time by Closegap and/or its third party mental health professionals, licensors and data vendors. Closegap cannot and does not guarantee that the Platform shall incorporate (or continue



to incorporate) any particular Third Party Materials.

13. Warranties.

13.1. Partner represents and warrants to Closegap that: (i) Partner has, and shall have at all times during the term, all necessary rights, title and interest, and has or shall have obtained all consents or other clearances necessary, to share the Partner Data with Closegap and to authorize Closegap to use the Partner Data as set forth herein; (ii) Partner shall pay all costs and fees associated with licensing, maintaining, and renewing the Partner Data during the term; and (iii) if Partner shared Partner Data in error, or did not have the necessary rights to share such data, Partner will immediately obtain such rights as necessary for Closegap to perform its obligations and exercise its rights hereunder. Partner acknowledges and agrees that Students must accept Closegap's then-current User Agreement and Privacy Policy and that Closegap shall have no obligation to provide the Platform to Students who have not done so.

13.2. Each party represents and warrants to the other that it: (i) has all necessary authority to enter into this Agreement; and (ii) will comply with all laws to the extent applicable to its performance hereunder, including, without limitation, the Family Education Rights and Privacy Act ("**FERPA**") and the Children's Online Privacy Protection Act ("**COPPA**").

14. Term: Termination. This Agreement shall commence upon the date of the first Sign-Up Form, and, unless earlier terminated in accordance herewith, shall last until the expiration of all Sign-Up Form Terms. For each Sign-Up Form, unless otherwise specified therein, the "Sign-Up Form Term" shall begin as of the effective date set forth on such Sign-Up Form, and unless earlier terminated as set forth herein, (x) shall continue for the initial term specified on such Sign-Up Form (the "**Sign-Up Form Initial Term**"), and (y) following the Sign-Up Form Initial Term, shall automatically renew for additional successive periods of equal duration to the Sign-Up Form Initial Term (each, a "**Sign-Up Form Renewal Term**") unless either party notifies the other party of such party's intention not to renew no later than thirty (30) days prior to the expiration of the Sign-Up Form Initial Term or then-current Sign-Up Form Renewal Term, as applicable. In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by providing written notice to the breaching party, provided that the breaching party does not materially cure such breach within thirty (30) days of receipt of such notice. Without limiting the foregoing, Closegap may suspend or limit Partner's access to or use of the Platform if (i) Partner's account is more than sixty (60) days past due, or (ii) Partner's use of the Platform results in (or is reasonably likely to result in) damage to or material degradation of the Platform which interferes with Closegap's ability to provide access to the Platform to other Partners; provided that in the case of subsection (ii): (a) Closegap shall use reasonable good faith efforts to work with Partner to resolve or mitigate the damage or degradation in order to resolve the issue without resorting to suspension or limitation; (b) prior to any such suspension or limitation, Closegap shall use commercially reasonable efforts to provide notice to Partner describing the nature of the damage or degradation; and (c) Closegap shall reinstate Partner's use of or access to the Platform, as applicable, if Partner remediates the issue within thirty (30) days of receipt

of such notice. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, accrued payment obligations, ownership provisions, warranty disclaimers, indemnity and limitations of liability. For clarity, any services provided by Closegap to Partner, including any assistance in exporting the Partner Data, shall be billable at Closegap's standard rates then in effect.

15. Free Offering. Closegap may make the Platform or certain editions of the Platform (e.g., a free subscription, or similar version) available to Partner free of charge ("**Free Offerings**"). Notwithstanding anything else, (i) if Partner provides any Partner Data in connection with a Free Offering, Closegap shall have no obligations with respect to such Partner Data, and Closegap expressly disclaims any liability with respect to such Partner Data, (ii) Free Offerings are provided "AS-IS," without warranty of any kind, and (iii) Closegap shall have no obligations under Section 15 (Indemnification) or liability of any kind with respect to Free Offerings (unless such exclusion of liability is not enforceable under applicable law, in which case Closegap's liability with respect to the Free Offerings shall not exceed \$100.00).

16. Indemnification. Each party ("**Indemnitor**") shall defend, indemnify, and hold harmless the other party, its affiliates and each of their respective employees, contractors, directors, suppliers and representatives (collectively, the "Indemnitee") from all losses, liabilities, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys' fees) ("**Losses**"), that arise from or relate to any claim by such third party that (i) the Partner Data or Partner's use of the Platform (in the case of Partner as Indemnitor), or (ii) the Platform (in the case of Closegap as Indemnitor), infringes, violates, or misappropriates any intellectual property or proprietary right of such third party; provided that the Indemnitee provides the Indemnitor with: (x) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (y) the option to assume sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (z) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor's expense). The foregoing obligations of Closegap do not apply (A) with respect to the Platform or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (1) not created or provided by Closegap (including without limitation any Partner Data), (2) made in whole or in part in accordance to Partner specifications, (3) modified after delivery by Closegap, (4) combined with other products, processes or materials not provided by Closegap (where the alleged Losses arise from or relate to such combination), (B) where Partner continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (C) to the extent Losses arise from Partner's breach of this Agreement.

17. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT,

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

18. Limitation of Liability. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS AND FOR PARTNER'S BREACH OF THE SECTION ENTITLED "RESTRICTIONS", IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY PARTNER TO CLOSEGAP HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

19. Miscellaneous. This Agreement (including all Sign-Up Forms) represents the entire agreement between Partner and Closegap with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Partner and Closegap with respect thereto. In the event of any conflict between these Terms and a Sign-Up Form, the Sign-Up Form shall control. The Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules, and the parties consent to exclusive jurisdiction and venue in the state and federal courts located in Los Angeles, California. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for each party set forth on the Sign-Up Form. Either party may update its address set forth above by giving notice in accordance with this section. Except as otherwise provided herein, any provision of this Agreement may be amended or waived only by a writing executed by both parties. Except for payment obligations, neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such party's reasonable control, including, without limitation, the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that (i)

either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement, and (ii) Closegap may utilize subcontractors in the performance of its obligations hereunder. Partner agrees that Closegap may use Partner's name and logo to refer to Partner as a Partner of Closegap on its website and in marketing materials. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.

