

APPENDIX D

CLEARVIEW ELITE™ MARKETING SOLUTION SERVICES AGREEMENT

TERMS AND CONDITIONS OF USE

THESE TERMS AND CONDITIONS OF USE (“TERMS AND CONDITIONS”) APPLY TO YOU (“YOU” OR “USER” AND “YOUR”) AND YOUR USE OF CLEARVIEW ELITE™ BRAND PRODUCTS AND SOFTWARE, A SERVER HOSTED BY CLEARVIEW ELITE, LLC, AN IDAHO LIMITED LIABILITY COMPANY (THE “COMPANY”) OR BY A THIRD-PARTY HOSTING PROVIDER ON THE COMPANY’S BEHALF, AND THE USE OF THE WWW.CLEARVIEWELITE.COM WEBSITE AND ANY ASSOCIATED SUBDOMAINS AND NETWORKED MOBILE APPLICATIONS (COLLECTIVELY, THE “CLEARVIEW ELITE PLATFORM”).

BY USING THE CLEARVIEW ELITE PLATFORM YOU ACCEPT AND AGREE TO THESE TERMS AND CONDITIONS. IT IS IMPORTANT THAT YOU READ THE ENTIRETY OF THESE TERMS AND CONDITIONS BEFORE ACCEPTING THEM. IF YOU ARE ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THESE TERMS AND CONDITIONS AND MAY NOT USE THE CLEARVIEW ELITE PLATFORM. YOUR USE OF THE CLEARVIEW PLATFORM IS CONDITIONED ON YOUR ACCEPTANCE OF, AND COMPLIANCE WITH THESE TERMS AND CONDITIONS. WE ENCOURAGE YOU TO REVIEW THESE TERMS AND CONDITIONS WITH YOUR LEGAL COUNSEL BEFORE ACCEPTING THEM. PLEASE ALSO PRINT OUT AND RETAIN A COPY OF THESE TERMS AND CONDITIONS IN YOUR RECORDS.

THESE TERMS AND CONDITIONS WERE LAST UPDATED BY US ON JULY 29, 2019. WE MAY AT ANY TIME, WITHOUT PRIOR NOTICE TO YOU, REVISE THESE TERMS AND CONDITIONS, WHICH REVISIONS WILL BE EFFECTIVE IMMEDIATELY.

1. DEFINITIONS

In addition to the terms otherwise defined in this Agreement, for purposes of this Agreement, the following terms have the meanings set forth below:

- 1.1. “**Agreement**” or “**this Agreement**” means these Terms and Conditions together with the Privacy Policy at <http://clearviewelite.com/privacy-policy> and any other exhibits, schedules, attachments and other documents establishing Your use of the Clearview Elite Platform.
- 1.2. “**Clearview**” means the Company.
- 1.3. “**Client**” means You.
- 1.4. “**Content**” means the marketing content which may be accessed by the Client and its End Users.

- 1.5. “**End Users**” means You, Your employees and other agents of Client that use the Service.
- 1.6. “**Marks**” means the trademarks, service marks, and/or trade names of each Party including, without limitation, Clearview’s Clearview EliteTM.
- 1.7. “**Parties**” means You and Clearview.
- 1.8. “**Party**” means You or Clearview, as the context requires.
- 1.9. “**Privacy Policy**” means the Privacy Policy at <http://clearviewelite.com/privacy-policy>.
- 1.10. “**Service**” means, collectively, the marketing services provided by Clearview to Client as set forth in Your Clearview Elite Services Agreement and the exhibits thereto.
- 1.11. “**User Data**” means (a) any and all information reflecting access and usage of the Service; and (b) all available information about End Users, including leads and all other information directly or indirectly submitted by, or obtained from, End Users or Client.

2. GENERAL USAGE

These Terms and Conditions apply to you, the End User of the Clearview Elite Platform, including without limitation, Your administrative assistant and/or other employees or independent contractors. The Clearview Elite Platform may contain links to third-party websites that are not owned or controlled by the Company; the Company has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites. In addition, the Company will not and cannot censor or edit the content of any third-party site. By using the Clearview Elite Platform, you expressly relieve the Company from any and all liability arising from your use of any third-party website. Accordingly, we encourage you to be aware when you leave the Clearview Elite Platform and to read the terms and conditions and privacy policy of each other website that you visit. YOU MAY BE ASKED TO ENTER INTO CONTRACTS WITH THOSE THIRD-PARTY SITES OR THEIR OWNERS OR OPERATORS BY VIRTUE OF YOUR CLICKING ON A LINK ON THIS SITE AND BEING TRANSPORTED TO THE EXTERNAL THIRD-PARTY SITE(S). YOU UNDERSTAND AND ACCEPT THE RISK OF PERHAPS BEING REQUIRED TO ENTER INTO SUCH THIRD-PARTY CONTRACTS AS A CONDITION OF YOUR RECEIVING THE SERVICES PROVIDED BY THE CLEARVIEW ELITE PLATFORM AND THE LINKED THIRD-PARTY SITES AND THAT THE COMPANY IS NOT RESPONSIBLE FOR YOUR ACTIONS OR INACTIONS IN CONNECTION WITH ANY THIRD-PARTY SITE.

To view or access all the features of the Clearview Elite Platform, your web browser may require additional third-party software, also known as plug-ins, add-ons, extensions, etc. The Company makes no warranties that this third-party software will be compatible with your computer and specifically disclaims any liability for direct or consequential damages that arise when you download, install, or use third-party software to access the content or features of the Clearview Elite Platform.

3. CLEARVIEW ELITE PLATFORM ACCESS

The Company hereby grants you a limited, revocable license to use the Clearview Elite Platform subject to your compliance with these Terms and Conditions and conditioned upon: (i) your use of the Clearview Elite Platform solely as permitted hereby; (ii) you will not copy or distribute any part of the Clearview Elite Platform in any medium without the Company’s prior written authorization; (iii) you will not alter or

modify any part of the Clearview Elite Platform other than as may be reasonably necessary to use the Clearview Elite Platform for its intended; (iv) you will not register or obtain domain names, Twitter handles, Facebook pages, or Instagram, Pinterest or other social media accounts using or incorporating any Company intellectual property, including but limited to its trademarks; and (v) you will otherwise comply with these Terms and Conditions.

In order to access the Clearview Elite Platform, you will have to create an account. You may never use another's account without the Company's permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify the Company immediately of any breach of security or unauthorized use of your account. Although the Company will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of the Company or others due to such unauthorized use.

You agree not to use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that accesses the Clearview Elite Platform in a manner that sends more request messages to the servers in a given period of time than a human can reasonably produce in the same period by using a conventional web browser. You agree not to collect or harvest any personally identifiable information, including account names, from the Clearview Elite Platform, and not to use the communication systems provided by the Clearview Elite Platform for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Clearview Elite Platform.

4. INTELLECTUAL PROPERTY RIGHTS.

4.1. **Rights in Property.** The Parties acknowledge that, as between them: (a) Clearview shall at all times own all rights, title, and interests in and to the Clearview Property and the products and services being provided under this Agreement; and (b) You and Your licensors shall at all times own all rights, title, and interests in and to the Client Property. As used herein, "Clearview Property" shall mean: the Clearview name and all intellectual property associated therewith and with the Clearview Elite Platform, including, without limitation, Clearview's Marks; the software and all other intellectual property associated with the products and services being provided by Clearview pursuant to the terms hereof; and all other intellectual property owned, leased, licensed or developed by Clearview whether or not done so in conjunction with the services being provided to Client. As used herein, "Client Property" shall mean Your Marks and the content provided by You that specifically relates to Your business and the real estate being marketed using the products and services provided by Clearview. Without limiting the generality of the foregoing, You agree that You shall not attempt nor engage anyone else to attempt to reverse engineer the software or system of delivering the services and products provided by Clearview to You pursuant to the terms hereof. Notwithstanding all other provisions of this Agreement to the contrary, (i) You acknowledge and agree that as part of the Service provided by Clearview, You may upload your personal client list into the Clearview Elite Platform and (ii) Clearview hereby agrees that it will not sell, distribute or otherwise use User Data except to provide You the Services to be provided pursuant to this Agreement, for its internal uses, and as otherwise allowed for in this Agreement and (iii) Clearview hereby acknowledges that no other parties have access to your personal client list or any other proprietary information uploaded by You into the Clearview Elite Platform.

4.2. **Reference.** During the term of this Agreement, each Party shall have the right to use the other Party's name and Marks in a legal and appropriate fashion, in marketing and promotional materials referencing the relationship established by this Agreement. That right shall immediately Terminate upon the Expiration or earlier termination of this Agreement. You hereby agree and acknowledge that the Content and marketing material contained therein will contain, in a

reasonably unobtrusive location and format to be determined by Clearview, a reference to Clearview's service. As an example of the foregoing, such reference might take the form of a statement at the bottom of a web page reading "Powered by Clearview Elite" and a link to Clearview's website.

- 4.3. **Reference.** Please do not send unsolicited ideas to Clearview, including but not limited to ideas for advertising campaigns, promotions, products, product improvements, processes, materials, marketing plans, or product names. Neither Clearview nor any of its employees accept or consider unsolicited ideas. This policy is intended to avoid misunderstandings or disputes when Clearview products, services, or marketing strategies seem similar to unsolicited ideas that were submitted to Clearview.

If, despite our request that You not send us your ideas, You still send them, then regardless of what Your submission states, the following terms shall apply to your submission: (1) You agree that Your ideas will automatically become the property of Clearview, without compensation to You, and (2) You agree that Clearview can use the ideas for any purpose and in any way and even give them to others.

Clearview does, however, welcome Your feedback regarding many areas of our existing business. If You want to send us Your feedback—and we hope You do—just use our "Contact Us" page <http://clearviewelite/contact> Please provide only specific feedback on our existing products or marketing strategies (in other words, do not include any unsolicited ideas that our policy will not permit us to accept or consider).

5. CONFIDENTIALITY

- 5.1. **Basic Terms.** During the term of this Agreement, confidential or proprietary information will be transmitted or otherwise provided by or on behalf of one Party (the "Discloser") to the other Party (the "Recipient"). Both Parties shall maintain and preserve to the maximum extent permitted by law the confidentiality of any such information and shall be entitled to obtain injunctive relief as required to enforce these provisions. Notwithstanding anything to the contrary in this Agreement, Recipient agrees that Recipient will not use or disclose any "nonpublic personal information" on a "consumer" or "customer" of Discloser or any of its affiliates that is made available to or provided to the Recipient by the Discloser (excluding "nonpublic personal information" already in Recipient's possession from other sources) ("Consumer/Customer Information") for any purpose other than as required for the performance of the Recipient's obligations under this Agreement. Recipient will take all reasonable measures, including without limitation such measures as it takes to safeguard its own confidential information, to (i) ensure the security and confidentiality of all such Customer/Consumer Information, (ii) protect against anticipated threats or hazards to the security or integrity of such Customer/Consumer Information, and (iii) protect against unauthorized access to or use of such Customer/Consumer Information, including but not limited to the proper disposal of such information. Recipient further agrees to promptly notify Discloser in the event that any Customer/Consumer Information is accessed by any unauthorized person while in the custody of Recipient or any of its affiliates or subcontractors, and to indemnify Discloser against for cost of providing any legally required notice to its customers of such event. In addition, Recipient, including its affiliates, will not disclose such Customer/Consumer Information to any third party unless the Recipient obtains the prior written consent of Discloser, except as otherwise required by law. For purposes of this section, the terms "nonpublic personal information," "consumer" and "customer" shall have the meanings set forth in title V of the Gramm-Leach-Bliley Act and its implementing regulations, and this section shall survive termination of this Agreement.

- 5.2. **Definition.** “**Confidential Information**” means any information: (a) designated in writing by either Party as confidential; or (b) if orally disclosed, identified at the time of disclosure as confidential and acknowledged by both parties as such; or (c) uploaded client lists into the Clearview Elite Platform; or (d) that should reasonably be understood to be of a confidential nature. “Confidential Information” does not include any information which the receiving Party can show, by documentary evidence: (a) has become, through no act or fault of the receiving Party, publicly known; (b) is received by the recipient from a third party without a restriction on disclosure or use; or (c) is independently developed by the receiving Party without reference to or use of the disclosing Party’s Confidential Information.
- 5.3. **Confidentiality Obligations.** Each Party shall treat as confidential all Confidential Information of the other Party and, shall not use such Confidential Information, except as set forth herein. Each Party shall implement reasonable procedures to prohibit the disclosure, duplication, misuse or removal of the other Party’s Confidential Information. Each Party shall disclose the other Party’s Confidential Information to employees on a need to know basis only and shall not disclose the other Party’s Confidential Information to any third party without such Party’s prior written consent. Without limiting the foregoing, each of the Parties shall use at least the same procedures and degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other Party under this Agreement, but in no event less than reasonable care under the circumstances.
- 5.4. **Equitable Relief.** Each Party acknowledges that its breach of the obligations set forth in this Section may result in immediate and irreparable harm to the other Party, for which there will be no adequate remedy at law, and that, notwithstanding any provision herein to the contrary, the other Party will be entitled to equitable relief in addition to any other legal relief available to it.

6. REPRESENTATIONS AND WARRANTIES.

- 6.1. **Representations and Warranties.** Each of Clearview (with respect to the Clearview Property) and You (with respect to the Client Property) represents and warrants that to the best of its knowledge: (a) it owns, or has properly obtained all appropriate rights to such works for purposes of performing its obligations hereunder; and (b) none of such works violate any third party’s U.S. intellectual property rights or any rights of publicity or privacy, or is defamatory, obscene, indecent, or constitutes trade libel or child pornography; and (c) it will comply with all applicable, federal, state, and local laws in the performance of its obligations hereunder.
- 6.2. **Disclaimer of Warranties.** THE WARRANTIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND/OR QUALITY OF SERVICE. CLEARVIEW DOES NOT WARRANT THAT THE SERVICE WILL MEET YOUR, OR ANY END USERS’ REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT AS PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED “AS IS.” FURTHERMORE, CLEARVIEW DOES NOT WARRANT OR MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE USE OF THE SERVICE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.
- 6.3. **Objectionable Subject Matter.** Clearview reserves the right to reject any Client Property or

submissions which exhibit expressions of abuse, offensive language and imagery, obscenity, or pornography, including but not limited to, child abuse, child pornography, or explicitly sexual situations, or any other material that could give rise to any civil or criminal liability under applicable state or federal law, or violating any laws or regulations of any governing body having jurisdiction over Clearview.

7. INDEMNIFICATION.

- 7.1. **Indemnity.** Subject to Section 8.3, each Party shall pay the defense costs of and indemnify and hold harmless the other Party, its officers, directors, shareholders, members, employees, independent contractors, and agents from and against any and all third party claims and any damages or, costs, including reasonable attorneys' fees, reasonably incurred and awarded in the defense or settlement of any such claim arising out of or relating to any breach of the representations and warranties contained in Section 7.1.
- 7.2. **End User Indemnification.** Subject to Section 8.3, You shall pay the defense costs of and indemnify and hold harmless Clearview, its officers, directors, shareholders, members, employees, independent contractors, and agents (collectively, the "Clearview Parties") from and against any and all claims, liabilities and costs, including reasonable attorneys' fees, reasonably incurred and finally awarded in the defense of any claim or suit brought against Clearview by third parties which were caused in whole or in part by Your acts or omissions or the acts or omissions of Your End Users.
- 7.3. **Mechanics of Indemnity.** The indemnifying Party's obligations are conditioned upon the indemnified Party: (a) giving the indemnifying Party prompt written notice of any claim for which the indemnified Party is seeking indemnity; (b) granting control of the defense and settlement of such claim to the indemnifying Party; and (c) reasonably cooperating with the indemnifying Party, at the indemnifying Party's expense.

7. LIMITATION OF LIABILITY. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 8, NEITHER PARTY IS LIABLE FOR ANY CLAIMS. NEITHER PARTY IS LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID HEREUNDER. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, BASED UPON A CLAIM OF ANY TYPE OR NATURE (INCLUDING BUT NOT LIMITED TO CONTRACT AND TORT INCLUDING NEGLIGENCE, WARRANTY OR STRICT LIABILITY), OR CLAIMS ARISING FROM THE TERMINATION OF THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. GENERAL PROVISIONS.

- 8.1. **Ability to Accept Terms and Conditions.** You affirm that you are either 18 or more years of age on the date at your location at which you click on "I Agree," are an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms and Conditions, and to abide by and comply with these Terms and Conditions.
- 8.2. **Acceptance of Terms and Conditions by Clearview.** You or, if applicable, your employer or independent contractor, may request or authorize the Company to access your computer

or mobile device on your behalf in order to implement the Clearview Elite Platform or upload or store your information thereon and, in such event, you agree and acknowledge that the Company is authorized and directed to accept these Terms and Conditions on your behalf (including, without limitation, by affirmatively clicking through any prompts relating to these Terms and Conditions or the Clearview Elite Platform). You agree that these Terms and Conditions are binding on you, and you shall comply fully with them, even if the Company accepts these Terms and Conditions, accesses your computer or mobile device on your behalf in order to implement the Clearview Elite Platform or upload or store your information thereon, or affirmatively clicks-through any prompts relating to these Terms and Conditions or the Clearview Elite Platform on your behalf.

- 8.3. **Governing Law.** You agree that: (i) the Clearview Elite Platform is to be deemed to be based solely in Idaho, USA; and (ii) the Clearview Elite Platform is to be deemed a passive website that does not seek to purposefully avail itself of the benefits and privileges of doing business in any state other than Idaho and thus does not give rise to personal jurisdiction over the Company, either specific or general, in jurisdictions other than Idaho. These Terms and Conditions shall be governed by the internal substantive laws of the State of Idaho, without respect to its conflict of laws principles. Any claim or dispute between you and the Company that arises in whole or in part from the Clearview Elite Platform shall be decided exclusively by a court of competent jurisdiction located in county in which the Company's principal offices are located.
- 8.4. **Severability; Waiver.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision, which most closely approximates the original intent and economic effect of the invalid provision. Any waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 8.5. **Survival.** In addition to any other provisions that expressly survive the expiration or earlier termination of this Agreement, the provisions in Articles 4 through Article 10 shall survive expiration or earlier termination of this Agreement.
- 8.6. **Assignment.** You may not assign or transfer Your rights or obligations under this Agreement without the Clearview's prior written consent. Clearview may assign or transfer its rights and obligations under this agreement in its sole and absolute discretion so long as the assignee or transferee agrees, in writing, to perform Clearview's obligation under this Agreement.
- 8.7. **Notices.** Except as otherwise set forth in this Agreement, any notices required or permitted hereunder shall be either personally delivered or sent by certified or registered mail to the appropriate Party at the address specified in Your Clearview Elite Services Agreement or at such other address as the Party shall specify in writing from time to time or via e-mail, if to Clearview to support@clearview.com, and if to You, to the e-mail address of record for your account with Clearview. Written notices shall be deemed effective upon personal delivery or if sent by certified or registered mail, postage prepaid, five (5) days after the

date of mailing. E-mail Notices shall be deemed delivered the day immediately following the day it was sent.

- 8.8. Independent Contractors. Clearview and You are each independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither Party shall have the power to obligate or bind the other Party.
- 8.9. Entire Agreement. The Agreement, as defined above, sets forth the entire understanding and agreement of the Parties and supersedes any and all oral or written agreements or understandings between the Parties as to the subject matter of this Agreement. Neither Party is relying upon any warranties, representations, assurances, nor inducements not expressly set forth herein.
- 8.10. Force Majeure. Neither Party shall be liable for any delay or nonperformance of any provision of this Agreement due to fire, explosion, flood, earthquake or other national catastrophe; governmental legislation, act, orders or regulations; strikes or labor difficulties; computer, software, telecommunications, or electrical failure or virus or other Internet attacks by hackers to the extent any such event is not occasioned by the negligence of the delayed Party. A Party's payment obligations under this Agreement will not be excused due to a force majeure event. Clearview shall undertake best efforts to remedy any delay in manufacturing or delivery resulting from any cause within or beyond its control. Clearview shall notify You as promptly as practicable of the occurrence of a force majeure event hereunder.
- 8.11. Amendment. The Company may amend these Terms and Conditions at any time. If you wish to be notified of any changes to these Terms and Conditions, You must e-mail us at support@clearviewelite.com, and if your e-mail address changes at any time, you are responsible for notifying us of your new address by sending an e-mail to support@clearviewelite.com. If you choose not to be notified of any changes to these Terms and Conditions by not complying with the preceding e-mail notification requirements, you thereby waive your right to notification and agree that you are responsible for reviewing these Terms and Conditions each time you visit this Clearview Elite Platform. In all cases, your use of the Clearview Elite Platform following any amendment of these Terms and Conditions will signify your assent to and acceptance of its revised terms, even if we fail to send you an e-mail notification. CONTACTING US VIA E-MAIL FOR THE PURPOSES SET FORTH ABOVE CONSTITUTES YOUR OPTING-IN TO RECEIVE E-MAIL COMMUNICATIONS FROM US FOR PURPOSES OF THE UNITED STATES CAN-SPAM ACT.