

These Terms of Use ("*Terms*") govern your access to and use of the applications, websites, content, products, and services ("*Fotello Service*," as more fully defined below in Section 1) made available by Bonne Idee, LLC ("*Company*").

PLEASE READ THESE TERMS CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND COMPANY.

By accessing or using the Fotello Service, you, an individual ("*you*"), confirm your agreement to be bound by these Terms. If you do not agree to these Terms, you may not access or use the Fotello Service. These Terms expressly supersede prior agreements or arrangements between you and Company. In these Terms, the words "including" and "include" mean "including, but not limited to."

### **1. The Fotello Service**

Fotello, Inc. ("*Fotello*") provides a marketplace where persons who seek local services can be matched with persons who provide local services. This marketplace is accessible online at Fotello.com and through its other systems, websites, and mobile applications.

The Fotello Service enables users to describe and submit requests for local services. Local services include taking pictures and shooting video ("*Local Services*"). Specific requests for Local Services ("*Jobs*") are described and submitted by an individual authorized by Fotello to use the Fotello Service ("*Client*"). Company, a subsidiary of Fotello, offers and, if accepted, assigns these Jobs for completion to independent providers of local services ("*Field Reps*").

**YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS A PROVIDER OF TECHNOLOGY SERVICES ONLY. COMPANY DOES NOT PROVIDE ANY LOCAL SERVICES.**

### **License**

Subject to your compliance with these Terms, Company grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to access and use any content, information, and related materials that may be made available through the Fotello Service. Any rights not expressly granted herein are reserved by Company and Company's licensors.

### **Restrictions**

You may not (a) remove any copyright, trademark, or other proprietary notices from any portion of the Fotello Service; (b) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast, or otherwise exploit the Fotello Service except as expressly permitted by Company; (c) decompile, reverse engineer, or disassemble the Fotello Service except as may be permitted by applicable law; (d) link to, mirror, or frame any portion of the Fotello Service; (e) launch, or cause to launch, any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Fotello Service or unduly burdening or hindering the operation and/or functionality of any aspect of the Fotello Service; or (f) attempt to gain unauthorized access to or impair any aspect of the Fotello Service or its related systems or networks.

### **Third Party Fotello Service and Content**

The Fotello Service may be made available or accessed in connection with third party services and content (including advertising) that Company does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third party services and content. Company does not endorse such third party services and content and in no event shall Company be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation, or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Fotello Service using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Fotello Service in any manner. Your access to the Fotello Service using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service.

### **Ownership**

The Fotello Service and all rights therein are and shall remain Company's property or the property of Company's licensors. Neither these Terms nor your use of the Fotello Service convey or grant to you any rights (a) in or related to the Fotello Service except for the limited license granted above; or (b) to use or reference in any manner Company's company names, logos, product and service names, trademarks, or service marks or those of Company's licensors.

## **2. Access and Use of the Fotello Service**

### **User Accounts**

In order to use most aspects of the Fotello Service, you must register for and maintain an active user account ("*Account*") with the Fotello Service. You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if greater than 18), to obtain an Account. Account registration requires you to submit to Company certain personal information, such as your name, address, mobile phone number, and age, as well as at least one valid payment method supported by Company. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Fotello Service. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Company in writing, you may only possess one Account.

### **User Requirements and Conduct**

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use your Account. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when accessing or using the Fotello Service, and you may only access or use the Fotello Service for lawful purposes (e.g., you may not request a Field Rep enter private property that you do not have the right to enter). Through your access or use of the Fotello Service, you may not cause nuisance, annoyance, inconvenience, or property damage, whether to the Field Rep or any other party.

### **Text Messaging and Telephone Calls**

You agree that Company may contact you by telephone or text messages (including by an automatic telephone dialing system) at any of the phone numbers provided by you or on your behalf in connection with a Company account, including for marketing purposes. You understand that you are not required to provide this consent as a condition of using the Fotello Service.

You understand that you may opt out of receiving text messages from Company at any time, either by texting the word STOP to any number you receive a text message from using the mobile device that is receiving the messages, or by contacting us at [hello@fotello.com](mailto:hello@fotello.com). If you do not choose to opt out, Company may contact you as outlined in its Privacy Policy, located at [www.fotello.com/privacy](http://www.fotello.com/privacy).

### **User Provided Content**

Company may, in Company's sole discretion, permit you from time to time to submit, upload, publish, or otherwise make available to Company through the Fotello Service textual, audio, and/or visual content and information, including commentary and feedback related to the Fotello Service, initiation of support requests, and submission of entries for competitions and promotions ("*User Content*"). Any User Content provided by you remains your property. However, by providing User Content to Company, you grant Company a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Fotello Service and Company's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

You represent and warrant that (a) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents, and releases necessary to grant Company the license to the User Content as set forth above; and (b) neither the User Content, nor your submission, uploading, publishing or otherwise making available of such User Content, nor Company's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Company in its sole discretion, whether or not such material may be protected by law. Company may, but shall not be obligated to, review, monitor, or remove User Content, at Company's sole discretion and at any time and for any reason, without notice to you.

### **Network Access and Devices**

You are responsible for obtaining the data network access necessary to use the Fotello Service. Your mobile network's data and messaging rates and fees may apply if you access or use the Fotello Service from your device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Fotello Service and Applications and any updates thereto. Company does not guarantee that the Fotello Service, or any portion thereof, will function on any particular hardware or device. In addition, the Fotello Service may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

## **3. Payment**

You understand that use of the Fotello Service may result in charges to you for the services you receive ("*Charges*"). Company will receive and/or enable your payment of the applicable Charges for services obtained through your use of the Fotello Service.

All Charges and payments will be enabled by Company using the preferred payment method designated in your Account, after which you will receive a receipt by email. If your primary Account payment method is determined to be expired, invalid, or otherwise not able to be charged, you agree that Company may use a secondary payment method in your Account, if available. Charges paid by you are final and non-refundable, unless otherwise determined by Company.

As between you and Company, Company reserves the right to establish, remove, and/or revise Charges for any or all services obtained through the use of the Fotello Service at any time in Company's sole discretion. Company will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. Company may from time to time provide certain users with promotional offers and discounts that may result in different amounts charged for the same or similar services obtained through the use of the Fotello Service, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Fotello Service or the Charges applied to you. You may elect to cancel your request for Local Services at any time prior to the acceptance of the Job by a Field Rep, in which case, if the Field Rep has already begun work on your Job, you may be charged a cancellation fee on a Field Rep's behalf. After you have received services obtained through the Fotello Service, you will have the opportunity to rate your experience and leave additional feedback. Company may use the proceeds of any Charges for any purpose, subject to any payment obligations it has agreed to with any Field Reps or other third parties.

In certain cases, with respect to Field Reps, Charges you incur will be owed directly to Field Reps, and Company will collect payment of those charges from you, on the Field Rep's behalf as their limited payment collection agent, and payment of the Charges shall be considered the same as payment made directly by you to the Field Rep. In such cases, you retain the right to request lower Charges from a Field Rep for services received by you from such Field Rep at the time you receive such services, and Charges you incur will be owed to the Field Rep. Company will respond accordingly to any request from a Field Rep to modify the Charges for a particular service or good. This payment structure is intended to fully compensate a Field Rep, if applicable, for the services obtained in connection with your use of the Fotello Service. In all other cases, Charges you incur will be owed and paid directly to Company or its affiliates, where Company is solely liable for any obligations to Field Reps. In such cases, you retain the right to request lower Charges from Company for services received by you from a Field Rep at the time you receive such services, and Company will respond accordingly to any request from you to modify the Charges for a particular service or good.

#### **4. Termination of Fotello Service**

Company may immediately terminate these Terms or the Fotello Service with respect to you, or generally cease offering or deny access to the Fotello Service or any portion thereof, at any time for any reason.

**PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH COMPANY ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.**

Company may amend the Terms from time to time. Amendments will be effective upon Company's posting of such updated Terms at this location or in the amended policies or supplemental terms on the applicable service(s). Your continued access or use of the Fotello Service after such posting confirms your consent to be bound by the Terms, as amended. If Company changes these Terms after the date you first agreed to the Terms (or to any subsequent changes to these Terms), you may reject any such change by providing Company written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to Bonne Idee, LLC, 5647 S Beneva Rd, Sarasota, FL 34233, or (b) by email from the email address associated with your Account to [hello@fotello.com](mailto:hello@fotello.com). In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to these Terms. By rejecting changes, you are agreeing that you will continue to be bound by the provisions of these Terms as of the date you first agreed to the Terms (or to any subsequent changes to these Terms).

Company's collection and use of personal information in connection with the Fotello Service is described in Company's privacy statements located at [www.fotello.com/privacy](http://www.fotello.com/privacy).

## **5. Arbitration Agreement**

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Company on an individual basis in arbitration, as set forth in this Arbitration Agreement. This will preclude you from bringing any class, collective, or representative action against Company and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against Company by someone else.

### **Agreement to Binding Arbitration**

You and Company agree that any dispute, claim, or controversy arising out of or relating to (a) these Terms or the existence, breach, termination, enforcement, interpretation, or validity thereof, or (b) your access to or use of the Fotello Service at any time, whether before or after the date you agreed to the Terms, will be settled by binding arbitration between you and Company, and not in a court of law.

You acknowledge and agree that you and Company are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Unless both you and Company otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated, or representative proceeding. However, you and Company each retain the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights.

### **Rules and Governing Law**

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this Arbitration Agreement. The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.

The parties agree that the arbitrator ("*Arbitrator*"), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation,

applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.

Notwithstanding any choice of law or other provision in the Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law. If the FAA and AAA Rules are found to not apply to any issue that arises under this Arbitration Agreement or the enforcement thereof, then that issue shall be resolved under the laws of the state of Florida.

### **Process**

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration - Consumer Arbitration Rules at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879). The Arbitrator will be either (1) a retired judge or (2) an attorney specifically licensed to practice law in the state of Florida and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an Arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the Arbitrator in accordance with the AAA Rules.

### **Location and Procedure**

Unless you and Company otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Company submit to the Arbitrator, unless you request a hearing or the Arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the Arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

### **Arbitrator's Decision**

The Arbitrator will render an award within the time frame specified in the AAA Rules. Judgment on the arbitration award may be entered in any court having competent jurisdiction to do so. The Arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. An Arbitrator's decision shall be final and binding on all parties. An Arbitrator's decision and judgment thereon shall have no precedential or collateral estoppel effect. Each party shall bear its own costs, fees, and expenses of arbitration.

### **Fees**

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Company will pay all such fees, unless the Arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

## **Changes**

Notwithstanding the provisions at the beginning of these Terms, regarding consent to be bound by amendments to these Terms, if Company changes this Arbitration Agreement after the date you first agreed to the Terms (or to any subsequent changes to the Terms), you may reject any such change by providing Company written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to Bonne Idee, LLC, 5647 S Beneva Rd, Sarasota, FL 34233, or (b) by email from the email address associated with your Account to hello@fotello.com. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to this Arbitration Agreement. By rejecting changes, you are agreeing that you will arbitrate any dispute between you and Company in accordance with the provisions of this Arbitration Agreement as of the date you first agreed to the Terms (or to any subsequent changes to the Terms).

## **Severability and Survival**

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (1) the unenforceable or unlawful provision shall be severed from these Terms; (2) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (3) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

## **6. Disclaimers; Limitation of Liability; Indemnity**

### **DISCLAIMER**

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." COMPANY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN ADDITION, COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE SERVICES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. COMPANY DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY, OR ABILITY OF FIELD REPS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE FOTELLO SERVICE, AND ANY SERVICE REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

### **LIMITATION OF LIABILITY**

COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE FOTELLO SERVICE, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF COMPANY, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF (a)

YOUR USE OF OR RELIANCE ON THE FOTELLO SERVICE OR YOUR INABILITY TO ACCESS OR USE THE FOTELLO SERVICE; OR (b) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY FIELD REP, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND COMPANY'S REASONABLE CONTROL.

THE FOTELLO SERVICE MAY BE USED BY YOU TO REQUEST LOCAL SERVICES WITH FIELD REPS, BUT YOU AGREE THAT COMPANY HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY LOCAL SERVICES PROVIDED TO YOU BY FIELD REPS OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS.

THE LIMITATIONS AND DISCLAIMER IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, COMPANY'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THIS PROVISION SHALL HAVE NO EFFECT ON COMPANY'S CHOICE OF LAW PROVISION SET FORTH BELOW.

#### **Indemnity**

You agree to indemnify and hold Company and its affiliates and their officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with (a) your use of the Fotello Service or services obtained through your use of the Fotello Service; (b) your breach or violation of any of these Terms; (c) Company's use of your User Content; or (d) your violation of the rights of any third party, including Field Reps.

### **7. Other Provisions**

#### **Choice of Law**

These Terms are governed by and construed in accordance with the laws of the State of Florida, U.S.A., without giving effect to any conflict of law principles, except as may be otherwise provided in the Arbitration Agreement above or in supplemental terms applicable to your region. However, the choice of law provision regarding the interpretation of these Terms is not intended to create any other substantive right to non-Floridians to assert claims under Florida law whether that be by statute, common law, or otherwise. These provisions, except as otherwise provided in Section 5 of these Terms, are only intended to specify the use of Florida law to interpret these Terms and the forum for disputes asserting a breach of these Terms, and these provisions shall not be interpreted as generally extending Florida law to you if you do not otherwise reside in Florida. The foregoing choices of law and forum selection provisions do not apply to the arbitration clause in Section 5 or to any arbitrable disputes as defined therein. Instead, as described in Section 5, the Federal Arbitration Act shall apply to any such disputes.

#### **Claims of Copyright Infringement**

Claims of copyright infringement may be provided either (a) by mail or hand delivery to Bonne Idee, LLC, 5647 S Beneva Rd, Sarasota, FL 34233, or (b) by email to [hello@fotello.com](mailto:hello@fotello.com).

#### **Notice**

Company may give notice by means of a general notice on the Fotello Service, electronic mail to your email address in your Account, telephone or text message to any phone number provided in

connection with your Account, or by written communication sent by first class mail or pre-paid post to any address connected with your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or telephone). You may give notice to Company, with such notice deemed given when received by Company, at any time by first class mail or pre-paid post to Bonne Idee, LLC, 5647 S Beneva Rd, Sarasota, FL 34233.

### **General**

You may not assign these Terms without Company's prior written approval. Company may assign these Terms without your consent to (a) a subsidiary or affiliate; (b) an acquirer of Company's equity, business or assets; or (c) a successor by merger. Any purported assignment in violation of this paragraph shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Company or any Field Rep as a result of these Terms or use of the Fotello Service. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law.

Company's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Company in writing. This provision shall not affect the Severability and Survivability section of the Arbitration Agreement of these Terms.

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By registering for an Account through the Fotello Service, you expressly acknowledge that you have read, understood, and taken steps to thoughtfully consider the consequences of these Terms, that you agree to be bound by the terms and conditions of these Terms, and that you are legally competent to enter into these Terms with Company.