

IMPORTANT- READ CAREFULLY: THE USE OF THIS WEBSITE AND THE SERVICES ARE CONDITIONED UPON YOUR COMPLIANCE AND ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT USE THIS SITE OR THE SERVICES.

Acceptance of Terms. This Agreement (the “**Agreement**”) sets forth an agreement between Flash of Genius, Inc., d/b/a UpdatePromise.com® (“**UpdatePromise.com**”) and the individual or legal entity pursuant to which the functions and features of the UpdatePromise.com® Service (as defined below) will be made available to you by UpdatePromise.com®. The terms “**You**”, “**Your**” and “**User**” herein refer to you, the customer and user of our Service. The terms “**We**”, “**Us**”, “**Our**”, “**Company**” and “**UpdatePromise.com**” refer to UpdatePromise.com®. Only upon Your acceptance of this Agreement, by clicking on the “I Agree” button, and paying all fees due will You have the right to access and use UpdatePromise.com®.

Description of Service. Through UpdatePromise.com®, You may send pre-selected or modified electronic messages to Your customers via e-mail, text, telephone or other electronic means notifying User’s recipient of the status of work being performed, promoting Your company’s good will or other legitimate business interest (“**Message**”). The UpdatePromise.com® software as a service (the “**Service**”) provides You with the ability to save Your Messages and Your customer information to a secure server and to access Your Messages and Your customer information by using any web browser and Your personal password. You understand and agree that the Service will be provided to You “AS IS” and that UpdatePromise.com® assumes no responsibility for the accuracy, quality, completeness or deletion of any data maintained by the Service. You are responsible for obtaining access to the Service, and that access may involve third party fees (such as Internet service provider or airtime charges).

You may also by opting in agree to use as a complimentary add-on service PromisePaySM (“**PromisePay**SM”), which allows You to process credit card transactions at the point of sale with Your customers through the Service. If PromisePaySM is used, references to the “**Service**” shall include references to PromisePaySM.

Privacy. User’s use of the Service is governed by Our Privacy Policy. This policy may change from time to time. UpdatePromise.com® is committed to respecting its commitments to You regarding Your privacy. You should review our Privacy Policy at www.updatepromise.com/privacy (Image, below, shows screenshot of October, 2016, edition of Privacy Policy, effective October, 2016).

Privacy Policy

How we ensure your privacy is protected.

1. **Our Commitment to Privacy.** This notice describes our Privacy Policy. Our privacy policy is designed to advise you about how we collect, use, and protect the personal information you provide. By visiting this site, you are accepting the practices described in this Privacy Policy.
2. **What Information is Collected.**
 - a. **Information You Provide to Us:** We collect any information you enter on our site, or that you give us in any other way. You can choose not to provide certain information, but you may not be able to take advantage of our services and features. At any time you may visit your personal profile at <https://www.updatepromise.com/profile> and review and update your personal information that we have already collected, and choose to opt-out of our sending you information respecting our company or promotional material.
 - b. **Automatic Information:** When you visit a website, you disclose certain information, such as your Internet Protocol (IP) address and the time of your visit. This site, like many other sites, records this basic information about visits to our site.
 - c. **"Cookies":** Cookies are pieces of information that are transferred to your computer from a web server. Most browsers are set up to accept cookies, but you can change your settings to have your browser notify you when you receive a new cookie or to refuse to accept cookies.
 - d. In operating our site, we may include registration, online surveys or other online forms that ask users to provide their names, email addresses, and other contact information; financial information, including credit card information; and demographic data, such as your zip code. Furthermore, if you communicate with use by text or by email, or by completing an online survey, any information provided by you to us will be collected from you.
3. **How and When the Information is Used.** The information we collect is used for administering our business activities. Occasionally we may use the information to notify you about changes to our website, new services, or special offers.
4. **How We Protect Your Information.** The privacy and protection of your information is important to us. We do not make any personal information available to third parties without your permission.
Your access to some services and content is password protected. We advise that you do not disclose your password to anyone. In addition, we recommend you sign out of password-protected services at the end of your session.
5. **Who Has Access to the Information.** Information about our users is important to us. We will not disclose any individually identifiable information to any third party without first receiving that user's permission.
6. **Methods We Use to Protect Your Information.** We use security software to protect the confidentiality of your personal information. In addition, our business practices are reviewed periodically for compliance with policies and procedures governing the security and confidentiality of our information. Our business practices limit employee access to confidential information, and limit the use and distribution of such information to authorized personnel.

You warrant that, for purposes of the data that may be accessed by You, pursuant to this Agreement, that You have provided any required privacy notices to Your customers as required by applicable law, including the Gramm-Leach-Bliley Act and its implementing regulations and, to the extent applicable, the privacy laws of any state,

Other Provisions Respecting Customer Data. UpdatePromise.com[®] shall provide You with prompt notice in the event of known or reasonably suspected privacy or security breaches applicable to You. You shall have the right to terminate this Agreement should UpdatePromise.com[®] not comply with any privacy laws or regulations. UpdatePromise.com[®] will return or destroy any non-public personal information of Your customers in UpdatePromise.com[®]'s possession and control upon termination. UpdatePromise.com[®] will implement and maintain appropriate safeguards to protect any non-public personal information of Your customers that UpdatePromise.com[®] obtains

pursuant to this Agreement for so long as UpdatePromise.com® has access to the same. UpdatePromise.com® shall not access, store, share, disclose or use any non-public personal information of Your customers other than as necessary to carry out the purposes for which You have provided access to such information or as otherwise required by law.

User Conduct and Responsibilities. You understand and agree that all information of whatever nature ("**Content**") which You transmit to UpdatePromise.com® is Your sole responsibility. You agree to not use the Service to distribute, link to, or solicit Content that:

- is unlawful, harmful to minors, threatening, abusive, defamatory, vulgar, obscene, libelous, invasive of another's privacy, or racially, ethnically or otherwise offensive;
- includes personally identifiable information about children;
- infringes someone else's intellectual property or other rights;
- advocates or solicits violence or other criminal conduct;
- violates any law, regulation, or contract; or
- contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment.

In light of the international nature of the Internet, You agree to comply with all local laws, rules and regulations regarding online conduct and acceptable content. Additionally, You agree to comply with all applicable laws regarding the transmission of technical data exported from the country of Your residence.

User shall be exclusively responsible for the supervision, management, and control of Your use of the Service, including, but not limited to:

(a) Hardware, Equipment, and Software. User is responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access Company servers. Company makes no representations, warranties, or assurances that User's equipment will be compatible with Company Services;

(b) Assuring proper configuration of equipment or devices;

(c) Establishing adequate operating methods;

(d) Implementing procedures sufficient to satisfy User's obligations for security under this Agreement, including appropriate action between it and

its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Service;

(e) User warrants and represents that User shall use Services only for lawful purposes and in accordance with all valid federal, state, and local laws and regulations governing use of e-mail and the Internet, whether or not specifically prohibited elsewhere in this Agreement. Failure to abide by the terms of this paragraph shall be grounds for immediate termination of User's account for cause;

(f) User expressly represents and warrants that User and any person to whom User grants access to User's Company account are at least 18 years of age;

(g) User shall not, nor allow others to, copy, disassemble, decompile, and/or reverse engineer any of the software which is the subject of the Service; and

(h) User shall not transfer or allow access to the Service to or by third parties; lend, lease, sublicense or pledge the Service; and/or allow service bureau or outsourcing uses of the Service.

(i) If User has elected to use PromisePaySM: You warrant that any sales transaction submitted by You will be genuine and arise from a bona fide sale or service that You directly provided, accurately describes the goods or services purchased and sold, and represents the accurate amount of such goods or services. For transactions submitted by You using PromisePaySM, You will fulfill all of Your obligations to each customer, and will resolve any customer dispute directly with such customer. Except in the ordinary course of business, no transaction submitted by You through PromisePaySM will represent a sale to any owner of Your entity.

Customer Consents to Service. You acknowledge that state and federal law generally governs the electronic transmission of messages to consumers. In particular, You acknowledge that the United States Federal Communications Commission has by order implementing the Telephone Consumer Protection Act of 1991 (the "**TCPA**") adopted final rules and regulations, (such regulations together with the TCPA are referred to as the "**TCPA Rules**"), generally prohibiting the initiation of telephone calls using an automatic telephone dialing system or an artificial or prerecorded voice to telephone numbers (including text messages) assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call (referred to herein as "**TCPA Covered Communications**").

You understand and agree that You are solely responsible for complying with the TCPA Rules and any other state, federal or local laws, rules and regulations, in effect from time to time, governing electronic communications

with Your customers (and, if You elect to use PromisePaySM, with respect to the processing of credit card transactions, including use of cardholder and point of sale data). Without limiting the foregoing, You agree that it is Your responsibility to obtain the prior [express written consent](#) of Your customers to receive TCPA Covered Communications, and to obtain any other consents from Your customers as required by laws, in effect from time to time, in connection with the receipt of messages by electronic transmission.

You agree that the foregoing consents that You obtain from Your customers will specifically authorize TCPA Covered Communications and any other contemplated communications, including but not limited to customer satisfaction surveys, to be sent by UpdatePromise.com[®] and by any other agents, contractors and affiliates acting on Your behalf.

You agree that You will not transmit any customer information to UpdatePromise.com[®] or otherwise use the Service in connection with any customer who has not given prior express written consent to receive TCPA Covered Communications and any other contemplated communications from UpdatePromise.com[®]. Without limiting the foregoing, in the event that customer information has ever been transmitted to UpdatePromise.com[®] for a customer, and such customer has not given consent to receive, or otherwise revokes consent to receive, TCPA Covered Communications and any other contemplated communications from UpdatePromise.com[®], You agree to notify UpdatePromise.com[®] of such lack of consent or revocation of consent as soon as possible.

User Password and Security. You will receive a unique password and username designation upon completing the Service's registration process and payment of Your fees. UpdatePromise.com[®] will endeavor to secure the data You transmit to the Service against theft, unauthorized use or interception by unauthorized persons using industry standard SSL encryption to scramble the data You transmit. UpdatePromise.com[®] assumes no liability for the unlawful disruption or theft of transmitted data. You are responsible for maintaining the confidentiality of Your password and username and are fully responsible for all activities that occur under Your password and username. UpdatePromise.com[®] has the right to rely on user names, passwords and other sign-in credentials authenticating access to and use of the Service. You must immediately notify Us if You become aware of any loss, theft or unauthorized use of any user name or password. You agree not to disrupt the functioning of the Service, solicit another user's password or otherwise act in a manner that interferes with other users' use of the Service. Further, You agree not to post or distribute any computer program that damages, detrimentally interferes with, surreptitiously intercepts, or expropriates any system, data or personal information.

If You elect to use PromisePaySM, You agree when registering a "member" or "merchant" account to (a) provide complete and accurate information about

You and (b) maintain the same as current and update the same from time to time as may be necessary.

UpdatePromise.com[®] Discretion over Operation of the Service. UpdatePromise.com[®] may edit, move, or delete any content on the Service (including Content or communications that User or any third party has provided) for any reason, and may preserve and disclose content or User information if required to do so by law or in the good faith belief that doing so is necessary to: (a) comply with legal process; (b) enforce these terms, (c) respond to claims that any content violates the rights of third parties; (d) protect the rights, property, or personal safety of UpdatePromise.com[®], its other users, or the public, or (e) administer the Service. UpdatePromise.com[®] generally does not pre-screen, monitor, or edit content provided by User or third parties. UpdatePromise.com[®] shall not be responsible for any failure to remove, or delay in removing, harmful, inaccurate, unlawful, or otherwise objectionable content originating with or otherwise provided by User or third parties.

Service Standards. UpdatePromise.com[®] will utilize commercially reasonable efforts to provide the Service on a 24/7 basis but it shall not be responsible for any disruption, regardless of length. Furthermore, UpdatePromise.com[®] shall not be liable for losses or damages You may incur due to any errors or omissions in any Content, or due to Your inability to access Your data due to disruption of the Service.

Wireless services use radio transmissions and coverage is not available everywhere. Quality of service may be affected by conditions beyond Our control, including atmospheric, geographic, or topographic conditions. In light of these limitations, We cannot guarantee that the Service will be available at any specific time or geographic location, or that the Service will be provided without interruption.

Correction of Service Problems. Upon discovery of any deviation in the computer program portion of the Service from the published functional specifications or coding error in the computer program portion of the Service that prevents it from performing substantially, User shall notify UpdatePromise.com[®] and provide supporting data, including printouts showing the claimed defective performance. Within ten (10) days thereafter, UpdatePromise.com[®], at its own election and expense, shall either

(a) Devise a method to avoid the claimed error; or

(b) Terminate the Service and refund to User the portion of the pre-paid Service Fee and Modification Fee pro-rated from the date of the notice until the end of the then current Service period.

Service Period. The Service granted in this Agreement shall remain in force for the minimum term of one (1) month. Upon expiration of the term specified herein, the Service shall automatically renew for successive minimum terms of one (1) month unless User gives UpdatePromise.com® notice of its intention not to renew the Service within ten (10) days prior to the expiration of the then term.

Service Fee. As payment for the Service granted under this Agreement, User shall pay UpdatePromise.com® monthly installments of “amount equal to confirmed agreed price” in sign up portion of the Service for one (1) consecutive month as a Service Fee. The initial monthly installment of the Service Fee shall be payable on execution of this Agreement. Succeeding monthly Service Fees and charges shall be payable from month to month in advance. The initial Service Fee and the succeeding monthly Service Fees and charges are collectively referred to herein as “**Service Fee**” or “**Service Fees**”. The initial monthly installment of “amount equal to confirmed agreed price” in sign up portion of software will be paid on-line by User through Your Visa or Mastercard account as instructed after User selects the “Sign-Up” button. User authorizes UpdatePromise.com® to charge Your credit card account used to pay the initial monthly installment Service Fee (and Modification Fee if applicable) for each successive month on the same calendar day preceding the successive month. Once paid, all Service Fees are non-refundable except as otherwise expressly provided herein. There is no subscription charge for subscribers to the Service to sign up and use PromisePaySM.

Payment of Taxes. User shall pay, or otherwise reimburse Us for, all taxes (other than taxes on Our income) that may be assessed on or in connection with the Service or its use, including but not limited to any and all federal, state and local personal property taxes, sales and use taxes, and excise taxes.

Service Fee Increases. Effective after the initial one (1) month service period UpdatePromise.com® may increase the periodic Service Fee provided for hereunder on thirty (30) days’ notice to User. The increased Service Fee shall become effective on the date specified in the notice of the increase unless User terminates this Agreement by ten (10) days’ notice to UpdatePromise.com®.

Modifications or Adaptations. For an additional fee of (call for pricing) (“**Modification Fee**”), User may, subject to conditions, restrictions and limitations as set forth herein, perform specified and limited modifications to the Service for User’s own use and merge it into other material to form revised materials. Any such revised materials shall be used strictly in accordance with the terms of this Agreement.

(a) The modifications or adaptations are limited to User's inclusion of additional personalized messages selected by User. User shall not modify or adopt the Service in any other respect;

(b) The right to perform a modification or adaptation is conditioned upon User's pre-payment of all Service Fees and the Modification Fee prior to each month the modification or adaptation is desired;

(c) The modifications or adaptation messages must be non-offensive and in good taste; and

(d) User is solely responsible for the content of any modification or adoption of the Service and will fully indemnify UpdatePromise.com[®] from any and all claims or damages arising from or related to any modification, conversion or adaptation by User or User's agent, employee or assignee or any person who directly or indirectly makes use of the Service through User's account, whether permitted or not permitted by User or known or unknown by User.

Storage Limits. There are currently no data base storage limits. UpdatePromise.com[®] and User agree that UpdatePromise.com[®] has the sole and exclusive authority to establish such limits at any time UpdatePromise.com[®] believes, in its sole discretion it necessary to do so.

Integrity of User Data. UpdatePromise.com[®] will utilize commercially reasonable efforts to protect the integrity of data transmitted by User to the Service. However, UpdatePromise.com[®] shall not be liable for any loss or damage resulting from total or partial loss of Your data or from any corruption of Your data. Data can get lost or become corrupt as a result of a number of causes, including hardware failures, software failures or bugs, viruses or communications failures. You agree to periodically back-up Your information onto another file that is not automatically synchronized with UpdatePromise.com[®].

Inactive Accounts. UpdatePromise.com[®] reserves the right to remove to a secondary/backup storage, any data from Your account if the account has not been active for more than one hundred eighty (180) days, provided that UpdatePromise.com[®] has utilized commercially reasonable efforts to contact You to provide notice of such data removal. UpdatePromise.com[®] reserves the right to permanently remove any data from Your account if the account has not been active for twenty-four (24) months, provided that UpdatePromise.com[®] has utilized commercially reasonable efforts to contact You to provide notice of such data removal.

Termination of Service. UpdatePromise.com[®] reserves the right to terminate Your access to the Service for any or no reason with ninety (90) days prior notice. UpdatePromise.com[®] will utilize commercially reasonable efforts to

provide such termination notice by email to allow You to copy Your data to another computer. UpdatePromise.com[®] will not be liable or responsible for any loss or damage resulting from Your failure to copy data within that ninety (90) day period. Additionally, in its sole discretion, UpdatePromise.com[®] may terminate Your account and use of the Service, and remove and discard any content, You have transmitted to the Service if UpdatePromise.com[®] believes that You have violated or acted inconsistently with this Agreement. You agree that any termination of Your access to the Service may be effected without prior notice, and acknowledge and agree that UpdatePromise.com[®] may immediately deactivate or delete Your account and all related information and files in Your account and/or bar any further access to such files or the Service. Further, You agree that UpdatePromise.com[®] shall not be liable to You or any third-party for any termination of Your access to the Service. User may not terminate this Agreement until User completes payment of the initial installments and becomes current on any other fees incurred. You understand that UpdatePromise.com[®] does not store any financial transaction data associated with merchant services connected to PromisePaySM; upon termination You will need to contact the merchant service provider to gain access to any such stored data.

Grounds for Automatic Termination. The Service granted by this Agreement shall be terminated automatically and without further notice upon the occurrence of any of the following:

- (a) Expiration of the term specified in this Agreement or of any optional renewal term in the absence of a subsequent renewal in accordance with the terms of this Agreement.
- (b) Assignment of the Service to a third party, or a third party's use of the Service whether directly permitted by User or indirectly and whether inadvertently, permitted or otherwise.
- (c) Refusal by User to pay any periodic Service Fee, Modification Fee or any increase in those fees provided for in this Agreement.
- (d) Cessation of business by User or any successor or assign to whom the Service has been legitimately transferred.
- (e) Commission by User of an event of default as defined herein.

Events of Default. User shall have committed an event of default, and this Agreement and the Service granted hereunder shall terminate, if any of the following occur:

- (a) User attempts to use, copy, license, or convey the Service in any manner contrary to the terms of this Agreement or in derogation of UpdatePromise.com[®]'s proprietary rights in the Service.

(b) User fails or neglects to perform or observe any of Your existing or future obligations under this Agreement, including, without limitation, the timely payment of any sums due UpdatePromise.com[®] within ten (10) days after notice that the payment is delinquent.

Effect of Termination. Upon termination of the Service granted hereunder, UpdatePromise.com[®]'s obligations under this Agreement shall cease. User's representations and warranties and obligations to indemnify shall survive until all applicable statute of limitations entitling any third person or entity to bring any claim have expired. User's obligations to complete all payments of the initial installments and become current and pay in full any and all other charges or fees survive the termination of this Agreement.

Intellectual Property Rights. As between You and Us, UpdatePromise.com[®] is the sole owner of the content, layout, functions, appearance, trademarks, copyrights, trade secrets and other intellectual property comprising the Service and the interface that is made available via the Service to You. The Service contains information that was created and maintained by UpdatePromise.com[®] at great effort and expense. The structure under which the information is stored and retrieved is unique and highly valuable to UpdatePromise.com[®].

You shall not acquire any ownership interest in the Service or any part thereof, including information voluntarily provided by You to UpdatePromise.com[®] that is incorporated into the Service. No rights or obligations other than those expressly recited herein are to be implied from this Agreement. In particular, no license to You is hereby granted directly or indirectly under any patent, patent application, copyright, trade secret or other intellectual property right now held by, or which may be obtained by, UpdatePromise.com[®].

User acknowledges and agrees that the Service is the confidential and proprietary property of UpdatePromise.com[®] and User receives no rights to and will not sell, assign, lease, market, transfer, encumber or otherwise suffer to exist any lien or security interest on, nor allow any third person, firm, company, or other entity to copy, reproduce or disclose the Service, whether in whole, in part, or in any manner whatsoever.

Any modifications or derivative works made solely by User will nonetheless be the intellectual property of UpdatePromise.com[®], and be subject to all of UpdatePromise.com[®]'s intellectual property rights in the underlying Service. User will have no right to register copyrights of Your derivative works (as derivative work).

UpdatePromise.com[®] shall retain complete ownership of all modifications and derivative works provided to User as part of any maintenance, support, or

services. In no event shall any support, maintenance, services or Service provided to User by UpdatePromise.com[®] pursuant to this Agreement be deemed to be based on any “work made for hire” agreement between the Parties.

Security. User agrees to keep the access code or password in a secure place, under access and use restrictions and not less strict than those applicable to User’s own trade secrets.

User further agrees to instruct its personnel to keep the Service confidential by using the same care and discretion that You use with other data designated by User as confidential.

User agrees that any disclosure of the access code to a third party constitutes a material breach of this Agreement and shall terminate the Service granted by this Agreement.

Damages for Breach. User further agrees that You shall be strictly liable for all damages to UpdatePromise.com[®] that result from any disclosure of the access code to any third party.

Copyright or Other Marks. User agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Service.

Disclaimer of Warranties. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. UPDATEPROMISE.COM[®] EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

UPDATEPROMISE.COM[®] MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, OR (v) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

ANY MATERIAL OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM UPDATEPROMISE.COM® OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

Limitation of Liability. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

UPDATEPROMISE.COM® SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF UPDATEPROMISE.COM® HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED THROUGH OR FROM THE SERVICE; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (e) ANY OTHER MATTER RELATING TO THE SERVICE.

UPDATEPROMISE.COM® SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY DAMAGES OR LOSS ARISING AS A CONSEQUENCE OF ANY DOWNTIME OR UNAVAILABILITY OF ITS WEBSITE.

UPDATEPROMISE.COM®, ITS AGENTS, AFFILIATES, LICENSORS OR THE LIKE, DO NOT REPRESENT OR WARRANT, EXPRESSLY OR IMPLIEDLY, THAT THEIR SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THEIR SERVICES OR AS TO THE ACCURACY, RELIABILITY, OR CONTENT OF ANY INFORMATION, SERVICE OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THEIR SERVICES, UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT.

UPDATEPROMISE.COM®, ITS DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS, OR ANYONE ELSE INVOLVED IN PROVIDING SERVICES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE SERVICES; OR FOR ANY DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO UPDATEPROMISE.COM®'S RECORDS, PROGRAMS, OR SERVICES.

UpdatePromise.com® will exercise no control over the content of the information passing through UpdatePromise.com®'s network except those controls expressly provided herein.

UPDATEPROMISE.COM® WILL NOT BE RESPONSIBLE FOR ANY DAMAGES THAT MAY BE SUFFERED BY USER, INCLUDING LOSS OF DATA RESULTING FROM DELAYS OR NON-DELIVERIES.

IN NO EVENT WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, EVEN IF THE PARTY TO BE CHARGED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL UPDATEPROMISE.COM®'S TOTAL LIABILITY UNDER ANY OR ALL PROVISIONS OF THIS AGREEMENT FOR ALL CAUSES OF ACTION ON A CUMULATIVE BASIS EXCEED THE PAYMENTS ACTUALLY MADE TO UPDATEPROMISE.COM® UNDER THIS AGREEMENT FOR ALL SERVICE OR SERVICES OR SUPPORT OR MAINTENANCE RESULTING IN LIABILITY OR OBLIGATIONS ON UPDATEPROMISE.COM®'S PART DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

Indemnity. User agrees to indemnify UpdatePromise.com® and its affiliates, directors, officers, agents and employees (collectively the “**UpdatePromise.com® Indemnified Parties**”), and hold them harmless from any claim or demand, including reasonable attorneys’ fees, made by any third party due to or arising out of Content User submits, posts, transmits or make available through the Service, User’s use of the Service, User’s violation or breach of this Agreement (including but not limited to breach of any representations and warranties), User’s violation of any rights of another or any other person’s violation of the rights of or injury to another arising out of or relating to any direct or indirect use of the Service through User’s account, whether permitted or not permitted by User, or known or unknown by User. If User has agreed to use PromisePaySM, User also agrees to indemnify the UpdatePromise.com® Indemnified Parties from all such losses, claims and demands (including reasonable attorneys’ fees) with respect to any transaction submitted by You through PromisePaySM, including with respect to the accuracy of any product information that You provide Your customer and/or any dispute arising out of the products or services offered by You.

User agrees to defend, indemnify, and hold the UpdatePromise.com® Indemnified Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys’ fees, asserted against the UpdatePromise.com® Indemnified Parties that may arise or result from any Service provided or performed or agreed to be performed or any product sold by User, User’s agents, employees, or assigns. User further agrees to defend, indemnify, and hold harmless the UpdatePromise.com® Indemnified Parties against liabilities arising out of:

(a) Any liability to UpdatePromise.com® arising by virtue of any use of UpdatePromise.com®’s Service by User for any unlawful purpose, or in

violation of any valid federal, state, or local law or regulation governing use of e-mail, the Internet, cellular telephone service, text messaging, specialized mobile radio service, or other radio common carrier service, including but not limited to violations of the TCPA or any successor statutes;

(b) Any injury to person or property caused by any products sold or otherwise distributed in connection with the Service provided to User;

(c) Any material supplied by User infringing or allegedly infringing on the property or proprietary rights of a third party;

(d) Copyright or trademark infringement by User, or violation by User of intellectual property rights of any other party; and

(e) Any defective product which User sold or distributed by means of the Service.

Notice. Notices to You may be made via either email or regular mail. Notices to UpdatePromise.com® should be addressed to 14850 Central Avenue, Chino Hills, California 91710, by email to: privacy@UpdatePromise.com. User agrees to keep Company informed of all current contact information for User's account. Changes in User's account information may be reported to Company by e-mail at customerservice@UpdatePromise.com or on Company's website located at www.UpdatePromise.com®. Failure to maintain or keep current all contact information shall be a ground for Company to terminate User's account for cause.

Assignment of Contract. User shall not assign or otherwise transfer its rights under this Agreement, including the Service granted hereunder, or the Service obtained pursuant to this Agreement or its rights hereunder without the prior written consent of UpdatePromise.com®. Any attempt to make such an assignment without UpdatePromise.com®'s consent shall be void.

Non-Waiver. UpdatePromise.com® and User agree that no failure to exercise and no delay in exercising any right, power, or privilege hereunder on the part of either party shall operate as a waiver of any right, power, or privilege. UpdatePromise.com® and User further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise.

Limitations of Actions. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Dispute Resolution. Any dispute arising from or related to this agreement shall be resolved by binding arbitration conducted by the American Arbitration Association (“**AAA**”) in Los Angeles County, California before a single neutral arbitrator selected in accordance with the Commercial Rules of the AAA. This arbitration clause shall survive the termination of this Agreement.

Severability. If any part of this Agreement is adjudged by an arbitrator or any court of competent jurisdiction to be invalid, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to the part immediately involved in the controversy adjudged.

Governing Law, Venue and Jurisdiction. This Agreement shall be deemed to have been made in, and shall be construed pursuant to, the laws of the State of California, without regard to conflicts of law. Without limiting the arbitration provision above, User agrees that this Agreement is entered into in Los Angeles County, California and the venue and jurisdiction of any non-arbitrable claim or dispute related to this Agreement will be Los Angeles County, California and User consents to such venue and jurisdiction.

Section Headings. The section titles in this Agreement are for convenience only and have no legal or contractual effect.

Entire Agreement. User acknowledges and agrees that this Agreement is the complete and exclusive statement of the mutual understanding of the parties, and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

Effect of Purchase Order. In the event of any conflict between this Agreement and the terms and conditions of any purchase order or similar document pursuant to which User acquired the Service granted by this Agreement, the terms and conditions of this Agreement shall control.

By clicking on the “I Agree” button on the registration page, You indicate that You agree with all of the terms of this Agreement. If You are not in agreement with them, click on the “Cancel” button and do not attempt to access UpdatePromise.com®.