

PTMOSE

Evaluation Agreement

Last Updated: March 14, 2023

This Evaluation Agreement (“**Evaluation Agreement**”) describes the terms and conditions upon which PTMOSE.com LLC (“**PTMOSE**,” “**we**,” “**us**,” or “**our**”) provides the person or entity accepting this Evaluation Agreement (“**Business**,” “**you**,” or “**your**”) with access and use of the Business Portal on the PTMOSE website and/or mobile application (the “**Site**”) so you can introduce and promote your business and available products and services (“**Offerings**”) to individuals who are registered on the Site (“**Users**”).

You may only access the Business Portal if you agree to abide by the terms and conditions of this Evaluation Agreement for each use of the Business Portal.

This Evaluation Agreement controls your legal relationship with us and the rights you grant us when using the Business Portal.

Please read the terms of this Evaluation Agreement carefully before accessing and using the Business Portal.

- 1. Access to Business Portal.** Subject to the terms and conditions of this Evaluation Agreement, our website [Terms of Use](#), and our [Privacy Policy](#), which are hereby incorporated by reference, we grant you a limited, non-exclusive, non-transferable, and non-assignable right to access and use the Business Portal during the term of this Evaluation Agreement. If the Business Portal is made available to you on a mobile device, we also grant you a non-exclusive, non-assignable, non-transferable license to download and use a single copy of our mobile application subject to the terms and conditions of this Evaluation Agreement.
- 2. Specific Disclaimers.** You acknowledge that the Business Portal is a limited-release offering and is not at the level of performance of a commercially-available product. The Business Portal may not operate correctly and may be substantially modified before its full commercial release. We do not make any warranty, guarantee, or representation that the Business Portal or Site will be available at all times or that they will be error or interruption-free. The Business Portal is provided "as is." You acknowledge and agree that you will not rely on any existing features being available in the future nor any proposed updates or additional features becoming available. We reserve the right to cease providing the Business Portal to you or businesses at any time at our sole discretion.
- 3. Business Account.** You must create an account before accessing the Business Portal (“**Business Account**”). Your Business Account gives you access to the Business Portal and functionality we may establish and maintain at our sole discretion. In creating your Business Account, you will be asked to provide information to be displayed on your profile (“**Business Profile**”), including but not limited to your business name, address, website address, contact information, and your Offerings. You acknowledge and agree that certain information in your Business Profile will be treated as non-confidential and will be visible to Site Users. You are fully responsible for the content you upload or post on your Business Profile, and you are advised not to post or otherwise incorporate content that you do not wish to be made public via the Site.
- 4. Offerings.** The Business Portal may allow you to advertise and sell Offerings to Users. When you publish your Offerings, you will be asked to provide information related to your Offerings, such as the title, description, tags, categories, quantity available, applicable dates, and so forth (“**Descriptions**”). You must provide accurate and non-misleading Descriptions. We reserve the right to add, remove, or modify Descriptions at our discretion if we believe they are misleading, in violation of this Evaluation Agreement, or otherwise objectionable. You can set your own prices and the terms and conditions applicable to your Offerings. PTMOSE is not a party to such terms, and any dispute arising out of any terms related to any Offering provided by you to a User is solely between you and the applicable User.
- 5. Shipping.** The Business Portal may allow you to add products available for Users to purchase and have shipped to their residence or a designated pickup location. This feature is provided through the ShipCompliant product provided by Sovos. To enable this feature, you must have an active account with ShipCompliant necessary to associate your available products with your brand. By using the shipping feature, you agree that we are not liable for compliance with any laws

applicable to shipping alcoholic beverages directly to consumers. We do not represent or warrant that ShipCompliant will provide complete compliance with applicable laws. You are solely responsible for ensuring that any alcoholic beverages shipped to Users through the Business Portal comply with applicable law. By creating a ShipCompliant account, you are agreeing to their [Terms and Conditions](#), [Privacy Policy](#), and any other policies or agreements the Sovos requires to use their service. For more information about ShipCompliant from Sovos, please visit their website: <https://sovos.com>

6. Payments. The Business Portal may allow you to collect payments from Users for the Offerings you make available via the Business Portal. All payments made through the Business Portal are processed through our third-party payment processor, such as Stripe (“**Payment Processor**”). You must have an account with our Payment Processor and must link your Payment Processor account with the Business Portal to collect payments through the Business Portal. By using the Payment Processor, you agree to the Payment Processor’s terms of services and privacy policy and acknowledge that PTMOSE is not a party to such agreements or policies. Payments made through the Payment Processor may be subject to transactional fees charged by the Payment Process (“**Processor Fees**”). All Processor Fees are non-cancellable and non-refundable once paid. We are not a party to any transaction between you and any User, and we are not responsible for any disputes regarding the sale or purchase of any Offering. You acknowledge and agree that we may receive a portion of Processor Fees for payments processed through the Business Portal.

7. Documentation. We may provide access to standard materials, guides, or training materials (collectively, “**Documentation**”). Documentation is provided for your internal training purposes only. You are prohibited from: (i) modifying the Documentation unless otherwise authorized in writing by us; (ii) reselling or sublicensing any Documentation; and (iii) developing or attempting to develop any of the products or services described in the Documentation. Documentation is provided “as-is” and is not subject to maintenance, support, or updates.

8. Marketing Materials. We may provide you with marketing materials to promote your Offerings and our Site to Users (“**Marketing Materials**”). In using the Marketing Materials, you agree to not: (i) alter any PTMOSE logos or trademarks; (ii) create any false or misleading advertising or inaccurate description of our relationship with you; or (iii) use the Marketing Materials in association with any of your products or services which are not available to Users through the Site. If you modify any Marketing Materials provided by us or create your own Marketing Materials, we reserve the right to reject such Marketing Materials at our sole discretion.

9. Prohibited Uses. You shall not make, have made, use, or sell for any purpose any product or other item using, incorporating, or derived from any Confidential Information (as defined below) or the Business Portal. Business will not (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Business Portal; (b) modify, translate, or create derivative works based on the Business Portal; (c) copy for any purpose, download, transmit, distribute, pledge, assign, or otherwise transfer or encumber PTMOSE’s rights to the Business Portal; (d) use the Business Portal for time sharing or service bureau purposes or otherwise for the benefit of a third party; or (e) provide access to or otherwise demonstrate the capabilities of the Business Portal to any third party other than Business’s internal employees.

10. Business Content. We may allow you to post Offerings, content, comments, and suggestions on the Business Portal (collectively, “**Business Content**”). Business Content will be treated as non-confidential and may be viewable by Site Users and third-party websites and services upon which the Site is provided. You shall not upload, download, post, email, or otherwise transmit any Business Content that, without limitation: (i) may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any third-party; (ii) may be considered false or misleading information; (iii) violates another’s rights, rights of celebrity or privacy, which includes without limitation uploading a picture of another person without such person’s consent; (iv) is unlawful, harmful, threatening, abusive, vulgar, harassing, defamatory, obscene, pornographic, profane, indecent, inflammatory, libelous, tortious, hateful, racially, ethnically, socially, politically, legally, morally, religiously objectionable or otherwise objectionable; (v) may be considered unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, or any other form of solicitation; (vi) would constitute or encourage a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, or national law; or (vii) would or be likely to incite, promote, or support discrimination, hostility, or violence. You acknowledge that we do not monitor any Business Content you upload to the Business Portal, but we or our designees shall have the right (but not the obligation) in our sole discretion to reject or remove Business Content that is available via the Site if we determine that it violates this Evaluation Agreement, or Terms of Service, any applicable law, or is otherwise objectionable to us.

11. Feedback. You may, but are not required to, provide general comments, suggestions, recommended improvements, observations, or other input and opinions related to the Business Portal ("**Feedback**"). If you provide Feedback to us, you hereby assign all rights, title, and interest in and to the Feedback. You further acknowledge that Feedback is considered our Confidential Information and shall be protected from disclosure in accordance with the terms of this Evaluation Agreement.

12. Third-Party Services. The Business Portal may provide access to or integrate with third-party applications, services, websites, and other services that are not owned or controlled by us ("**Third-Party Services**"). Third Party Services include, without limitation, our Payment Processor and Google Maps. All Third-Party Services are provided "As-Is." We do not endorse, warrant, or assume any liability for any Third-Party Services, regardless of whether they are required to use the Business Portal. You expressly relieve us from any and all liability arising from your use of Third-Party Services, and any use by you of Third-Party Services is solely between you and the applicable Third-Party Services provider. If you access Third-Party Services, you do so at your own risk and understand that this Evaluation Agreement does not apply to your use of Third-Party Services. We are not responsible for any disclosure, modification, or deletion of your Business Profile, Business Content, or Business Data resulting from access by Third-Party Services. Additionally, we are not responsible for downtime or unavailability of Third-Party Services outside our reasonable control. Under no circumstances will we be liable for any indirect, special, incidental, punitive, or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising from the use or the inability to use Third-Party Services.

13. User Data. The Business Portal may provide access to information about Users, such as their name, contact information, interests, and other information related to their activity on the Site (collectively, "**User Information**"). You agree that User Information is our proprietary information and, as such, you agree not to use User Information for any purpose other than to provide Offerings through the Business Portal.

14. User Privacy. User Information may contain Personal Information subject to applicable privacy laws. "**Personal Information**" means any information relating to an identified or identifiable natural person; an identifiable natural person can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. By accessing or using User Information containing Personal Information, you agree to only use such Personal Information in accordance with our Privacy Policy and all applicable privacy laws, rules, or regulations.

15. Business Data. "**Business Data**" means all of your content, information, and data input into your instance of the Business Portal, including without limitation: (i) any transactional data; (ii) contact data; (iii) market or account data; (iv) Personal Information; (v) Confidential Information; and (vi) information or data related to your Business Content and Offerings. You acknowledge and agree that you are solely responsible for any Business Data you enter or make available via the Business Portal. We are not responsible or liable for any Business Data processed, stored, or entered into the Business Portal. You will retain sole ownership of any Business Data. We will not use or disclose any Business Data other than to provide the Business Portal to you or fulfill our rights and responsibilities related to this Evaluation Agreement. You grant to us a non-exclusive, royalty-free, assignable, transferable, sublicensable, and irrevocable right and license to use, reproduce, adapt, and distribute your Business Content as reasonably necessary: (i) to provide the Site in accordance with or Terms of Use; (ii) to exercise our other rights, and perform our other obligations, under this Evaluation Agreement; and (iii) and for any other use not expressly prohibited by this Evaluation Agreement or applicable law.

16. Aggregated Data. You grant to us a non-exclusive, royalty-free, assignable, transferable, sublicensable, and irrevocable right and license to use, reproduce, adapt, and distribute Related Data to use and disclose the information contained in or derived from Business Data or Related Data (as defined below), on an anonymous (de-identified) basis only, for statistical, analytical, research, marketing, product/service improvement, and other commercial purposes. The license above will survive the termination or expiration of this Evaluation Agreement for any reason. Related Data will be PTMOSE's property, and PTMOSE shall not have any duty to compensate or account to Business for exercising the foregoing rights. "**Related Data**" means data or information (excluding Business Data) associated with or arising out of the use of the Business Portal (including, without limitation, data associated with requests made to, and responses generated in connection with, the Business Portal).

17. Confidential Information. "**Confidential Information**" refers to the following items that either party discloses to the other: (a) any document marked "Proprietary" or "Confidential;" (b) any other non-public materials and information provided or made available by us to you, including the Business Portal or other PTMOSE products or services, information regarding

technology, know-how, processes, software programs, research, development, financial information, and information we provide regarding third parties; and (c) any other sensitive or proprietary information you should reasonably consider a trade secret or otherwise confidential. Confidential Information does not include information that: (i) is in your possession at the time of disclosure; (ii) is independently developed by you without the use of or reference to our Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of your improper action or inaction; or (iv) is approved for release in writing by us. You shall not use Confidential Information for any purpose other than evaluating and using the Business Portal. You agree to hold Confidential Information in strict confidence and not disclose Confidential Information to any third party except as approved in writing by us. If disclosure is required by a court or government authority, you agree to promptly notify us of any legal or governmental demand to disclose any Confidential Information and reasonably cooperate with us in any effort to seek a protective order or otherwise to contest such required disclosure, at our expense.

18. Proprietary Rights. PTMOSE and its licensors, where applicable, shall own all rights, title, and interest, including all related intellectual property rights, in and to the Business Portal, and any suggestions, ideas, enhancement requests, Feedback, recommendations, Documentation, or other information provided by you relating to the Business Portal. This Evaluation Agreement does not convey to you any rights of ownership in or related to the Business Portal, Confidential Information, or any invention, patent, copyright, trademark, or other intellectual property rights. The PTMOSE name, logo, and any product names and logos associated with the Business Portal is our or our licensor's trademarks, and no right or license is granted to Business to use them other than as expressly permitted by us in writing.

19. Copyrights and Trademarks. We shall have and retain sole ownership of all PTMOSE copyrights, trademarks, and other intellectual property, including the goodwill thereto ("**PTMOSE IP**"). You shall have and retain sole ownership of any and all of your copyrights, trademarks, and other intellectual property, including the goodwill thereto ("**Business IP**"). You shall not remove or alter any proprietary or copyright notices, trademarks, or logos contained in the PTMOSE IP without the express written permission of PTMOSE. You agree that we may reference you in our business listings and place your name and logo on our Site and marketing materials relating to the Site or any other products and services, as well as in any press releases or customer "case studies" and the like. You hereby grant us a limited license to use your trademarks (name and logo only) designated by you for such limited uses, subject to your trademark/logo usage guidelines, if any, provided by you to us. Notwithstanding the foregoing, you may request the removal of any such usage of your trademark/logo with written notice to us upon the termination of this Evaluation Agreement.

20. Term and Termination. Unless earlier terminated as provided herein, this Evaluation Agreement begins upon your first access to the Business Portal and continues until terminated by either party by notifying the other party in writing (email will suffice) of the party's intent to terminate this Evaluation Agreement. This Evaluation Agreement will automatically terminate upon your purchase of a paid version of the Business Portal and will be superseded entirely by the terms of the PTMOSE Business Agreement ("**Business Agreement**"). Unless you enter into a Business Agreement, you shall immediately cease all use of the Business Portal upon the termination of this Evaluation Agreement. We may delete and have no further obligation for Business Data stored in the Business Portal upon the termination of this Evaluation Agreement. Each party's obligations under this Evaluation Agreement regarding Confidential Information shall survive termination of this Evaluation Agreement for any reason for as long as Confidential Information remains confidential. Your rights and obligations regarding your Offerings purchased by Users through the Platform shall survive termination of this Evaluations Agreement for any reason and shall remain subject to the terms and conditions of the agreement entered between you and the applicable User.

21. Representations and Warranties. By creating your Business Account, you represent and warrant that: (i) your Business Profile is accurate and updated; (ii) you have and will continue to comply with all applicable federal, state, and local laws, regulations, and ordinances while promoting and selling your Offerings through our Business Portal, including without limitation that your Business Content does not infringe upon the property rights, intellectual property rights (copyrights and trademarks), or other rights of others; (iii) you have all the required state and local licenses and permits to offer the Offerings, whether online or on-premises, to Users through our Business Portal; and (iv) you agree to be bound by the terms of this Evaluation Agreement.

22. Disclaimer of Warranties. WE PROVIDE THE BUSINESS PORTAL ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. YOUR USE OF THE BUSINESS PORTAL IS AT YOUR SOLE RISK, AND WE MAKE NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, THAT: (I) THE BUSINESS PORTAL WILL MEET YOUR REQUIREMENTS; (II) THE OPERATION OF THE BUSINESS PORTAL WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE; (III) THE BUSINESS PORTAL OR THE SITE ARE SECURE FROM HACKING, OR OTHER UNAUTHORIZED

INTRUSION OR YOUR INFORMATION WILL REMAIN PRIVATE OR SECURE; (IV) THE BUSINESS PORTAL IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (V) DEFECTS, IF ANY, WILL BE CORRECTED. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY. THE INFORMATION AND ANY CONTENT PROVIDED BY US ON THE SITE ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT, AND ARE NOT INTENDED TO CONSTITUTE SPECIFIC ADVICE. YOU AGREE THAT WE SHALL HAVE NO RESPONSIBILITY FOR ANY DAMAGES SUFFERED BY YOU, YOUR BUSINESS, YOUR COMPUTER, OR LOSS OF DATA THAT RESULTS FROM YOUR ACCESS TO OUR BUSINESS PORTAL, OUR SITE, OR ANY CONTENT CONTAINED THEREIN.

YOU ARE SOLELY RESPONSIBLE FOR ENSURING YOUR BUSINESS CONTENT, INCLUDING YOUR OFFERINGS AND ANY INTERACTIONS YOU HAVE WITH USERS THROUGH THE SITE OR OFFLINE, FULLY COMPLIES WITH APPLICABLE LAWS.

23. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES INCLUDING, WITHOUT LIMITATION, OUR OWN NEGLIGENCE, SHALL WE OR OUR OFFICERS, EMPLOYEES, AFFILIATES, DIRECTORS, AGENTS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, TRANSMITTING, OR DISTRIBUTING THE BUSINESS PORTAL 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 WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF OR RELATING TO THIS EVALUATION AGREEMENT OR ANY OFFERINGS PURCHASED THROUGH OUR SITE. THIS LIMITATION APPLIES TO, WITHOUT LIMITATION: (I) THE USE OR INABILITY TO USE THE SITE OR THE BUSINESS PORTAL; (II) ANY ACTIONS WE TAKE OR FAIL TO TAKE AS A RESULT OF ANY ELECTRONIC MESSAGES YOU SEND US; (III) STATEMENTS OR CONDUCT OF ANY OTHER USER OR THIRD-PARTY, WHETHER ONLINE OR OFFLINE; OR (IV) ANY OTHER MATTER RELATING TO THE BUSINESS PORTAL.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OUR TOTAL LIABILITY EXCEED \$100. ANY CLAIM ARISING UNDER THIS EVALUATION AGREEMENT MUST BE BROUGHT BY YOU WITHIN 12 MONTHS AFTER THE EVENTS GIVING RISE TO THE CAUSE OF ACTION ARE DISCOVERED, OTHERWISE YOU RELEASE US OF ANY SUCH CLAIM.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

24. Release. If you have a dispute with one or more Users, you release PTMOSE (and our officers, directors, agents, subsidiaries, joint ventures, and employees) from any claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

If you are a California resident, you waive California Civil Code §1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

25. Indemnification. You agree to release, defend, indemnify, and hold harmless PTMOSE and its affiliates, officers, directors, shareholders, employees, and agents and their respective successors and assigns ("**Indemnified Parties**") from any third-party claim, suit, proceeding, or government enforcement actions arising out of, related to, or alleging an injury or loss caused by your access and use of the Business Portal that, without limitation, includes: (i) your Business Content; (ii) your access to or use of the Business Portal for illegal, fraudulent, offensive, or tortious purposes; (iii) your Offerings; (iv) your violation of this Evaluation Agreement; or (v) your violation of any rights of any third-party. You will also indemnify and hold harmless the Indemnified Parties for any costs and expenses, including reasonable attorneys' fees, incurred in responding to any legal action, subpoena, search warrant, or court order requiring the production of information or documents related to your use of the Business Portal. In any event, we will have the right to participate in the defense of any such suit or proceeding through counsel of our own choosing at our expense.

26. Arbitration. For any dispute with us, you agree to first contact us at info@ptmose.com and attempt to resolve the dispute with us informally for at least thirty (30) days before initiating any arbitration or court proceeding. In the event we are unable to resolve the dispute informally, you and we agree that any dispute, claim, or controversy arising out of or relating to this Evaluation Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the

determination of the scope or applicability of this provision to arbitrate, shall be determined solely and exclusively by binding arbitration before a single arbitrator. You and we also agree that the arbitration shall be conducted by the American Arbitration Association (“AAA”) under the Commercial Arbitration Rules and that such arbitration will be conducted in San Francisco, California, unless you and we agree otherwise. Each party will be responsible for paying AAA filing, administrative, and arbitrator fees per AAA rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys’ fees, and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. This arbitration provision is governed by the Federal Arbitration Act.

27. Dispute Resolution and Governing Law. This Evaluation Agreement, and all disputes arising out of or related to this Evaluation Agreement, shall be governed and construed in accordance with the laws of the State of California without reference to conflict of laws principles. Any dispute between the parties that are excluded from the arbitration provision or that cannot be heard in small claims court shall be resolved in the state and federal courts in San Francisco County, California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

28. Miscellaneous. You hereby agree that a breach of this Evaluation Agreement will cause PTMOSE irreparable harm for which recovery of monetary damages would be inadequate and that we shall therefore be entitled to obtain timely injunctive relief under this Evaluation Agreement, as well as such further relief as may be granted by a court of competent jurisdiction. This Evaluation Agreement shall not be construed as creating an agency, partnership, joint venture, or any association between the parties; the parties shall always be independent contractors. You will not assign or transfer any rights or obligations under this Evaluation Agreement without our written consent. The waiver or failure of either party to exercise any right provided in this Evaluation Agreement shall not be construed as a waiver of any other right or remedy to which either party may be entitled. The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements concerning the subject matter of this Evaluation Agreement. No changes can be made to this Evaluation Agreement other than in writing and signed by both parties. If any term or provision of this Evaluation Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Evaluation Agreement will remain in full force and effect as if such invalid or unenforceable term had never been included.