

Terms of Service

These Terms of Service govern your use of the Pesto website, Pesto mobile application (the “App”), and any other products or services provided by us (each a “Site” and together, the “Sites”). By accessing the Sites and the products and services contained therein (collectively “Services”), you agree to abide by these Terms of Service and to comply with all applicable laws and regulations. If you do not agree with these Terms of Service, you are prohibited from using or accessing the Sites and Services.

We, PingLend, Inc. dba Pesto (“Pesto”), reserve the right to review and amend any of these Terms of Service at our sole discretion. Upon doing so, we will update this page. Any changes to these Terms of Service will take effect immediately from the date of publication. Your continued use of the Sites following notification of any changes to these Terms of Service constitutes acceptance of those changes.

THESE TERMS OF SERVICE CONTAIN A MANDATORY INDIVIDUAL ARBITRATION PROVISION AND CLASS ACTION & JURY TRIAL WAIVER PROVISION. YOU CAN OPT-OUT OF THE AGREEMENT TO ARBITRATE BY CONTACTING LEGAL@GETPESTO.COM WITHIN 30 DAYS OF FIRST ACCEPTING THESE TERMS OF SERVICE AND STATING THAT YOU (INCLUDE YOUR FIRST AND LAST NAME) DECLINE THE ARBITRATION AGREEMENT.

These Terms of Service were last updated on October 19, 2023.

Acceptance of Terms of Service

By registering for and/or using the Sites in any manner, including but not limited to visiting or browsing the Sites, you agree to these Terms of Service and all other operating rules, policies and procedures that may be published from time to time on the Sites by us, each of which is incorporated by reference and each of which may be updated from time to time without notice to you.

These Terms of Service apply to all users of the Sites, including, without limitation, users who are non-registered account holders.

Eligibility

You represent and warrant that you are U.S. citizen or legal permanent resident of the U.S. and at least 18 years of age and that you are not a person barred from accessing the Services under the laws of the U.S. Although the Sites may be accessible worldwide, not all features, products or services discussed, referenced, provided or offered through or on the Sites are available to all persons or in all geographic locations, or appropriate or available for use outside of the U.S. We may, in our sole discretion, refuse to offer the Sites to any person or entity and change its eligibility criteria at any time.

Account Registration

To access certain Services on the Sites, you will be required to register for an account on the Sites (an “Account”). You must provide accurate and complete information and keep your Account information updated. You shall not use a name of another person with the intent to impersonate that person.

Your Account information may include information that is personal to you, such as your name, phone number and email address (collectively, “personal details”). You may only provide your own personal details. You may not provide personal details of any third person. You must update your Account information to reflect any change to your personal details. If at any time any portion of your Account information is inaccurate or incomplete, or if you otherwise violate these Terms of Service, we may in our sole discretion and without advance notice choose to suspend or terminate your access to Sites, your Account or both.

You are solely responsible for the activity that occurs on your Account, and for keeping your Account password secure. We will not be liable for any losses or damages caused by any unauthorized user of your Account. You may never use another person’s user account or registration information for the Sites without permission. You must notify us immediately of any change in your eligibility to use the Sites, breach of security or unauthorized use of your Account. You should never publish, distribute or post login information for your Account. You shall have the ability to delete your Account by sending a request to support@getpesto.com.

Credit Card

You may be eligible to apply for a Pesto credit card on the Pesto website if you meet the minimum age requirement and are the lawful owner of valuables like jewelry or watches, etc. (“Collateral”) free and clear of all encumbrances and claims of others to pledge to secure a line of credit.

a. Valuation of Collateral

In order to obtain a valuation of the Collateral, you will be required to complete a valuation/appraisal form online on the Pesto website or App and provide an appraisal, certificate or photos of the item. If Pesto determines that the item cannot be collateralized (used to secure a line of credit), then the initial application will be rejected. If Pesto determines that the item can be collateralized, then Pesto will provide an estimated credit value of the item. Please note that this is strictly an estimate and will not be finalized until the item is physically inspected. If you agree to the estimated credit value of the item, you can either ship the item to or bring it to a designated valuation center. If you ship the item, you agree to fully comply with all laws or regulatory requirements and delivery services company requirements applicable to the shipment of the collateral. You also agree to release Pesto and our respective employees, officers, directors, contractors, and agents from any and all damages which may arise from the shipment of the collateral to and from a designated valuation center. During the online application process if you provide a grossly inaccurate or blatantly false description of your item that you ship to Pesto or you send us an item without going through the online appraisal tool, making it ineligible, we require you to deliver to us a prepaid shipping label via email with the label attached, which means that you will be responsible for paying for the shipment of the item back to you from Pesto.

b. Additional Terms Apply

The Pesto credit card will be issued by the “Bank”. If you apply for or receive a Pesto credit card, additional terms will apply in connection with your application or receipt of the credit card. As a consequence, you are required to agree to the Bank’s Consumer Secured Credit Card Agreement and Privacy Policy, which are separate and independent from these Terms of Service.

c. Identity Verification

If you apply for a credit card, you also agree to give Pesto permission to obtain and share information with its third-party vendor to verify your identity. Pesto may ask for your full name, address, date of birth, last four of your Social Security number or Individual Taxpayer Identification Number, and other information that will allow Pesto's third-party vendor to verify your identity. Pesto may also ask to see a copy of a government issued and non-expired photo identification to verify your identity.

d. Collateral Ownership & Storage

In order to apply for a credit card, you acknowledge and confirm that you are the lawful owner of the Collateral free and clear of all encumbrances and claims of others. If your credit card application is approved, you will be required to assign, transfer, and grant a first party security interest in the Collateral to a designated company ("Lender"). The Collateral will be safely stored at a designated storage center while you use your Pesto credit card. You can add more items to increase your credit limit or have your item(s) returned to you at any time if the full balance of the credit card is paid off. Please refer to the Consumer Secured Credit Card Agreement for additional terms which govern the use of your Pesto credit card.

Consent to Electronic Communications

By accepting these Terms of Service, you expressly consent to be contacted by Pesto or its service providers at any telephone number or electronic email address you provide us. You agree that Pesto or its service providers can contact you in any way, including e-mail, SMS messages (including text messages), or an automatic texting system at any phone number you have provided to us.

You warrant that the telephone number you provided us is accurate. You are responsible for any and all charges, including fees associated with text messaging, imposed by your communications service provider. You may withdraw your consent to text messages by replying STOP to the text message you receive from us.

By accepting these Terms of Services, you also agree that we may communicate with you via email regarding these Terms of Service or your use of the Sites. All email communications will be considered to be "in writing" and have the same meaning and effect as if you were provided a paper copy. You may download or print a paper copy of any email communication and retain it for your records. You agree to give us notice of any changes to your contact information including your email address.

Your consent to receive communications electronically is valid until you revoke your consent by notifying us of your decision to do so at privacy@getpesto.com. If you revoke your consent to receive communications electronically, Pesto may terminate your right to use the Services under these Terms of Service and you may not be able to continue to use the Bank's credit card products since they are provided electronically only.

Restricted Activities

By using the Sites, you warrant that you will not:

- create more than one account for yourself;
- create another account if we have already disabled your previous account;
- provide false or inaccurate information including an attempt to falsify your identity;
- modify, copy, prepare derivative works of, decompile, or reverse engineer any materials and software contained on the Sites;
- remove any copyright or other proprietary notations from any materials and software on the Sites;
- transfer the materials to another person or “mirror” the materials on any other server;
- knowingly or negligently use the Sites in a way that abuses or disrupts our networks;
- impersonate any person, or misrepresent your identity or affiliation with any person or organization;
- post or upload any content that is harassing, indecent, obscene, offensive, fraudulent, or unlawful;
- post or upload any content that contains profanity or other foul language;
- post or upload any content that is defamatory, hateful, abusive, inflammatory, threatening, invasive, or otherwise objectionable;
- post or upload any content that contains an instruction, advice, or materials that could cause harm or injury to individuals or to computers or networks;
- post or upload any content that encourages anyone to commit any unlawful or criminal act or condone any unlawful or criminal act;
- post or upload any content that depicts nudity or sexual activity;
- post or upload any content that depicts drugs or other controlled substances;
- post or upload any content that depicts stolen or counterfeit goods;
- post or upload any content that promotes terrorism or terrorist organizations, organized hate, and criminal organizations;
- post or upload any content that is gruesome in nature including content that depicts violent or graphic images;
- post or upload any content that promotes gambling, betting including sports betting, or lotteries;
- post or upload any content that contains someone else’s private or confidential information;
- use the Sites in violation of any local, state, federal or international law or regulation;
- use the Sites in conjunction with sending unauthorized spam or junk mail;
- harvest, collect, or gather user data;
- use the Sites in such a way that may infringe the privacy, intellectual property rights, or other rights of Pesto or any third parties;
- engage in any behavior that violates these Terms of Service.

Your License to Use the Sites

Subject to these Terms of Service, we grant each user of the Sites a limited, revokable, non-exclusive, non-sublicensable and non-transferable license solely for purposes of using the Sites for personal, noncommercial use only. This constitutes the grant of a license, not a transfer of title. This license shall automatically terminate if you violate any of these restrictions or the Terms of Service, and may be terminated by Pesto at any time.

User-Generated Content

You are solely responsible for any content that you post, upload or otherwise transmit on the Sites (“User-Generated Content”) including videos, text, images, audio, graphics or any works of authorship. Under no circumstances, will we be liable for any User-Generated Content that is posted, uploaded, or otherwise transmitted by you on the Sites.

Our Intellectual Property

The content of the Sites includes the text, graphics, computer code, images, illustrations, logos, sounds, videos, and any other like materials. Unauthorized use of the content of the Sites may violate copyright, trademark and other laws. Use, reproduction, modification, distribution, or storage for subsequent use of any content is expressly prohibited without prior written permission from us. You shall not sell, license, rent, reproduce, or otherwise use or exploit any content from the Sites.

Links to Other Websites

Pesto may have links to other websites that are not owned or controlled by Pesto. Pesto is not responsible for the contents of any such linked website. The inclusion of any link does not imply endorsement, approval, or control by Pesto of the website. Use of any such linked website is at your own risk and we strongly advise you to make your own investigations with respect to the suitability of those websites. These Terms of Service do not apply to your use of third-party websites. You expressly release Pesto from any and all liability arising from your use of any third-party website or service. Your use of the third-party websites or services contained therein may subject you to additional terms of service and policies.

Content Removal and Right to Terminate Account

We can remove any content you upload, post or share on the Sites if it violates the Terms of Service. While we prefer to give advance notice of termination, we reserve the right, in our sole discretion to suspend or terminate your right to use the Sites with or without notice, effective immediately, if we have a good reason, including any violation of our Terms of Service or we are permitted or required to do so by law.

Privacy

You consent to the collection, use and disclosure of personal identifiable information pursuant to the terms in our privacy policy. Please refer to our privacy policy for information on how Pesto collects, uses and discloses information we receive from users of the Sites and Services contained therein.

Warranty Disclaimer

THE SITES AND CONTENT ARE PROVIDED “AS IS”, “AS AVAILABLE” AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WE, AND OUR DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, SUPPLIERS, PARTNERS, CONTENT PROVIDERS AND LICENSORS DO NOT WARRANT THAT: **(I)** THE SITES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; **(II)** ANY DEFECTS OR ERRORS WILL BE CORRECTED; **(III)** ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE SITE IS FREE OF VIRUSES

OR OTHER HARMFUL COMPONENTS; OR **(IV)** THE RESULTS OF USING THE SITES WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE SITE IS SOLELY AT YOUR OWN RISK.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AS SET FORTH IN THIS SECTION. THUS, TO THE EXTENT SUCH EXCLUSIONS IN THIS SECTION ARE SPECIFICALLY PROHIBITED BY APPLICABLE LAW, THOSE EXCLUSIONS MAY NOT APPLY TO YOU. IN THESE JURISDICTIONS, PESTO AND THE OTHER PARTY'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PESTO AND ITS OFFICERS, DIRECTORS, PARTNERS, AFFILIATES, AGENTS, EMPLOYEES AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (I) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SITES AND SERVICES CONTAINED THEREIN; (II) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SITES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (III) ANY SYSTEM FAILURE OR MALFUNCTION; OR (IV) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR DATA. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF PESTO EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (\$100.00). THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT PESTO HAS BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES OR CLAIMS.

SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

Indemnification

You shall defend, indemnify, and hold harmless Pesto and its agents, licensors, partners, and affiliates and each of our and their respective employees, contractors, agents, directors, and officers, from and against any all liabilities, losses, damages, obligations, claims, and expenses, including but not limited to attorneys' fees, arising out of or relating to (i) your use or misuse of, or access to, the Sites including any data or content transmitted or received by you, (ii) your violation of any of these Terms of Service, (iii) a third party accessing and using your Account or identity on the Sites with your username, password, or other appropriate security code, (iv) your violation of any third-party right including but not limited to intellectual property rights or right of privacy, (v) your willful misconduct, or (vi) your violation of any applicable law, rule or regulation. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses. This provision shall survive the termination of these Terms of Service.

Governing Law

These Terms of Service shall be governed by and construed in accordance with the laws of the State of California, including its conflicts of law rules, and the United States of America. You agree to submit to the

exclusive personal jurisdiction of the state and federal courts in the State of California except as detailed in the “Arbitration” section below.

Arbitration, Jury Trial/Class Action Waiver

READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM PESTO. If you have a claim or dispute with Pesto you agree to first contact Pesto at legal@getpesto.com and attempt to informally resolve the dispute. If for someone reason, we are unable to resolve the claim or dispute informally after sixty (60) days, WE AGREE THAT ANY DISPUTE (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) ARISING OUT OF OR RELATING TO THE RELATIONSHIP BETWEEN YOU AND PESTO OR THESE TERMS OF SERVICE OR THE ALLEGED BREACH THEREOF SHALL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION UNDER THE AMERICAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY.

Neither you nor we will participate in a class action or class-wide arbitration for any claims covered by this agreement to arbitrate. ALL CLAIMS MUST BE BROUGHT IN THE PARTY'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS REPRESENTATIVE OR CLASS MEMBER IN A PURPORTED CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATIONS. UNLESS BOTH YOU AND PESTO AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. YOU AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU AND PESTO ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND. The parties to this agreement acknowledge that this arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“FAA”). The arbitrator will decide any dispute regarding the enforceability of this arbitration agreement. The arbitration will be conducted in San Francisco, unless you and Pesto agree otherwise. Attendance at an in-person hearing may be made by telephone by you and/or Pesto, unless the arbitrator requires otherwise. If you do not wish to be subject to this Arbitration requirement, within 30 days of first accepting these Terms of Service, send an email to Pesto at legal@getpesto.com stating that you (include your first and last name) decline this arbitration agreement. Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules. The AAA's rules are available at www.adr.org. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Service.

Copyright Infringement - Digital Millennium Copyright Act (DCMA) Notice

Pesto complies with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. §512, as amended).

If you have any complaints or objections to material posted on the Sites you may contact our designated agent at the following address: Email: support@getpesto.com

Any notice alleging that materials hosted by or distributed through the Sites infringe intellectual property rights must include the following information:

- * an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
- * a description of the copyrighted work or other intellectual property that you claim has been infringed;
- * a description of the material that you claim is infringing and where it is located on the Sites;
- * your address, telephone number, and email address;
- * a statement by you that you have a good faith belief that the use of the materials on the Sites of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
- * a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Assignment

You may not assign your rights or obligations hereunder by operation of law or otherwise. Pesto, however, may freely assign its rights and obligation hereunder.

Severance

If any provision of these Terms of Service is determined by a court of law to be unlawful, void or unenforceable for any reason, the validity of the remainder of these Terms of Service shall not be affected and will remain valid.

Contact Us

Please contact us at legal@getpesto.com if you have any questions regarding these Terms of Service.

US PATRIOT ACT NOTICE

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you use our services, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see a form of identification with your photograph or other identifying documents.