

## Gusto R&D Tax Credit Service Powered by Ardius Terms

Last updated October 15, 2021.

These Gusto R&D Tax Credit Service Powered by Ardius Terms Terms (the “Ardius R&D Terms”), together with the Gusto Terms of Service Agreement available at <https://gusto.com/about/terms> (the “Gusto Terms”) and the Gusto R&D Tax Credit Service Terms available at [www.gusto.com/about/terms/rd-tax-credit](http://www.gusto.com/about/terms/rd-tax-credit) (the “Gusto R&D Terms”) (collectively, the “Ardius R&D Agreement”), set forth the terms and conditions under which Ardius, LLC and its affiliates (“Ardius”) agree to provide eligible customers of Gusto, Inc. (“Gusto”) (each a “User,” as defined in the Gusto Terms) with the ability to request the Gusto R&D Tax Credit Service Powered by Ardius (as defined below) from and become a customer of Ardius (each, an “Ardius Customer” or “Customer”), via the Gusto Platform.

If User is agreeing to these terms on behalf of a business or an individual other than User, User represents and warrants that User has authority to bind that business or other individual to the this Ardius R&D Agreement, and User’s agreement to these terms will be treated as the agreement of such business or individual. In that event, User also refers to that business or individual. By clicking the applicable button to indicate User’s acceptance of the Ardius R&D Agreement, User agrees, effective as of the date of such action, to be bound by these Ardius R&D Terms.

The terms and conditions of the Gusto Terms agreed to in connection with the creation of User’s Account, including but not limited to all representations, warranties, covenants, disclaimers, limitations of liability, agreements, and indemnities relating to the Services, are incorporated herein by reference, and User acknowledges and agrees that the representations, warranties, covenants, disclaimers, limitations of liability, agreements, and indemnities contained in the Gusto Terms shall remain in full force and effect to the full extent provided therein.

YOU AGREE TO THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER DESCRIBED IN SECTION 15.

### 1. Gusto R&D Tax Credit Service Powered by Ardius

Provided that Customer (i) meets Customer’s payment obligations; (ii) complies with the terms of this Ardius R&D Agreement, and; (iii) meets the Eligibility Criteria (as defined below), Ardius will provide the Gusto R&D Tax Credit Service Powered by Ardius to Customer via the Gusto Platform for the relevant and agreed upon jurisdiction(s), tax filing(s), and fiscal year(s).

Ardius will perform the Gusto R&D Tax Credit Service Powered by Ardius, which may include but shall not exceed: (a) reviewing Customer records, such as contracts and invoices (“Customer Documentation”) provided

to Ardius by Customer, (b) interviewing Customer and Customer employees and/or business personnel identified by Customer (“Customer Interviews”), (c) using Customer Documentation and Customer Interviews to prepare a final report (the “Ardius Report”) that documents what Customer activities may constitute qualified research for purposes of filing for and possibly receiving a state or federal research and development tax credit (the “R&D Tax Credit”), and (d) utilizing the Customer Documentation and Customer Interviews provided to Ardius by Customer to prepare applicable federal and/or state tax forms (the “Customer Tax Forms”) (collectively, the “Gusto R&D Tax Credit Service Powered by Ardius”).

Customer shall be responsible for: (i) providing requested Customer Documentation, (ii) identifying and scheduling participants for Customer Interviews, (iii) participating in Customer Interviews as applicable, (iv) reviewing all Reports and Customer Tax Forms; (v) making its own decisions on what to include on its applicable tax filings; (vi) compiling and filing Customer Tax Forms with the applicable tax agencies; (vii) communicating or otherwise sharing information with tax agencies or authorities or anyone reasonably believed to be a representative of a tax agency or authority.

For avoidance of doubt, Customer is solely responsible for all filings, filing decisions, and any communications with any tax authority or agency (or anyone reasonably believed to represent a tax authority or agency), including the contents of any documents or information provided to any tax authority or agency. Unless Ardius or Gusto specifies otherwise in writing, Ardius is not responsible for providing any assistance in preparing for or responding to tax audits or examinations, and Ardius is not in the business of providing professional or legal advice. We encourage Customer to consult an attorney in the event of an audit or examination.

## **2. Eligibility Requirements for the Gusto R&D Tax Credit Service Powered by Ardius**

Only businesses that qualify for the federal R&D Tax Credit are eligible for the Gusto R&D Tax Credit Service Powered by Ardius. Eligibility requirements for the federal R&D Tax Credit are established by the Internal Revenue Service (“IRS”), and more information about the Federal R&D Tax Credit, including the IRS eligibility rules for the Federal R&D Tax Credit (the “Eligibility Criteria”), can be found on the IRS website. Before enrolling a company (the “Company”) in the Gusto R&D Tax Credit Service Powered by Ardius, Customer is encouraged to consult with an accountant to determine whether such Company is eligible for the Federal R&D Tax Credit. Ardius may also undertake an independent assessment of whether a Company is eligible for federal R&D Tax Credits. In the event that Ardius determines a Company is not eligible for the Federal R&D Tax Credit, Ardius shall promptly inform Customer of the same and this Agreement and the Gusto R&D Tax Credit Services Powered by Ardius shall be terminated, subject to the terms of Section 14 below. For avoidance of doubt, in the event that Customer’s Company is determined to not be a Qualified Business within the meaning of this Section, Customer shall not be invoiced for the Gusto R&D Tax Credit Service Powered by Ardius Service Fees described in Section 5 herein.

## **3. Customer Responsibilities Related to the Gusto R&D Tax Credit Service Powered by Ardius**

For avoidance of doubt, Section 5 of the Gusto R&D Terms applies herein with full force and effect. Without limiting the foregoing, by accepting these Ardius R&D Terms, Customer also acknowledges and agrees to the following:

**Instructions:** Ardius may provide Customer with instructions about how to use the Gusto R&D Tax Credit Service Powered by Ardius. Customer is solely responsible for following those instructions, whether sent by email, by posting on the Gusto Site, or otherwise.

**Provided Information:** Customer represents that Customer has the authority to share Provided Information (as defined herein) with Ardius, and Customer understands that Customer is solely responsible for the accuracy and completeness of such Provided Information as further described in Sections 8 and 9 herein.

**Review and approval:** Customer is responsible for reviewing all Customer Tax Forms, the Ardius Report, summaries, information, documents or materials (collectively, "Materials") that Ardius may submit to Customer for review, and Customer must notify Ardius of any inaccuracies in the Materials as soon as possible, or within a timeframe specified by Ardius. Customer accepts full responsibility for the results of the Gusto R&D Tax Credit Service Powered by Ardius, and for Customer's reliance on any of the Materials.

**Third party notices:** Customer must promptly notify Ardius of any third-party notices that Customer may receive which could affect Ardius's ability to effectively provide the Gusto R&D Tax Credit Service Powered by Ardius, or which could increase the likelihood that a Claim (as defined below) is brought against Customer, Ardius, or Gusto in connection with the Gusto R&D Tax Credit Service Powered by Ardius, e.g. notices from the Internal Revenue Service or other government agencies regarding penalties or errors relating to the Gusto R&D Tax Credit Service Powered by Ardius.

**Communications with tax agencies:** Customer is solely responsible for all filings, filing decisions, and any communications with any tax authority or agency (or anyone Ardius or Gusto reasonably believes to represent a tax authority or agency), including the contents of any documents or information provided to any tax authority or agency. Unless Ardius specifies otherwise in writing, Ardius is not responsible for providing any assistance in preparing for or responding to tax audits or examinations, and Ardius is not in the business of providing professional or legal advice. Ardius encourages Customer to consult an attorney in the event of an audit or examination.

#### **4. Ardius Audit Guidance**

If specifically included in the Gusto R&D Tax Credit Service Powered by Ardius, and in the event that Customer receives an IRS or State tax audit letter and/or notice regarding or relating to the Customer Tax Forms prepared by Ardius as described below, Ardius may undertake commercially reasonable efforts to provide Customer with up to 10 hours of audit guidance, which shall be limited to what to expect and how to prepare for the audit ("Ardius Audit Guidance").

Ardius Audit Guidance will only be available to Customers for three years following the federal filing date for the most recent tax year. Ardius Audit Guidance applies to Federal and State tax audit notices and/or letters.

To request Ardius Audit Guidance, Customer must provide Ardius with copies of the relevant notice or letter from federal or state tax authorities in addition to copies of the relevant Customer Tax Forms and any relevant Customer Documentation as may be specified or requested by Ardius in its sole discretion. Ardius Audit Guidance will not be available to Customers who have materially altered or modified (as determined by Ardius in its sole discretion) the Customer Tax Forms prior to filing. Ardius Audit Guidance does not constitute legal, tax, regulatory or other professional advice and is for informational purposes only. Ardius will not act as Customer’s representative in an audit.

**5. Gusto R&D Tax Credit Service Powered by Ardius Service Fees**

Ardius will invoice and Customer agrees to pay the fees for the Gusto R&D Tax Credit Service Powered by Ardius listed in the Service Fee Table below (the “Gusto R&D Tax Credit Service Powered by Ardius Service Fees”). From time to time Ardius or Gusto may offer discounts in their sole discretion. In addition, Ardius may update the Service Fee Table at any time in its sole discretion.

Service Fee Table:

Milestone	List Price	Discounted Gusto Price
Signing up for Gusto R&D Tax Credit powered by Ardius Service	\$1,000.00	\$0
Upon Ardius’s completion of Customer’s R&D Tax Credit calculations	\$1,000.00	\$100.00
Utilization of R&D Tax Credits	30% of total utilized credit	20% of total utilized credit

Customer shall pay such invoice within thirty (30) days of receipt thereof via money transfer, ACH, check, or any other payment method Ardius may deem acceptable in its sole discretion. All Gusto R&D Tax Credit Service Powered by Ardius Service Fees are non-refundable unless otherwise specified in the Gusto R&D Tax Credit Service Powered by Ardius Agreement. Customer understands that failure to pay Gusto R&D Tax Credit Service Powered by Ardius Service Fees as they become payable may result in suspension or termination of this Gusto R&D Tax Credit Service Powered by Ardius Agreement.

Customer agrees to reimburse Ardius for any sales, use, and similar taxes arising from the provision of the Gusto R&D Tax Credit Service Powered by Ardius that any federal, state, or local governments may impose.

In the event that Customer, or the entity for whom Customer has requested Ardius provide the Gusto R&D Tax

Credit Service Powered by Ardius, is acquired or undergoes a change in ownership, Customer shall be responsible for payment of the total of the remaining Gusto R&D Tax Credit powered by Ardius Service Fees, including any fees based on the unutilized R&D Tax Credits, incorporating any relevant discounts.

## **6. User Accounts**

To use the Gusto R&D Tax Credit powered by Ardius Service, User must have an account with Ardius (an "Account"). Customer hereby authorizes Ardius to obtain and store User's Account information as necessary to make the Gusto R&D Tax Credit powered by Ardius Service available to User.

## **7. Privacy Policy**

Please refer to Ardius's Privacy Policy for information on how Ardius collects, uses, and discloses information from Customer. Customer acknowledges and understands that Ardius may collect, use, and disclose Customer's information pursuant to Ardius's Privacy Policy as it may be updated from time to time. Gusto is Ardius' parent company and affiliate, and Customer understands that

## **8. Ardius has No Liability for Provided Information**

Ardius is not responsible or liable for determining how much Federal R&D Tax Credit the Customer is eligible to claim in a given tax year (the "Available Credit"). Determining the amount of Available Credit remains solely the responsibility of the Customer. Customer must provide Ardius with the necessary information for Ardius to perform the Gusto R&D Tax Credit powered by Ardius Service, which may include Customer Documentation such as (a) employee W-2 data via documents and/or API access to a payroll service API; (b) general ledger information regarding departmental contract and supply costs via connecting to an accounting service API; (c) invoices and contracts, as necessary, related to contract costs; (d) contemporaneous documentation supporting the qualification of activities, and information collected during Customer Interviews ("Provided Information"). For the avoidance of doubt, Provided Information includes Customer Documentation and Customer Interviews.

Customer is solely responsible for the accuracy, timeliness, and completeness of such Provided Information and for maintaining the accuracy and completeness of such Provided Information. Ardius will rely on the Provided Information furnished by Customer. Ardius is not responsible or liable for any consequences or Claims (as defined below), including but not limited to, any Resulting Errors (as defined below) arising from reliance on the Provided Information.

## **9. Obligation to Notify Ardius of Changes to Provided Information**

Customer must promptly notify Ardius of any changes to the Provided Information. In particular, Customer must promptly notify Gusto if (i) Customer has changed the employer identification number to which any Available Credit should apply or (ii) Customer has used any portion of its Available Credit against its business income taxes. Ardius is not responsible or liable for any consequences or Claims (as defined below), including but not limited to any Resulting Errors (as defined below), arising from Customer's failure to notify Ardius of

any changes to the Provided Information.

## **10. Proprietary Rights**

Customer retains all intellectual property rights in Customer's information or data, and Ardius retains all intellectual property rights in the Gusto R&D Tax Credit Service Powered by Ardius. Customer grants Ardius a limited license to use Customer's information and/or data to provide and improve the Gusto R&D Tax Credit Service Powered by Ardius. Ardius may retain anonymized, de-identified, and aggregated information or data in order to improve the Gusto R&D Tax Credit Service Powered by Ardius. Customer agrees that any feedback or suggestions provided by Customer to Ardius about the Gusto R&D Tax Credit Service Powered by Ardius ("Feedback") is given entirely voluntarily, and Ardius will be free to use, disclose, reproduce, license, or otherwise distribute and exploit such Feedback as it sees fit, entirely without obligation or restriction of any kind and without compensating or crediting Customer. Feedback includes, without limitation, feedback Customer provides to Ardius in response to surveys Ardius and/or its affiliates conduct, through any available technology, about Customer's experience. Gusto retains all intellectual property rights in the Gusto Platform.

## **11. Warranty Disclaimers**

Customer's use of the Platform and Gusto R&D Tax Credit Service Powered by Ardius is entirely at Customer's own risk. Neither Ardius nor Gusto is in the business of providing legal, regulatory, financial, accounting, employment, tax or other professional services or advice. Any information provided by Ardius or Gusto via the Platform or otherwise is meant for informational purposes only and should not be interpreted as professional advice. Customer should consult a professional that is trained or licensed in the relevant area if Customer needs such assistance.

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE PLATFORM AND GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND MADE BY ARDIUS OR GUSTO. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ARDIUS AND GUSTO DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DATA LOSS, AND NON-INFRINGEMENT. FURTHERMORE, GUSTO MAKES NO WARRANTIES REGARDING THE ACCURACY, RELIABILITY, TIMELINESS, TRUTHFULNESS, COMPLETENESS, OR QUALITY OF ANY INFORMATION IN OR LINKED TO THE GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS. ARDIUS AND GUSTO CANNOT GUARANTEE THE ACCURACY OR COMPLETENESS OF CUSTOMER INFORMATION AND ARDIUS AND GUSTO MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO CUSTOMER INFORMATION. ARDIUS AND GUSTO DO NOT WARRANT THAT THE PLATFORM OR GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS WILL (I) MEET CUSTOMER'S EXPECTATIONS OR REQUIREMENTS; (II) BE COMPLETELY SECURE OR FREE FROM ERRORS, BUGS, VIRUSES, OR OTHER HARMFUL COMPONENTS; OR (III) BE FREE FROM INTERRUPTION, THEFT, OR DESTRUCTION. IN ADDITION, ARDIUS AND GUSTO EXPRESSLY DISCLAIM ANY RESPONSIBILITY FOR ENSURING THE VALIDITY AND ENFORCEABILITY OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED VIA THE E-SIGN SERVICE UNDER ANY APPLICABLE U.S. LOCAL, STATE, OR

FEDERAL LAWS, OR THE LAWS OF ANY OTHER JURISDICTION.

## **12. Indemnity**

Customer will indemnify and hold harmless Gusto, Ardius, and Gusto's and Ardius's officers, directors, employees, and agents (the "Indemnified Parties"), from and against any claims, disputes, demands, liabilities, damages, losses, costs, judgements, penalties, fines, and expenses (including, without limitation, reasonable legal and accounting fees) (collectively, the "Claims"), arising out of or in any way connected with (i) Customer's access to or use of the Platform or Gusto R&D Tax Credit Service Powered by Ardius; (ii) Customer's violation or alleged violation of this Gusto R&D Tax Credit Service Powered by Ardius Agreement; (iii) Customer's violation or alleged violation of any third party right, including without limitation any right of privacy or publicity, or any right provided by any labor or employment law, rule, or regulation, or any intellectual property right; (iv) Customer's violation or alleged violation of any applicable law, rule, or regulation; (v) Customer's gross negligence, fraudulent activity, or willful misconduct; (vi) Ardius's or any other Indemnified Party's use of or reliance on information or data furnished by Customer, an employee or independent contractor of Customer, in connection with this Gusto R&D Tax Credit Service Powered by Ardius Agreement; (vii) actions or activities that Ardius or any other Indemnified Party undertakes in connection with the Gusto R&D Tax Credit Service Powered by Ardius or this Gusto R&D Tax Credit Service Powered by Ardius Agreement at the direct request or instruction of anyone that Ardius or any other Indemnified Party reasonably believes to be Customer (each such action or activity, a "Requested Action"); (viii) Ardius's or any other Indemnified Party's use of or reliance on information or data resulting from such Requested Actions; or (ix) Customer's failure to properly follow Ardius's instructions with respect to the Gusto R&D Tax Credit Service Powered by Ardius.

## **13. Limitation of Liability**

NEITHER ARDIUS, GUSTO, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE PLATFORM OR GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, OR SYSTEM FAILURE, OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FROM THE USE OF OR INABILITY TO USE THE PLATFORM OR GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS WHETHER SUCH DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ARDIUS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IN NO EVENT WILL ARDIUS'S OR GUSTO'S TOTAL LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS OR FROM THE USE OF OR INABILITY TO USE THE PLATFORM OR GUSTO R&D TAX CREDIT SERVICE

POWERED BY ARDIUS EXCEED THE AMOUNTS CUSTOMER HAS PAID TO ARDIUS FOR USE OF THE PLATFORM, SERVICES, OR CONTENT IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE APPLICABLE CLAIM. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN ARDIUS AND CUSTOMER.

#### 14. Term and Termination

The Gusto R&D Tax Credit Service Powered by Ardius and the Gusto R&D Tax Credit Service Powered by Ardius Agreement will continue until terminated by either party. Customer may terminate the Gusto R&D Tax Credit Service Powered by Ardius and the Gusto R&D Tax Credit Service Powered by Ardius Agreement by giving Ardius at least thirty (30) days prior written notice. Ardius may terminate the Gusto R&D Tax Credit Service Powered by Ardius and the Gusto R&D Tax Credit Service Powered by Ardius Agreement by giving Customer at least thirty (30) days' prior written notice. In addition to Ardius's foregoing termination right, Ardius may immediately suspend or restrict Customer's Account; suspend or restrict Customer's access to the Gusto R&D Tax Credit Service Powered by Ardius or immediately terminate the Gusto R&D Tax Credit Service Powered by Ardius and this Ardius R&D Agreement, in each case with or without notice to Customer, in the event that: (i) Ardius has any reason to suspect or believe that Customer may be in violation of the Ardius R&D Agreement; (ii) Ardius determines that Customer's actions are likely to cause legal liability for or material negative impact to Ardius; (iii) Ardius believes that Customer has misrepresented any data or information or that Customer has engaged in fraudulent or deceptive practices or illegal activities; (iv) Ardius has determined that Customer is behind in payment of fees for the Services and Customer has not cured such non-payment within five (5) days of Ardius providing Customer with notice of the non-payment; or (v) Customer files a petition under the U.S. Bankruptcy Code or a similar state or federal law, or a petition under the U.S. Bankruptcy Code or a similar state or federal law is filed against Customer. Furthermore, while Ardius strives to support a multitude of business and organization types, in certain unique situations, if Ardius cannot support the Gusto R&D Tax Credit Service Powered by Ardius for Customer's business or organization type, or if the Eligibility Criteria are not met, Ardius may immediately terminate the Gusto R&D Tax Credit Service Powered by Ardius and this Ardius R&D Agreement upon written notice to Customer.

In the event that Customer elects to terminate this agreement as described above, or in the event that Customer experiences a change in ownership such as a sale or acquisition, Ardius will invoice Customer for the total of the remaining Gusto R&D Tax Credit Service Powered by Ardius Service Fees, including any fees based on the unutilized R&D Tax Credits, incorporating any relevant discounts.

The termination of any of the Gusto R&D Tax Credit Service Powered by Ardius or the Gusto R&D Tax Credit Service Powered by Ardius Agreement will not affect Customer's or Ardius's rights with respect to transactions which occurred before termination. Ardius will have no liability for any costs, losses, damages, penalties, fines, expenses, or liabilities arising out of or related to Ardius's termination of the Gusto R&D Tax Credit Service Powered by Ardius Agreement. Any sections of the Gusto R&D Tax Credit Service Powered by Ardius Agreement which by their nature should survive and the following sections of these Ardius R&D Tax Credit



Beta Terms will survive and remain in effect: Sections 5 (to the extent that there are any unpaid fees for services rendered as of the time of termination of these Ardius R&D Tax Credit Beta Terms), 6, 7, 10 through 19.

Upon termination of the Gusto R&D Tax Credit Service Powered by Ardius and/or termination of the Gusto R&D Tax Credit Service Powered by Ardius Agreement, Customer's right to access and use such terminated Gusto R&D Tax Credit Service Powered by Ardius will automatically terminate.

#### **15. Changes to the Gusto R&D Tax Credit Service Powered by Ardius or the Ardius R&D Agreement**

Ardius may modify the Ardius R&D Agreement at any time, in Ardius's sole discretion. If Ardius does so, Ardius shall post the modified Ardius R&D Agreement on its website. It is important that Customer reviews and accepts any modified Ardius R&D Agreement because Customer can continue to use the Gusto R&D Tax Credit Service Powered by Ardius only if Customer accepts the modified Ardius R&D Agreement, indicating to Ardius that Customer agrees to be bound by the modified Ardius R&D Agreement. If Customer does not agree to be bound by the modified Ardius R&D Agreement, then Customer may not continue to use the Gusto R&D Tax Credit Service Powered by Ardius. Because the Gusto R&D Tax Credit Service Powered by Ardius may evolve over time, Ardius may change or discontinue all or any part of the Ardius R&D Tax Credit Service Powered by Ardius at any time and without notice, at Ardius's sole discretion.

#### **16. Governing Law**

This Ardius R&D Agreement will be interpreted and construed in accordance with the laws of the State of California without regard to the conflicts of laws principles thereof.

#### **17. Arbitration**

Notwithstanding any other provision in the Ardius R&D Agreement, and except as otherwise set forth in this section, if either Customer or Ardius has any dispute, controversy, or claim, whether founded in contract, tort, statutory, or common law, concerning, arising out of, or relating to the Ardius R&D Agreement or the Gusto R&D Tax Credit Service Powered by Ardius, including any claim regarding the applicability, interpretation, scope, or validity of this arbitration clause (each of the foregoing, a "Legal Claim") that cannot be resolved directly between Customer and Ardius, then such Legal Claim will be settled by individual (not class or class-wide), confidential, binding arbitration administered by the American Arbitration Association ("AAA") in accordance with the then-current Commercial Arbitration Rules and Mediation Procedures of the AAA (the "AAA Rules"), including any expedited procedures. To initiate an arbitration proceeding, an arbitration claim must be submitted by the claimant (the "Claimant") to the AAA, and a written Demand for Arbitration must be provided to the other party (the "Opposing Party"), pursuant to the AAA Rules. Arbitration hearings will be held in San Francisco, California or any other location that is mutually agreed upon by Customer and Ardius. A single arbitrator will be mutually selected by Ardius and Customer and shall be (i) a practicing attorney licensed to practice law in California or a retired judge; and (ii) selected from the arbitrators on the AAA's roster of commercial dispute arbitrators who have a background in payroll, health insurance, human resources, and/or

online commerce law (or if there are no such arbitrators, then from the arbitrators on the AAA's roster of commercial dispute arbitrators) (collectively, the "Arbitrator Requirements"). If Ardius and Customer cannot mutually agree upon an arbitrator within ten (10) days of the Opposing Party's receipt of the Demand for Arbitration from the Claimant, then the AAA shall appoint a single arbitrator that satisfies the Arbitrator Requirements. The arbitrator will follow the law and will give effect to any applicable statutes of limitation. The prevailing party shall be entitled to an award of the costs and expenses of the arbitration, including reasonable attorneys' fees and expert witness fees. The award rendered by the arbitrator shall be final and binding upon Customer and Ardius. A judgment on the award may be entered and enforced in any court of competent jurisdiction.

Either Ardius or Customer may assert claims, if the claims qualify, in small claims court in San Francisco, California. Either Ardius or Customer may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Services or intellectual property infringement without first engaging in the above arbitration process. If found that the agreement to arbitrate does not apply to Customer or Customer's Legal Claim, then Customer agrees to the exclusive jurisdiction of the state and federal courts of San Francisco County, California to resolve the Legal Claim.

Customer and Ardius agree and acknowledge that this Ardius R&D Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act (Title 9 of the United States Code) shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in these Customer Terms. CUSTOMER FURTHER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT CUSTOMER AND ARDIUS ARE EACH WAIVING THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY AS TO DISPUTES HEREUNDER AND THAT CUSTOMER IS WAIVING ITS RIGHT TO PARTICIPATE IN ANY CLASS ACTION PROCEEDING ARISING FROM THIS GUSTO R&D TAX CREDIT SERVICE POWERED BY ARDIUS AGREEMENT.

#### **18. Ardius is Not Responsible for Things Ardius Cannot Control**

Ardius is not responsible or liable for any delays or failures in performance from any cause beyond Ardius's control, including, but not limited to, acts of God, changes to laws or regulations, embargoes, wars, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power outages, strikes, weather conditions, acts of hackers, acts of internet service providers, acts of any other third party, or acts or omissions of Customer.

#### **19. Electronic Transmission**

These Ardius R&D Terms, and any amendments hereto, by whatever means accepted, will be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were an original signed version thereof, delivered in person. Neither party hereto shall argue that a contract was not formed hereunder based on either (i) the use of electronic means to deliver a signature or to indicate acceptance of these Ardius R&D Terms or (ii) the fact that any signature or acceptance of these Ardius R&D Terms were transmitted or communicated through electronic means; and each party forever waives any related defense.

## 20. General

This Ardius R&D Agreement constitutes the entire agreement between Ardius and Customer regarding the Gusto R&D Tax Credit Service Powered by Ardius and replaces all prior understandings, communications, and agreements, oral or written, regarding this subject matter. This Ardius R&D Agreement may be modified only by a written amendment signed by the parties or as otherwise provided in Section 12. If any part of this Ardius R&D Agreement is deemed to be unenforceable or invalid, that section will be removed without affecting the remainder of the Ardius R&D Agreement. The remaining terms will be valid and enforceable. Customer may not assign this Ardius R&D Agreement, by operation of law or otherwise, without Ardius's prior written consent. Any attempt by User to assign or transfer this Ardius R&D Agreement, without such consent, will be null. Ardius may freely assign or transfer this Ardius R&D Agreement Agreement without restriction. The provisions of this Ardius R&D Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

Any notices or other communications provided by Ardius under this Ardius R&D Agreement, including those regarding modifications to this Ardius R&D Agreement, will be given: (i) via email; or (ii) by posting to the Platform. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is given. For notices made by posting to the Platform, the date of such posting will be deemed the date that notice is given. Ardius's failure to enforce any right or provision of this Ardius R&D Agreement will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Ardius. Except as expressly set forth in this Ardius R&D Agreement, the exercise by either party of any of its remedies under this Ardius R&D Agreement will be without prejudice to its other remedies under this Ardius R&D Agreement or otherwise.

## 21. Contact Information

If Customer has any questions about this Agreement or the Gusto R&D Tax Credit Service Powered by Ardius, Customer may contact Ardius at [support@ardius.com](mailto:support@ardius.com). Ardius is a subsidiary of Gusto. Gusto, the provider of the Gusto Platform, is located at 525 20th Street San Francisco, CA 94107. If Customer is a California resident, Customer may report complaints regarding the Gusto R&D Tax Credit Service Powered by Ardius by contacting the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs at:

Department of Consumer Affairs

Consumer Information Division

1625 North Market Blvd., Suite N 112

Sacramento, CA 95834

Phone Number: (800) 952-5210

