

# Background Checks Terms of Service

Last updated September 7, 2022

These Gusto Background Check Terms of Service (the “Background Check Terms”) together with the Gusto Terms of Service available at <http://www.gusto.com/about/terms> (the “Gusto Terms”), the Gusto Payroll Service Terms available at <http://www.gusto.com/about/terms/payroll> (the “Payroll Terms”), and the Checkr, Inc. Services Agreement available at <https://checkr.com/customer-agreement> (the “Checkr Service Terms”) (collectively, the “Background Check Customer Agreement”), set forth the terms and conditions under which Gusto, Inc. (“Gusto”) agrees to provide eligible customers (each, a “Customer”), with the opportunity to request, obtain, and review results of background checks performed by Gusto’s background check partner, Checkr, Inc. (“Checkr”) via the Gusto Platform (the “Background Checks Service”).

These Background Check Terms are “Service Terms” under the Gusto Terms. Capitalized terms used but not otherwise defined in these Background Check Terms have the meanings ascribed to such terms in the Gusto Terms, the Payroll Terms, and the Checkr Service Terms, as applicable. The Background Check Customer Agreement is a legally binding agreement between Customer and Gusto. The individual agreeing to these Background Check Terms on behalf of Customer (the “Authorized Signatory”) is encouraged to read the Background Check Customer Agreement carefully and to save a copy of it for Customer’s records. The Authorized Signatory represents and warrants that such Authorized Signatory has the authority to bind Customer to the Background Check Customer Agreement. By (i) checking the box presented with these Background Check Terms, (ii) initiating a background check for any person using the Gusto Platform, or (iii) accessing or using the Background Checks Service, effective as of the date of such action, Customer agrees to be bound by the Background Check Customer Agreement.

## 1. These Background Check Terms are Part of and Governed by the Gusto Terms and the Payroll Terms

The terms and conditions of the Gusto Terms and the Payroll Terms agreed to in connection with the creation of any Customer’s account, including but not limited to all representations, warranties, covenants, disclaimers, limitations on liability, agreements, and indemnities, are incorporated herein by reference, and Customer acknowledges and agrees that such terms and conditions shall remain in

full force and effect to the full extent provided therein.

If the terms and conditions of these Background Check Terms conflict with the terms and conditions of the Gusto Terms or the Payroll Terms, then the order of precedence with respect to which terms and conditions control Customer's use of the Background Checks Service directly on the Gusto Platform will be as follows: the terms and conditions of these Background Check Terms, followed by the terms and conditions of the Payroll Terms, followed by the terms and conditions of the Gusto Terms, and lastly, followed by the terms and conditions of Checkr Service Terms.

THE GUSTO TERMS, AVAILABLE AT [HTTPS://GUSTO.COM/ABOUT/TERMS](https://gusto.com/about/terms) , CONTAIN IMPORTANT INFORMATION REGARDING LIMITATIONS OF GUSTO'S LIABILITY, GUSTO'S WARRANTY DISCLAIMERS, CUSTOMER'S INDEMNIFICATION OBLIGATIONS, CUSTOMER'S DUTY TO MITIGATE DAMAGES, THE LAW GOVERNING GUSTO'S PROVISION OF THE BACKGROUND CHECKS SERVICE, AND DISPUTE RESOLUTION PROCEDURES THEREUNDER.

## 2. These Background Check Terms are in Addition to and Separate from the Checkr Service Terms

These Background Check Terms, the Gusto Terms, and Gusto's Privacy Policy available at <https://gusto.com/about/privacy> (the "Gusto Privacy Policy") govern access to and through the Gusto Platform and are in addition to and separate from any terms governing Checkr at <https://checkr.com/> (the "Checkr Platform"). The Checkr Platform is governed by the Checkr Service Terms, the Checkr, Inc. Terms of Service Agreement available at <https://checkr.com/terms-of-service> , and Checkr's Privacy Policy available at <https://checkr.com/privacy-policy>. Customer is encouraged to read and review the terms and policies governing the Gusto Platform and the Checkr Platform (the "Platforms"). Customer acknowledges that, under these Background Check Terms, the policies and terms of both of the Platforms govern and may be inconsistent. Where any provision governing the Gusto Platform conflicts with any provision governing the Checkr Platform, the provision governing the Gusto Platform shall control for the purposes of services rendered on the Gusto Platform and pursuant to the Background Check Customer Agreement.

## 3. Gusto Provision of the Background Checks Service is Governed by the Background Check Customer Agreement

Subject to the terms and conditions of the Background Check Customer Agreement, Gusto agrees to use commercially reasonable efforts to provide Customer with the Background Checks Service, through its partnership with Checkr, in accordance with the Background Check Customer Agreement.

## 4. Obligations Under the Gusto Terms

In addition to the obligations specified in these Background Check Terms, Customer has certain obligations under the Gusto Terms, including but not limited to obligations to (i) designate Account Administrator(s); (ii) be responsible for actions taken under Customer's Account; (iii) follow instructions Gusto or Checkr provides to Customer with respect to the Services; (iv) maintain applicable accounts with providers of Third-Party Services; (v) provide accurate, timely, and complete information, and maintain the accuracy and completeness of such information, in order for Gusto to perform the Services; and (vi) abide by certain obligations and refrain from taking certain prohibited actions, as described in further detail in Section 8 (User Is Responsible for Certain Information and Obligations Relating to the Services), Section 10 (Third-Party Services, Websites, and Resources), Section 13 (General Prohibitions), and Section 21 (Duty to Mitigate) of the Gusto Terms.

## 5. Background Checks Service

Provided that Customer meets Customer's obligations and complies with the terms of the Background Check Customer Agreement, Gusto will provide Customer with the Background Checks Service. The Background Checks Service shall be limited to allowing Customer's Account Administrator(s) to (i) initiate background check requests for candidates, (ii) view, for a limited period of time, the status of all background checks initiated directly on the Gusto Platform, and (iii) review, for a limited period of time, the results of background checks marked as "Clear," "Consider," or "Complete." Customer acknowledges that Checkr, and not Gusto, is the Credit Reporting Agency ("CRA"), as that term is defined in the Fair Credit Reporting Act, 15 USC § 1681 et seq. (the "FCRA"). As the CRA, Checkr (and not Gusto) is solely responsible for (a) conducting background check investigations; (b) assembling and/or evaluating Reports, as that term is defined in the Checkr Service Terms; (c) providing any and all legally required disclosures and/or notifications; and (d) managing the adverse action or other customer dispute process. Customer also acknowledges that Gusto will not indefinitely store Reports generated by the Background Checks Service. The Background Checks Service is not limited to criminal background checks and may include (but is not limited to) education verifications and employment verifications. Gusto reserves the right to modify or discontinue any individual type of background check available through the Background Checks Service at any time, with or without notice to Customer.

## 6. Assess Features

Customer understands, acknowledges, and agrees that (i) Gusto has automatically enabled certain Checkr Assess Filters (defined below) for Reports initiated on the Gusto platform that include checks regarding criminal history; and, as a result, (ii) such Reports will display as "Clear" to the extent that the Report contains findings that fall within the scope of those Assess Filters. For the purpose of background checks initiated on the Gusto Platform, "Checkr Assess Filters" shall include:

1. Dismissed charges;
2. Non-felony deferred / alternative adjudication charges;
3. Charges with less-than-misdemeanor severity;
4. Non-felony marijuana possession charges; and
5. Non-felony drug possession and paraphernalia charges.

For more information about the Checkr Assess Filters, visit the Checkr Help Article on Assess, available at: <https://help.checkr.com/hc/en-us/articles/360051026954-Assess>. Prior to initiating a background check, Customer is solely responsible for reviewing the Checkr Assess Features against the laws and regulations that are applicable to Customer's candidate, applicable job position, or business. If Customer desires to remove the Checkr Assess Features from Customer's account, Customer should do so directly on the Checkr Platform unless directed otherwise by Gusto or Checkr.

## 7. Disputes Related to the Content, Accuracy, or Validity of a Report

Customer acknowledges that as the CRA, Checkr is solely responsible for managing or otherwise resolving any disputes as to the content, accuracy or validity of any Report that Checkr assembles and makes available to Customer through the Gusto Platform. Gusto does not engage in any form of investigation, re-investigation, dispute resolution, or any other action required by the adverse action process.

## 8. Compliance with Laws

Customer shall comply with any and all laws, rules, or regulations applicable to the Background Checks Service (collectively, the "Applicable Laws"), including but not limited to the FCRA, anti-discrimination laws, and local, state and federal employment laws (e.g. "ban-the-box" laws). Customer may request and otherwise use Reports solely for employment purposes and in accordance with this Section 8 ("Compliance with Laws"). Any access to or use of the Background Checks Service by any individuals under the age of eighteen (18) is strictly prohibited. Any use of the Background Checks Service or the Reports assembled and/or provided hereunder in contradiction of this Section 8 constitutes a violation of the Background Check Customer Agreement and may result in Customer's suspension or termination from the Background Checks Service.

## 9. No Legal or Professional Advice

Customer acknowledges and agrees that the Background Checks Service does not contain legal, HR, or other professional advice, and neither Gusto nor Checkr can provide legal or other compliance-

related advice to Customer and/or Customer's Administrator(s) regarding its use of the Background Checks Service. Gusto highly recommends that Customer consult with legal counsel regarding Customer's use of the Background Checks Service, including the content of the prescribed notices and disclosures as well as how Customer acts upon any information contained in any Report assembled by Checkr and displayed through the Gusto Platform.

## 10. Customer Questions and Complaints

Gusto's customer support for the Background Checks Service shall be limited to answering questions generally about pricing or availability of the Background Checks Service or a Customer's Gusto account. Any questions, complaints, or disputes related to (i) how the Background Checks Service is performed or (ii) any information contained within a Report should be directed solely to Checkr. Customer and Checkr shall decide how to handle or respond to such complaints without Gusto's participation. Gusto is in no way responsible for Customer complaints stemming from the validity, content, timing, or accuracy of Reports, or any other complaint relating to any Report generated by Checkr.

## 11. Service Fees and Charges

As part of the Background Checks Service, Gusto will invoice and debit Customer, on behalf of Checkr, on a monthly basis. Customer agrees to pay the fees assessed by Checkr and invoiced by Gusto for the Background Checks Service (the "Checkr Pass-Through Fees"), in accordance with this Section 11. Customer acknowledges and agrees that the Checkr Pass-Through Fees are charged solely at the discretion of Checkr and include certain pass-through fees set by state and local agencies and courthouses. Customer authorizes Gusto to debit Customer's designated bank account, as specified by Customer through the Gusto Platform, for all Checkr Pass-Through Fees as they become payable during the Term (as defined in Section 14 herein). From time to time, Checkr may modify or raise the Checkr Pass-Through Fees. Checkr will provide notice of such modifications to Customer directly and Customer's continued use of the Background Checks Service following such notice constitutes Customer's acceptance of the modification and agreement to be debited in accordance with this Section 11.

Additionally, Customer agrees to reimburse Gusto for any sales, use, and similar taxes arising from the provision of the Background Checks Service that any federal, state, or local governments may impose.

## 12. Gusto Is Not Responsible for Things Gusto Cannot Control

Gusto is not responsible or liable for any delays or failures in performance from any cause beyond

Gusto's control, including, but not limited to, acts of God, changes to laws or regulations, embargoes, wars, pandemics, 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.

Gusto is not responsible or liable for, and makes no warranties or representations with respect to, the content, validity, or enforceability of any Report procured by Customer, Checkr, or any third party as a result of the Background Checks Service. Further, Gusto is not responsible or liable for any matters or disputes arising from such Reports, including but not limited to any disputes between Customer, Checkr, and/or a Consumer, as that term is defined in the Checkr Service Terms.

Any change to the products or services offered by any of the aforementioned third parties may materially and adversely affect, or entirely disable, Customer's use of or access to the Gusto Platform and the Gusto Services. Likewise, Gusto cannot guarantee that any Customer information hosted on a third-party server will remain secure.

### 13. Modifications

Gusto may change or discontinue all or any part of the Background Checks Service at any time, with or without notice, at Gusto's sole discretion. Gusto may also modify, amend, or restate the Background Check Customer Agreement at any time, in Gusto's sole discretion. If Gusto does so, Gusto shall let Customer know either by posting the modified Background Check Customer Agreement on the Gusto Platform or through other electronic communications. It is important that Customer review the Background Check Customer Agreement whenever Gusto modifies it because if Customer continues to use the Background Checks Service after Gusto has notified Customer of the modified Customer Agreement, Customer agrees to be bound by the modified Background Check Customer Agreement. If Customer does not agree to be bound by the modified Background Check Customer Agreement, then Customer may not continue to use the Background Checks Service.

### 14. Term and Termination

The Background Check Customer Agreement will commence on the later to occur of (a) Customer acknowledging and agreeing to the Background Check Customer Agreement and (b) Gusto making the Background Checks Service available to Customer, and it will terminate upon termination of the Background Check Customer Agreement by Gusto or Customer in accordance with this Section 14 (the "Term").

Gusto may immediately (i) suspend or restrict Customer's Account; (ii) suspend or restrict Customer's access to the Gusto Platform or the Background Checks Service; (iii) block Customer's



ability to use any particular feature of the Background Checks Service; or (iv) terminate the Background Checks Service and the Background Check Customer Agreement, in each case with or without notice to Customer, in the event that: (i) Gusto has reason to suspect that Customer may be in violation of the Background Check Customer Agreement or any Applicable Laws; (ii) Gusto determines that Customer's actions are likely to cause legal liability for or negative impact to Gusto; or (iii) Gusto believes that Customer has misrepresented any data or information or that Customer has engaged in fraudulent or deceptive practices or illegal activities.

Upon any expiration or termination of the Background Check Customer Agreement, Customer's right to access and use the Background Checks Service will automatically terminate; provided, however, that Gusto will generally continue to provide Customer with the Limited Access Rights described in Section 22 (Term; Termination; Suspension) of the Gusto Terms, subject to the terms and conditions therein.

## 15. Maintenance

Gusto makes no representations or warranties about the availability or accessibility of the Background Checks Service. From time to time, scheduled system maintenance or emergency maintenance may occur, and during such periods, the Background Checks Service may be inaccessible and unavailable, with or without notice to Customer.

## 16. Indemnification

Customer will indemnify and hold harmless Gusto and its 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 the Background Checks Service; (ii) Customer's violation or alleged violation of the Background Check Customer Agreement; (iii) Customer's violation or alleged violation of any third-party right, including any right of privacy or publicity, or any right provided by any labor or employment law, rule, or regulation; (iv) Customer's breach of covenants, representations, or warranties; (v) Customer's violation of any law or regulation (including, without limitation, any Applicable Laws); (vi) gross negligence, fraudulent activity, or willful misconduct by Customer or Customer's employees; (vii) the content, compliance, method of delivery or effectiveness of any notices, authorizations, disclosures, pre-adverse or adverse action letters; (viii) Customer's failure, or the failure of any Account Administrators or Authorized Representatives, to properly follow Gusto's or Checkr's instructions with respect to the Background Checks Service; or (ix) Gusto's or any other Indemnified Party's use of or reliance on information or data furnished by Customer, Customer's

Consumers, or Customer's Authorized Representatives in providing the Background Checks Service, or otherwise in connection with the Background Check Customer Agreement.

## 17. Limitation of Liability

Gusto is not responsible or liable for: (i) Customer's use or inability to use the Background Checks Service; (ii) any information obtained from or through the Background Checks Service; (iii) any interruption or failure to access or download the Reports; (iv) Customer's reliance upon the information presented within the Background Checks Service; (v) the cost of substitute services arising out of or in connection with the Background Check Customer Agreement or from the inability to use the Gusto Platform; (vi) Customer's failure to properly follow any Gusto's or Checkr's instructions with respect to the Background Checks Service; or (vii) any interruption in the Background Checks Service, delay in report processing, or other error or violation of applicable law as a result of Customer's failure to fulfill its obligations under the Background Check Customer Agreement. Maximum liability is amounts actually paid in the six (6) month period immediately preceding the date of the claim up to a maximum of \$1,000. Recovery of the above amount is the sole and exclusive remedy.

## 18. Warranty Disclaimer

TO THE FULLEST EXTENT PERMITTED BY LAW, THE BACKGROUND CHECKS SERVICE, INCLUDING ANY AND ALL SERVICES PROVIDED AS PART OF THE BACKGROUND CHECKS SERVICE, AND CONTENT CONTAINED THEREIN, ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTY WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, GUSTO DOES NOT MAKE ANY REPRESENTATION OR WARRANTY THAT THE BACKGROUND CHECKS SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE, RELIABLE, ACCURATE, ERROR-FREE, OR FREE OF DEFECTS, AND GUSTO WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS, ERRORS OR DEFECTS. ANY PARTICIPATION IN OR USE OF THE BACKGROUND CHECKS SERVICE OR CONTENT CONTAINED THEREIN IS AT CUSTOMER'S SOLE RISK. GUSTO WILL NOT INDEFINITELY STORE REPORTS GENERATED BY THE BACKGROUND CHECKS SERVICE ON THE GUSTO PLATFORM.