

# Gusto R&D Tax Credit Services Terms

*Last updated December 2, 2022*

These Gusto R&D Tax Credit Services Terms (the “**R&D Tax Credit Services Terms**”), together with the Gusto Terms of Service Agreement available at <https://gusto.com/about/terms> (the “**Gusto Terms**”) and the R&D Tax Credit Redemption Service Terms, incorporated herein by reference to [www.gusto.com/about/terms/rd-tax-credit](http://www.gusto.com/about/terms/rd-tax-credit) (the “**R&D Credit Redemption Terms**”) (collectively, the “**R&D Services Agreement**”), set forth the terms and conditions under which Gusto, Inc. its subsidiary and its affiliates, and Ardius, LLC (“**Ardius**”), a Gusto company (collectively “**Gusto**”) agrees to provide eligible customers of Gusto (each a “**User**,” as defined in the Gusto Terms) with the ability to request certain research and development (“R&D”) tax credit services from and become a customer of Gusto (“**Customer**”) via the Gusto all-in-one HR platform (the “**Platform**”).

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

The terms and conditions of the Gusto Terms agreed to in connection with the creation of Customer’s Account, and/or Customer’s enrollment in the Gusto Payroll Service, 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 Customer 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. Capitalized terms not otherwise defined herein have the meanings assigned to them in the Gusto Terms or the R&D Credit Redemption Terms, as applicable.

If the terms and conditions of these R&D 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 shall control shall be as follows: the terms and conditions of these R&D Terms shall control, followed

by the terms and conditions of the Payroll Terms, followed by the terms and conditions of the Gusto Terms.

THE GUSTO TERMS, AVAILABLE AT [WWW.GUSTO.COM/ABOUT/TERMS](http://WWW.GUSTO.COM/ABOUT/TERMS), CONTAIN IMPORTANT INFORMATION REGARDING LIMITATIONS OF GUSTO'S LIABILITY, GUSTO'S WARRANTY DISCLAIMERS, USER'S INDEMNIFICATION OBLIGATIONS, USER'S DUTY TO MITIGATE DAMAGES, THE LAW GOVERNING THE R&D TAX CREDIT SERVICES AGREEMENT, AND DISPUTE RESOLUTION PROCEDURES THEREUNDER.

YOU AGREE TO THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER DESCRIBED IN SECTION 17 HEREIN.

### 1. *R&D Tax Credit Services*

Provided that Customer (a) meets Customer's payment obligations; (b) complies with the terms of this Gusto R&D Services Agreement; and (c) meets the Eligibility Criteria (as defined below), Gusto will provide the R&D Tax Credit Services to Customer via the Platform. Customer's use of the R&D Tax Credit Services shall include access to, and use of, Gusto's R&D Credit Redemption Service (as defined below), and Gusto shall provide such access provided that Customer complies with the obligations of this Gusto R&D Services Agreement.

Gusto will perform the R&D Tax Credit Service(s) for which Customer is enrolled, which may include any of the following: (a) reviewing Customer records, such as contracts, invoices, and other contemporaneous documentation supporting the qualifying activities (collectively "**Customer Documentation**" and further defined herein) provided by Customer; (b) interviewing Customer's employees and/or business personnel ("**Customer Interviews**"); (c) using the Customer Documentation and Customer Interviews (collectively "**Provided Information**" as further defined herein) to identify, calculate, author basic qualitative documentation and prepare applicable tax forms (the "**Customer Tax Forms**") pertaining to Customer's available federal and supported state R&D tax credits ("**R&D Tax Credits**") (the "**Study Service**"); (d) authoring additional qualitative documentation, including project activity summary reports, to support the R&D Tax Credit calculation (the "**Enhanced Documentation**"); and/or (e) up to ten (10) hours of assistance in gathering the data necessary to respond to inquiries from the Internal Revenue Service ("IRS") about the tax credits ("**Audit Assistance**") (individually and collectively, the "**R&D Tax Credit Services**"). Customer may enroll in any such R&D Tax Credit Service for which it meets the Eligibility Criteria.

Customer's enrollment in and use of the R&D Tax Credit Services (in compliance with these R&D Tax Credit Services Terms) enables Customer to access and use the R&D Credit Redemption Service through the Platform as described in the R&D Credit Redemption Terms.

Unless otherwise specified in writing, Gusto is not responsible for providing any assistance in preparing for or responding to tax audits, examinations, inquiries or communications of any kind from any state or federal tax authority or anyone reasonably believed to represent a state or federal tax authority. Gusto is not in the business of providing professional or legal advice. We encourage Customer to consult a tax advisor prior to using the R&D Tax Credit Services and in the event of an audit or examination.

For avoidance of doubt, Customer is solely responsible for all state or federal tax 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.

## **2. Eligibility Requirements for the R&D Tax Credit Services**

Customer acknowledges that only businesses that qualify for R&D Tax Credits are eligible for the Gusto R&D Tax Credit Service. Eligibility requirements for the R&D Tax Credits are established by the IRS, and more information about the R&D Tax Credits, including the IRS eligibility rules (the "**Eligibility Criteria**"), can be found on the IRS website. Gusto will undertake an independent assessment of whether a Customer's business or business the Customer represents (collectively the "**Company**") is eligible for R&D Tax Credits. In the event that Gusto determines a Company is not eligible for the R&D Tax Credits, Gusto shall promptly inform Customer of the same and this R&D Tax Credit Services Agreement and the R&D Tax Credit Services shall be terminated, subject to the terms of Section 15 below, and Customer shall not be invoiced for any of Service Fees described in Section 6 herein.

## **3. Customer Responsibilities and Representations Related to the R&D Tax Credit Services**

By accepting these R&D Tax Credit Services Terms, Customer acknowledges and agrees to the following:

- (a) Instructions: Gusto may provide Customer with instructions about how to use the R&D Tax Credit Services. Customer is solely responsible for following those instructions, whether sent by email, by posting on the Platform, Gusto's website and the associated domains thereof, or otherwise.
- (b) Provided Information: Customer shall provide Gusto with the necessary Customer Documentation for Gusto to perform the R&D Tax Credit Services, which may include: (i) employee W-2 information via Company documents and/or API access to Company's payroll service API (as applicable); (ii) general ledger information regarding departmental contract and supply costs via connecting to Company's accounting service API (as applicable); (iii) previously filed tax returns; (iv) invoices and contracts, as necessary, related to contract costs or research expenses; and (v) other contemporaneous documentation supporting the qualification of activities. In addition to Customer Documentation, Customer shall provide information via or during Customer Interviews (collectively Customer Documentation and Customer Interviews are referred to as "**Provided Information**"). Customer shall be responsible for collecting and submitting this Provided Information to Gusto. Customer represents that Customer has the authority to share Provided Information with Gusto, and Customer acknowledges that Customer is solely responsible for the accuracy, currency, and completeness of such Provided Information as further described in Sections 9 and 10 herein. If Customer is an accountant for the Company (each, a "**Company Accountant**"), then by accepting this Gusto R&D Services Agreement or using either the R&D Tax Credit Service(s) or R&D Credit Redemption Service, Customer represents and warrants that the Company has authorized Customer to share such Provided Information with Gusto on Company's behalf.
- (c) Review and approval: Customer is responsible for reviewing all Customer Tax Forms, reports, summaries, information, documents or other materials (collectively, "**Materials**") that Gusto may submit to Customer for review, and Customer must notify Gusto of any inaccuracies in the Materials as soon as possible, or within a timeframe specified by Gusto. If Customer is a Company Accountant,

then Customer represents and warrants to Gusto that Customer is authorized to review the Materials on Company's behalf. Customer is solely responsible for making Customer's own decisions on what to include in applicable tax filings and forms. Customer accepts full responsibility for all results, outcomes, and/or consequences of Customer's use of or reliance on the R&D Tax Credit Services, including, without limitation, the final R&D Tax Credits awarded by the IRS, and for Customer's reliance on any of the Materials.

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

(e) Communications with tax agencies: Customer is solely responsible for all tax filings, filing decisions, and any communications with any tax authority or agency (or anyone Gusto reasonably believes to represent a tax authority or agency), including the contents of any documents or information (including any Customer Tax Forms that Customer may choose to file) provided to any tax authority or agency. Unless otherwise specified by Gusto in writing, Gusto is not responsible for providing any assistance in preparing for or responding to tax audits or examinations, and Customer acknowledges that Gusto is not in the business of providing professional or legal advice. Gusto encourages Customer to consult a tax advisor in the event of an audit or examination.

#### ***4. Audit Assistance Does Not Constitute Professional or Legal Advice***

If Customer enrolls in Audit Assistance, as defined herein, and in the event that such Customer receives an IRS or state tax audit letter and/or notice regarding or relating to the Customer Tax Forms prepared by Gusto as described below, Gusto may undertake commercially reasonable efforts to provide Customer with up to ten (10) hours of informational guidance regarding what to expect and how to prepare for an audit. Audit Assistance is intended to educate the Customer as to requirements for activities and expenses to qualify for R&D Tax Credits and effective approaches to addressing the R&D Tax Credit portion of the audit. Audit Assistance will not address any other sections of the tax return or inquiries that do not directly pertain to the R&D Tax Credit, as determined at the sole discretion of Gusto. Audit Assistance does not constitute legal, tax, regulatory or other professional advice and is for informational purposes only. Gusto will not act as Customer's representative in an audit. Customer is encouraged to consult a tax advisor for guidance in the event of an audit or examination.

Audit Assistance is only available for federal and state tax audit notices and/or letters. To redeem Audit Assistance, Customer must provide Gusto with copies of all relevant notices or and/or letters in addition to copies of the relevant Customer Tax Forms and any relevant Customer Documentation as may be specified or requested by Gusto in its sole discretion. Audit Assistance will only be available to Customers for twelve months following such Customer's date of enrollment in Audit Assistance, which for purposes of this R&D Tax Credit Services Agreement is deemed the day Customer submits approval of Gusto's R&D tax credit calculations. Audit Assistance will not be available to Customers who have, as determined by Gusto in its sole sole discretion, materially altered or modified the information or content on the Customer Tax Forms as originally drafted by Gusto.

## 5. R&D Tax Credit Services Fees

Gusto will invoice and Customer agrees to pay the fees associated with the Gusto R&D Tax Credit Service(s) for which it has enrolled. These fees may include, without limitation: (a) a one-time eligibility fee ("**Eligibility Fee**"); (b) a percentage of the R&D Tax Credits identified by Gusto and available to Customer ("**Service Fee**"); (c) and/or an annual fee ("**Annual Fee**") (collectively, the "**R&D Tax Credit Services Fees**"). The R&D Tax Credit Services Fees are listed on the applicable fee schedules at <https://gusto.com/product/pricing>.

From time to time Gusto may offer discounts on the R&D Tax Credit Services Fees at its sole discretion. In such cases the discounts shall be confirmed with the Customer in writing on the applicable invoice. In addition, Gusto may update the R&D Tax Credit Services Fees at any time.

## 6. Payment of R&D Tax Credit Services Fees

Gusto shall invoice Customer for the R&D Tax Credit Services Fees according to the following invoice schedule:

- Study Service: (1) The Study Service Eligibility Fee will be invoiced concurrently with the Study Service Fee. (2) The Study Service Fee will be invoiced once the Customer submits approval of Gusto's R&D tax credit calculations from the Platform.
- Enhanced Document: The Enhanced Document Fee will be invoiced once the Enhanced Document deliverables (such deliverables to be defined in the applicable sales agreement between Gusto and Customer) are available for Customer download in the Platform. The Enhanced Document is deemed accepted fifteen (15) days after it is made available on the Platform. Notification in the Platform is sufficient for notification purposes, and Gusto may provide additional notification via electronic mail.
- Audit Assistance: The Audit Assistance Annual Fee will be invoiced concurrently with the Study Service Fee.

Customer may, in compliance with the R&D Credit Redemption Terms, utilize claimed R&D Tax Credits to offset Customer's payroll tax liabilities.

User agrees to pay the R&D Tax Credit Services Fees for the Services as outlined in Sections 5 and 6 of these Terms and in accordance with the applicable fee schedules listed at <https://gusto.com/product/pricing>. User authorizes Gusto to debit User's designated bank account, as specified by User through the Platform (the "Bank Account"), for all fees as they become payable.

User acknowledges that the origination of Automated Clearing House ("ACH") transactions to or from the Bank Account and the transmission of funds via ACH transactions to or from the Bank Account must comply with applicable laws, rules, and regulations, including the NACHA Rules and Article 4A

of the Uniform Commercial Code, as adopted in California and as may be amended from time to time (as amended, the "UCC").

Notwithstanding the foregoing, Customer shall pay all invoice(s) within fifteen (15) days of receipt thereof via money transfer, ACH, check, or any other payment method Gusto may deem acceptable in its sole discretion. Gusto reserves the right to assess interest charges to any past due amounts at the lower of (a) two percent (2%) per month; or (b) the maximum amount allowed by law.

All R&D Tax Credit Services Fees are non-refundable unless otherwise specified on the invoice. Customer understands that failure to pay R&D Tax Credit Services Fees as they become payable may result in suspension or termination of this R&D Tax Credit Services Agreement and the incorporated Gusto Terms of Service Agreement available at <https://gusto.com/about/terms>.

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

In the event that Customer elects to terminate this Gusto R&D Services Agreement in accordance with Section 15 of these R&D Tax Credit Services Terms, or the Company for whom Customer has requested Gusto provide the R&D Tax Credit Services is acquired or undergoes a change in ownership, Customer shall be responsible for payment of the total of the remaining R&D Tax Credit Services Fees, including any fees based on the unutilized R&D Tax Credits, incorporating any relevant discounts, and Gusto will invoice Customer for the same in accordance with the terms of this Section 6.

## ***7. User Accounts***

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

## ***8. Privacy Policy***

For information on how Gusto collects, uses, and discloses information from Customer, please refer to Gusto's Privacy Policy ("**Privacy Policy**", incorporated herein by reference to <https://gusto.com/about/privacy>). Customer acknowledges and understands that Gusto may collect, use, and disclose Customer's information pursuant to the Privacy Policy as it may be updated from time to time. Ardius is a subsidiary and affiliate of Gusto, and customer authorizes Ardius to access payroll and expense information from Customer's Gusto account in order to perform the Gusto R&D Tax Credit Services. For more information on how Gusto and its affiliates and subsidiaries collect, use and disclose information from Users, please refer to the Privacy Policy.

## ***9. Gusto has No Liability for 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. Customer understands that Gusto will rely on the Provided Information furnished by Customer in performing the R&D Tax Credit Services. Gusto is not responsible or liable for any consequences or Claims (as defined below), including but not limited to, any Resulting Errors (as defined in the Gusto Terms) arising from Gusto's reliance on the Provided Information. Determining the amount of R&D Tax Credit that the Customer may be eligible to claim in a given tax year (the "**Available Credit**") remains solely the responsibility of the Customer.

## ***10. Obligation to Notify Gusto of Changes to Provided Information***

Customer must promptly notify Gusto 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. Gusto is not responsible or liable for any consequences or Claims (as defined below), including but not limited to any Resulting Errors, arising from Customer's failure to notify Gusto of any changes to the Provided Information.

## ***11. Proprietary Rights***

Customer retains all intellectual property rights in and to Customer's information or data, including Provided Information, and Gusto retains all intellectual property rights in the R&D Tax Credit Services. Customer grants Gusto a limited license to use Customer's information and/or data, including Provided Information, to provide and improve the R&D Tax Credit Services. Customer agrees that any feedback or suggestions provided by Customer to Gusto about the R&D Tax Credit Services ("**Feedback**") is given entirely voluntarily, and Gusto 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 Gusto in response to surveys Gusto and/or its affiliates conduct, through any available technology, about Customer's experience. Gusto retains all intellectual property rights in the Platform.

## 12. Warranty Disclaimers

Customer's use of the Platform and R&D Tax Credit Services is entirely at Customer's own risk. Gusto is not in the business of providing legal, regulatory, financial, accounting, employment, tax or other professional services or advice. Any information provided by Gusto via the Platform or the R&D Tax Credit Services 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 R&D TAX CREDIT SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND MADE BY GUSTO. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GUSTO DISCLAIMS 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 R&D TAX CREDIT SERVICES. GUSTO CANNOT GUARANTEE THE ACCURACY OR COMPLETENESS OF CUSTOMER INFORMATION AND GUSTO MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO CUSTOMER INFORMATION. GUSTO DOES NOT WARRANT THAT THE PLATFORM OR R&D TAX CREDIT SERVICES 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, GUSTO EXPRESSLY DISCLAIMS 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.

## 13. Indemnity

Customer will indemnify and hold harmless Gusto, Gusto's officers, directors, employees, and agents, Gusto's subsidiaries and affiliates, and the officers, directors, employees, and agents of its subsidiaries and affiliates (each an "*Indemnified Party*" and collectively 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 R&D Tax Credit Services; (ii) Customer's violation or alleged violation of this Gusto R&D Services 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) Gusto's or any other Indemnified Party's use of or reliance on information or data, including Provided Information, furnished by Customer, an employee or



independent contractor of Customer, in connection with this Gusto R&D Services Agreement; (vii) actions or activities that Gusto or any other Indemnified Party undertakes in connection with the R&D Tax Credit Services or this Gusto R&D Services Agreement at the direct request or instruction of anyone that Gusto or any other Indemnified Party reasonably believes to be Customer (each such action or activity, a "Requested Action"); (viii) Gusto'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 Gusto's or Gusto's instructions with respect to the R&D Tax Credit Services.

#### ***14. Limitation of Liability***

NEITHER GUSTO, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE PLATFORM OR R&D TAX CREDIT SERVICES 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 GUSTO R&D SERVICES AGREEMENT, OR FROM THE USE OF OR INABILITY TO USE THE PLATFORM OR R&D TAX CREDIT SERVICES WHETHER SUCH DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT GUSTO 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 GUSTO'S TOTAL LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS GUSTO R&D SERVICES AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE PLATFORM OR R&D TAX CREDIT SERVICES EXCEED THE AMOUNTS CUSTOMER HAS PAID TO GUSTO FOR USE OF THE R&D TAX CREDIT SERVICES 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 GUSTO AND CUSTOMER.

#### ***15. Term and Termination***

The R&D Tax Credit Services and the Gusto R&D Services Agreement will continue until terminated by either party. Customer may terminate the R&D Tax Credit Services and the Gusto R&D Services Agreement by giving Gusto at least thirty (30) days prior written notice, and shall complete the payment of remaining Service Fees as set forth in Sections 6 and 7 herein. Gusto may terminate the R&D Tax Credit Services and the Gusto R&D Services Agreement by giving Customer at least thirty (30) days' prior written notice. In addition, Gusto may immediately suspend or restrict Customer's Gusto account; suspend or restrict Customer's access to the R&D Tax Credit Services or immediately terminate the R&D Tax Credit Services and this Gusto R&D Services Agreement, in each case with or

without notice to Customer, in the event that: (i) Gusto has any reason to suspect or believe that Customer may be in violation of the Gusto R&D Services Agreement; (ii) Gusto determines that Customer's actions are likely to cause legal liability for or material negative impact to Gusto; (iii) Gusto believes that Customer has misrepresented any data or information or that Customer has engaged in fraudulent or deceptive practices or illegal activities; (iv) Gusto 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 Gusto 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 Gusto strives to support a multitude of business and organization types, in certain unique situations, if Gusto cannot support the Gusto R&D Tax Credit Service(s) for Customer's business or organization type, or if the Eligibility Criteria are not met, Gusto, by and through Gusto, may immediately terminate the Gusto R&D Tax Credit Service and this Gusto R&D Services 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, Gusto will invoice Customer for the total of the remaining Service Fees, including any fees based on the unutilized R&D Tax Credits, incorporating any relevant discounts.

The termination of any of the R&D Tax Credit Services or the Gusto R&D Services Agreement will not affect Customer's or Gusto's rights with respect to transactions which occurred before termination. Gusto will have no liability for any costs, losses, damages, penalties, fines, expenses, or liabilities arising out of or related to Gusto's termination of the Gusto R&D Services Agreement. Any sections of the Gusto R&D Services Agreement which by their nature should survive and the following sections of these R&D Tax Credit Services Terms will survive and remain in effect, including Sections 5 and 6 (to the extent that there are any unpaid fees for services rendered as of the time of termination of these R&D Tax Credit Services Terms), 7, 8, and 11 through 19.

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

## ***16. Changes to the Gusto R&D Services Agreement or R&D Tax Credit Services***

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

## 17. Arbitration

Notwithstanding any other provision in the Gusto R&D Services Agreement, and except as otherwise set forth in this section, if either Customer or Gusto has any dispute, controversy, or claim, whether founded in contract, tort, statutory, or common law, concerning, arising out of, or relating to the Gusto R&D Services Agreement or the R&D Tax Credit Services, 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 Gusto, 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 Gusto. A single arbitrator will be mutually selected by Gusto 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 Gusto 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 Gusto. A judgment on the award may be entered and enforced in any court of competent jurisdiction.

Either Gusto or Customer may assert claims, if the claims qualify, in small claims court in San Francisco, California. Either Gusto 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 Gusto agree and acknowledge that this Gusto R&D Services 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 GUSTO 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 R&D STUDY AGREEMENT.

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

This Section 18 does not limit Section 26 of the Gusto Terms, concerning items outside of Gusto's 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, 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 or Customer's employees, contractors, or authorized representatives.

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

These R&D Tax Credit Services 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 R&D Tax Credit Services Terms or (ii) the fact that any signature or acceptance of these R&D Tax Credit Services Terms were transmitted or communicated through electronic means; and each party forever waives any related defense.

## ***20. General***

This Gusto R&D Services Agreement constitutes the entire agreement between Gusto and Customer regarding the R&D Tax Credit Services and replaces all prior understandings, communications, and agreements, oral or written, regarding this subject matter. This Gusto R&D Services Agreement may be modified only by a written amendment signed by the parties or as otherwise provided in Section 16. If any part of this Gusto R&D Services Agreement is deemed to be unenforceable or invalid, that section will be removed without affecting the remainder of the Gusto R&D Services Agreement. The remaining terms will be valid and enforceable. Customer may not assign this Gusto R&D Services Agreement, by operation of law or otherwise, without Gusto's or Gusto's prior written consent. Any attempt by Customer to assign or transfer this Gusto R&D Services Agreement, without such consent, will be null. Gusto and Gusto may freely assign or transfer this Gusto R&D Services Agreement Agreement without restriction. The provisions of this Gusto R&D Services 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 Gusto under this Gusto R&D Services Agreement, including those regarding modifications to this Gusto R&D Services 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. Gusto's or Gusto's failure to enforce any right or provision of this Gusto R&D Services 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 Gusto. Except as expressly set forth in this Gusto R&D Services Agreement, the exercise by either party of any of its remedies under this Gusto R&D Services Agreement will be without prejudice to its other remedies under this Gusto R&D Services Agreement or otherwise.

## ***21. Contact Information***

If Customer has any questions about this Agreement or the R&D Tax Credit Services, Customer may contact Gusto at [support@Gusto.com](mailto:support@Gusto.com). Gusto is located at 525 20th Street San Francisco, CA 94107. Ardius is a subsidiary of Gusto. If Customer is a California resident, Customer may report complaints regarding the R&D Tax Credit Services 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