

# Terms of Service Agreement

Last updated September 26, 2017

This Terms of Service Agreement (this “Agreement”) is made and entered into by and between you, as a User (as defined below), and Gusto, Inc. and its subsidiaries and affiliates (collectively, “Gusto”). This Agreement contains the terms and conditions that govern the use of Gusto’s all-in-one HR platform (the “Platform”). Gusto directly, and through its website (<https://gusto.com>) and the associated domains thereof (the “Site”), offers customers the products and services listed at <https://gusto.com/product/pricing> (as such list may be updated, modified, or otherwise changed from time to time, collectively, the “Services”).

This Agreement is applicable to all persons who use or access the Platform and/or the Services, in their company’s capacity or in an individual capacity, including authorized users representing the company, its employees, or other persons using or accessing the Services (collectively, “Users” and each, a “User”). 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 this 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 this Agreement, or by accessing or using the Platform, User agrees, effective as of the date of such action, to be bound by the Agreement.

Please review Section 25 of this Agreement carefully, as it contains an arbitration provision and class action waiver which requires User to resolve disputes with Gusto through final, binding arbitration on an individual basis. By entering into this Agreement, User is acknowledging that User has read and that User understands the terms of this Agreement and that User agrees to be bound by the arbitration provision and class action waiver.

# 1. Additional Terms for Services

Gusto’s provision of any Service is subject to the terms of this Agreement and any supplemental terms referenced herein or which Gusto may present User with for review and acceptance at the time User subscribes to such Service (each, “Service Terms”), and any Service Terms shall be incorporated into and form a part of this Agreement. If the terms hereof conflict with any Service Terms, the Service Terms will govern with respect to the matters contemplated thereby.

Service Plan	Service Terms
Core	<a href="#">Payroll Service Terms</a> and <a href="#">Human Resources Service Terms</a>
Complete	<a href="#">Payroll Service Terms</a> and <a href="#">Human Resources Service Terms</a>
Concierge	<a href="#">Payroll Service Terms</a> , <a href="#">Human Resources Service Terms</a> , and <a href="#">HR Support Center Terms</a>
Select	<a href="#">Payroll Service Terms</a> , <a href="#">Human Resources Service Terms</a> , and <a href="#">HR Support Center Terms</a>
Simple	<a href="#">Payroll Service Terms</a>
Plus	<a href="#">Payroll Service Terms</a>
Plus with HR Add-Ons	<a href="#">Payroll Service Terms</a> , <a href="#">Human Resources Service Terms</a> , and <a href="#">HR Support Center Terms</a>
Premium	<a href="#">Payroll Service Terms</a> , <a href="#">Human Resources Service Terms</a> , and <a href="#">HR Support Center Terms</a>

If User chooses to subscribe to one or more of the following add-on services, then User agrees to be bound by the Service Terms listed next to such add-on service(s), each of which is incorporated herein by reference, as applicable to User:

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Add-on Service	Service Terms
Health Insurance Benefits Service	<a href="#">Health Insurance Benefits Service Terms</a>
Tax-Advantaged Accounts Service	<a href="#">Tax-Advantaged Accounts Service Terms</a>
Workers' Compensation Service	<a href="#">Workers' Compensation Service Terms</a>
International Contractor Payments Service	<a href="#">International Contractor Payments Service Terms</a>
R&D Tax Credit Redemption Service	<a href="#">R&amp;D Tax Credit Redemption Service Terms</a>
State Tax Registration Service	<a href="#">State Tax Registration Service Terms</a>
Background Checks Beta	<a href="#">Background Checks Beta Terms</a>
Gusto R&D Tax Credit Services	<a href="#">Gusto R&amp;D Tax Credit Services Terms</a>
Human Resources Service	<a href="#">Human Resources Service Terms</a>
HR Support Center Service	<a href="#">HR Support Center Terms</a>

Gusto's provision of any Service is contingent upon User being actively enrolled in the Payroll Service (as defined in the Payroll Service Terms).

## 2. Services Fees and Charges

User agrees to pay the fees for the Services in accordance with the applicable fee schedules listed at <https://gusto.com/product/pricing>, and 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. Unless otherwise stated in the applicable Service Terms, fees for the Services are typically based on the calendar months in which User is enrolled in any Services (so, for example, if User is enrolled in a Service Plan for a given calendar month, User would be charged for such month even

if User does not run payroll in such month), and such fees are applied in full for a given calendar month, regardless of whether User is only enrolled in the Services for a portion of such month. Except for certain fees for particular add-on services that User has opted into, fees for the Services will be billed to User and debited from User's Bank Account on a monthly calendar basis, in arrears. Notwithstanding the foregoing, Gusto may invoice User for any applicable, outstanding fees, and User shall pay such invoice 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. All fees are non-refundable. User agrees to reimburse Gusto for any sales, use, and similar taxes arising from the provision of the Services that any federal, state, or local governments may impose. Gusto may charge additional fees for exceptions processing, setup, and other special services (including optional add-on services).

Gusto reserves the right to change the fees for its Services from time to time. User will be notified of any change to existing fees at least thirty (30) days before the fee change goes into effect. If a fee increase or change to this Agreement is not acceptable to User, User may cancel the Services as provided herein prior to the time when such fee increase or change to this Agreement takes effect. User's continued use of the Services beyond the cancellation window constitutes User's agreement to those changes. If Gusto is unable to collect fees due because of insufficient funds in User's Bank Account or for any other reason, User must pay the amount due immediately upon demand, plus any applicable exceptions processing fees, bank fees, or charges for return items, plus interest at the lesser of 18% per annum or the maximum rate permitted by law, plus attorneys' fees and other costs of collection as permitted by law.

### 3. Switching Service Plans

Gusto currently offers several Service Plans with varying features and fee schedules, as well as multiple add-on services that User can choose to opt into for additional fees, unless otherwise stated. Before User may begin to use the Services, User will be asked to select a Service Plan from those detailed at <https://gusto.com/product/pricing>. User may request to change User's Service Plan via the Platform.

If User chooses to upgrade from User's current Service Plan (the "Current Plan") to a more expensive Service Plan (the "New Upgrade Plan"), then such upgrade will promptly go into effect, and User will begin receiving access to the features and

Services available under the New Upgrade Plan at the time of such upgrade. The fee schedule for the New Upgrade Plan will be applied to User's Service Plan charge for the calendar month in which User upgraded and for each calendar month thereafter for so long as User is subscribed to the New Upgrade Plan.

If User chooses to downgrade from User's Current Plan to a less expensive Service Plan (the "New Downgrade Plan"), then the downgrade will not go into effect until the beginning of the calendar month following the calendar month in which User elected to downgrade (the "Downgrade Election Month"). User will still receive access to the features and Services available with User's Current Plan until the end of the Downgrade Election Month. After the Downgrade Election Month, User will lose access to some of the features and Services available with User's Current Plan and will only have access to the features and Services available under User's New Downgrade Plan. The fee schedule for User's Current Plan will be applied to User's Service Plan charge for the Downgrade Election Month, and the fee schedule for the New Downgrade Plan will be applied to User's Service Plan charge for the calendar month following the Downgrade Election Month and for each calendar month thereafter for so long as User is subscribed to the New Downgrade Plan.

## 4. User Accounts

To use the Platform, User must have an account with Gusto (an "Account"). User hereby authorizes Gusto to obtain and store User's Account information as necessary to make the Platform available to User.

## 5. Who May Use the Platform

User may use the Platform only if User is thirteen (13) years of age or older and is not barred from using the Services under applicable law.

## 6. Privacy Policy

Please refer to Gusto's [Privacy Policy](#) for information on how Gusto collects, uses, and discloses information from Users. User acknowledges and understands that Gusto may collect, use, and disclose User's information pursuant to Gusto's Privacy Policy, as it may be updated from time to time.

## 7. User's Compliance with the Agreement

Use of the Platform and the Services are each conditioned upon User's full compliance with this Agreement and all applicable laws, rules, and regulations.

## 8. User Is Responsible for Certain Information and Obligations Relating to the Services

User will designate and authorize either itself and/or one or more individuals with authority to (i) act on User's behalf, (ii) provide information on User's behalf, and (iii) bind User and/or User's business with respect to the Services (each such individual, an "Account Administrator"). An Account Administrator is authorized by User to access the Services by entering a confidential user ID and password. Such Account login information will entitle the Account Administrator, depending on their designation and the permissions given by User, to have the authority to input information and access, review, modify, and/or provide approvals on User's behalf.

User is solely responsible for all actions taken under any Account that User has access to. Any actions taken under Accounts that User has access to will be deemed authorized by User, regardless of User's knowledge of such actions (the "Authorized Actions"). Authorized Actions include but are not limited to (i) actions taken by User, an Account Administrator, or an authorized representative of User (an "Authorized Representative"), and (ii) actions that User, an Account Administrator, or an Authorized Representative (or anyone that Gusto reasonably believes to be User, an Account Administrator, or an Authorized Representative) directs or instructs Gusto to take on its behalf.

In addition, User is solely responsible for (i) following instructions that Gusto provides to User with respect to the Services, whether such instructions are provided via the Platform, email, or otherwise, (ii) obtaining, maintaining, and keeping secure any

equipment and ancillary services necessary to connect to, access, or otherwise utilize the Platform, including but not limited to internet access, networking equipment, hardware, software, and operating systems, and (iii) maintaining applicable accounts with providers of Third-Party Services (as defined below) utilized by User.

User will, and will cause authorized users of User's Account, including but not limited to Account Administrators and Authorized Representatives, to take reasonable steps to adequately secure, and keep confidential, any User Account passwords or credentials, and any information accessible via the User Account. If User believes or suspects that User's Account or passwords or credentials for User's Account have been disclosed to, accessed by, or compromised by unauthorized persons, User must immediately notify Gusto. Gusto reserves the right to prevent access to the Services if Gusto has reason to believe that User's Account or passwords or credentials for User's Account have been compromised.

User is responsible for timely providing Gusto with the information required for Gusto to perform the Services. User may furnish such information directly to Gusto or via an Account Administrator or Authorized Representative, such as User's accountant. Furthermore, User represents and warrants to Gusto that for any information that User shares with Gusto, whether directly, via its Account Administrator, or via its Authorized Representative, User will have the authority to share such information. User is responsible for the accuracy and completeness of information provided to Gusto, and User will ensure that any such information, whether provided by User, an Account Administrator, or Authorized Representative, is accurate and complete. Moreover, User is required to maintain the accuracy and completeness of such information on an ongoing basis and will promptly notify Gusto, whether directly or through an Account Administrator or Authorized Representative, of any changes to the information provided to Gusto.

In addition, User, whether directly or through its Account Administrators or Authorized Representatives, is responsible for reviewing any reports, filings, information, documents or materials (collectively, the "Materials") posted to the Platform by Gusto (or otherwise made available to User by Gusto) for User's review, and User or its Account Administrators or Authorized Representatives must notify Gusto of any inaccuracies in the Materials as soon as possible, or within the time period specified in communications received from Gusto.

User, whether directly or through its Account Administrators or Authorized



Representatives, is also obligated to promptly notify Gusto of any third-party notices that User may receive which could affect Gusto's ability to effectively provide the Services or increase the likelihood that a Claim (as defined below) is brought against User or Gusto in connection with the Services, such as notices from the Internal Revenue Service or other government agencies regarding penalties or errors relating to the Services, and, if User subscribes to the Benefits Service (as defined in the Health Insurance Benefits Service Terms), notices from insurance carriers regarding eligibility, enrollment, payment, or any other communications affecting the contract of services with that insurance carrier.

User agrees that, to the fullest extent permitted by law, the provision of Account login credentials (e.g., username and password) or identity verification credentials to Gusto by User, an Account Administrator, or an Authorized Representative, together with any actions authorized by such foregoing parties via the Platform (e.g., clicking the "Submit Payroll" or other buttons) or otherwise (e.g., verbally telling a Gusto Customer Care representative to take an action), will have the same effect as such parties providing a written signature authorizing electronic payments, filings, or any other actions in connection with the Services.

## 9. User Verification

User gives Gusto permission to obtain, verify, and record information that identifies the individual who creates an Account, is the intended user of an Account, or accesses the Services. Gusto may ask for User's name, address, date of birth, social security number, and other information that will allow Gusto to identify User. Gusto may also ask to see User's driver's license or other identifying documents. User consents to and authorizes Gusto to obtain credit reports about User's business, and to report adverse credit information about User's business to others, including but not limited to the Internal Revenue Service and any applicable state taxing authorities. Gusto may, at its discretion, decline to offer the Services for any reason, including in the event that the Services enrollment process is not satisfactorily completed, Gusto is unable to verify satisfactory credit of User's business, and/or for other lawful business reasons.

## 10. Third-Party Services, Websites, and Resources



Through the Platform, User will be able to elect to receive services from partners of Gusto (each such service, a “Third-Party Service,” and each such partner, a “Partner”). User is solely responsible for, and assumes all risk arising from, User’s election to receive and User’s receipt of any Third-Party Service. Gusto is not responsible for Third-Party Services or any material, information, or results made available through Third-Party Services. The applicable Partners may require User to agree to terms and conditions or agreements with respect to their provision of the Third-Party Services to User. If User elects to receive a Third-Party Service, User authorizes Gusto to submit to the applicable Partner any and all documents and information about User, User’s business and User’s business’ employees that are necessary for such Partner to provide the Third-Party Service to User, including, without limitation, User’s payroll information, bank account information, User’s employees’ bank account information, and any additional information, such as the personal information of User’s employees, requested by such Partner that User has provided to Gusto in connection with this Agreement and User’s receipt of the Services (collectively, the “Shared Information”). User is responsible for the accuracy of all Shared Information. User represents and warrants that User has all the rights in and to any Shared Information necessary to provide Shared Information to Gusto and for Gusto to provide it to Partners, and that Gusto’s use or disclosure of Shared Information as contemplated hereunder will not violate any rights of privacy or other proprietary rights, or any applicable local, state, or federal laws, regulations, orders, or rules. User agrees that by electing to receive a Third-Party Service, and by consenting and authorizing Gusto to submit User’s Shared Information to a Partner, User has waived and released any Claim against Gusto and its directors, officers, and employees arising out of a Partner’s use of User’s Shared Information, even if that use is not authorized by the applicable agreement between User and the Partner.

The Platform and the Services may contain links to third-party websites or resources. Gusto provides these links only as a convenience and is not responsible for the content, products, or services on or available from those websites or resources, or links displayed on such websites. User acknowledges its sole responsibility for, and assumes all risk arising from, User’s use of any third-party websites or resources.

## 11. Proprietary Rights

## User Content and Licenses Granted

“User Content” means any text, graphics, images, music, software, audio, video, works of authorship of any kind, and documents, information, or other materials that are uploaded to, posted to, stored on, or created using the Platform by Users. For the avoidance of doubt, any templates, documents, or materials that Gusto provides to User via the Services shall constitute Gusto Content (as defined below) hereunder. Gusto does not claim any ownership rights in any User Content and nothing in this Agreement will be deemed to restrict any rights that User may have to use and exploit User Content. However, by making any User Content available through the Services, User hereby grants to Gusto a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, modify, create derivative works based upon, publicly display, publicly perform, and distribute User Content in connection with operating and providing the Platform and the Services. User is solely responsible for all User Content. User represents and warrants that User owns all User Content or User has all rights that are necessary to grant Gusto the license rights in User Content under this Agreement. User Content is subject to the provisions of Section 13, and Gusto has the right to remove User Content from the Platform in accordance with Section 14.

User may generally remove User Content from the Platform, provided that certain types of User Content may not be removed from the Platform, as further specified in particular Service Terms. Moreover, in certain instances, some User Content may not be completely removed and copies of User Content may continue to exist on the Platform. Gusto is not responsible or liable for the removal or deletion of (or the failure to remove or delete) any User Content.

## Gusto’s Intellectual Property Rights

“Gusto Content” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and documents, information, or other materials that are posted, generated, provided, or otherwise made available through the Services by Gusto, other than User Content. User Content and Gusto Content shall be collectively referred to herein as “Content.” Gusto and its licensors exclusively own all worldwide right, title, and interest in and to the Gusto Content, and also in and to the Platform and the Services, including in each case all associated intellectual property rights (“Gusto IP”). User acknowledges that the Platform, Services, and Gusto Content are protected by copyright, trademark, and other laws of the United States and foreign countries. User agrees not to remove, alter, or obscure any copyright, trademark, service mark, or

other proprietary rights notices incorporated in or accompanying the Platform, Services, or Gusto Content. This Agreement does not convey any proprietary interest in or to any Gusto IP or rights of entitlement to the use thereof except as expressly set forth herein. Any feedback, comments, and suggestions User may provide for improvements to the Platform, Services, or Gusto Content (“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. Feedback includes, without limitation, feedback User provides to Gusto in response to any surveys Gusto conducts, through any available technology, about User’s experience.

Subject to User’s compliance with this Agreement, Gusto grants User a limited, non-exclusive, non-transferable, non-sublicensable license to access, view, and download Gusto Content solely in connection with User’s permitted use of the Platform for User’s own behalf.

## 12. Consent to Receive SMS/MMS Messages About User’s Account

Gusto will send SMS to end users who have opted in to receive one time PIN Code and/or messages about activity in User’s Account and service updates as well as SMS messages soliciting User’s feedback about the Services and User’s experience interacting with Gusto’s Customer Care team. Message frequency may vary. Standard message and data rates may apply. Note that Gusto will not send User autodialed marketing SMS or MMS messages unless User expressly agrees in writing to receive such messages. If User would like to opt out of receiving SMS messages, User should reply HELP for help or STOP to cancel.

## 13. General Prohibitions

User agrees not to take any of the following actions:

- Post, upload, publish, submit, share, distribute, or transmit any User Content

that: (i) User lacks the authority to post, upload, publish, submit, share, distribute, or transmit; (ii) infringes, misappropriates, or violates a third party's patent, copyright, trademark, trade secret, moral rights, or other intellectual property rights, or rights of publicity or privacy; (iii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iv) is fraudulent, false, misleading, or deceptive; (v) is defamatory, indecent, obscene, pornographic, vulgar, or offensive; (vi) promotes discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group; (vii) is violent or threatening or promotes violence or actions that are threatening to any person or entity; (viii) promotes illegal or harmful activities or substances; or (ix) contains software viruses, worms, defects, Trojans, adware, spyware, malware, or other similar computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware device;

- Use the Services other than as authorized in this Agreement;
- Resell, sublicense, timeshare, or otherwise share the Services with any third party;
- Display, mirror, or frame (i) the Site, or the layout or design of any page on the Site or form contained on a page; (ii) the Platform; (iii) the Services; or (iv) Gusto Content or any individual element within the Site, Platform, or Services, including Gusto's name and any Gusto trademark, logo, or other proprietary information, in each case, without Gusto's express prior written consent;
- Access, tamper with, or use non-public areas of the Platform, Services, Gusto's computer systems, or the technical delivery systems of Gusto's providers;
- Interfere or attempt to interfere with the proper working of the Platform or the Services (including but not limited to any application, function, or use of the Services) or any activities conducted on the Services;
- Take any action that imposes or may impose (as determined by Gusto in Gusto's sole discretion) an unreasonable or disproportionately large load on Gusto's (or Partners') infrastructure;
- Use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site;

- Harvest or “scrape” any Content from the Platform or Services (such prohibited “scraping” includes, but is not limited to, (i) the use of any automated process or software that sends more requests to Gusto’s Platform than a human could reasonably produce in the same period of time in order to extract Content from the Platform or Services, and; (ii) the sharing of User’s Account credentials with a third party service in order for such third party service to impersonate User and extract Content from the Platform or Services via automatic processes) without Gusto’s express written consent;
- Attempt to probe, scan, or test the vulnerability of any Gusto system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Gusto or any of Gusto’s providers or any other third party (including another User) to protect the Platform, Services, or Content;
- Attempt to access or search the Platform, Services, or Content or download Content from the Platform or Services through the use of any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, data mining tools, or the like), other than the software and/or search agents provided by Gusto or other generally available third-party web browsers;
- Access the Services for the purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive purposes;
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters, or other form of solicitation through the Platform or Services;
- Use any meta tags or other hidden text or metadata utilizing a Gusto trademark, logo, URL, or product name without Gusto’s express written consent;
- Use the Platform, Services, or Content, or any portion thereof, (i) for any purpose other than User’s internal business purposes, or (ii) for the benefit of any third party or in any manner not permitted by this Agreement;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Platform, Services, or Content to send altered, deceptive, or false source-identifying information;

- Attempt to decipher, decompile, disassemble, reverse engineer, or otherwise attempt to derive any source code, or underlying ideas, or algorithms of any of the software used to provide the Platform, Services, or Content;
- Modify, translate, or otherwise create derivative works of any part of the Platform, Services, or Content other than User's own User Content;
- Interfere with, or attempt to interfere with, the access of any User, host, or network, or use any device, software, or routine that is intended to damage, surreptitiously intercept, or expropriate any system, data, or communication, including, without limitation, by sending a virus, overloading, flooding, spamming, or mail-bombing the Platform or Services;
- Collect from or store on the Platform or Services any personally identifiable information or protected health information of other Users without their express permission;
- Impersonate or misrepresent User's affiliation with any person or entity;
- Engage in any fraudulent, deceptive, or illegal practices or activities, or use the Services to directly or indirectly support any such practices or activities;
- Violate any applicable law, rule, or regulation, or the National Automated Clearing House Association Operating Rules, as they may be amended from time to time (as amended, the "NACHA Rules"); or
- Encourage, assist, or enable any other individual to do any of the foregoing.

## 14. Gusto's Rights to Monitor User Content and Conduct

Although Gusto is not obligated to monitor access to or use of User Content or to review or edit any User Content, Gusto has the right to do so for the purposes of operating the Platform and Services, ensuring compliance with this Agreement, and complying with applicable law or other legal requirements. Gusto reserves the right, but is not obligated, to remove or disable access to any User Content, at any time and without notice, for any reason, including, but not limited to, if Gusto, at Gusto's sole

discretion, considers any User Content to be objectionable or in violation of this Agreement.

Gusto has the right to monitor access to and use of the Platform, Services, and Content and to investigate conduct that Gusto believes could affect the Platform, Services, or Content, including violations of this Agreement. Gusto may also consult and cooperate with law enforcement authorities and administrative agencies to prosecute Users who violate the law.

## 15. E-Signatures

Gusto provides an electronic signature service (the “E-Sign Service”) which allows parties to sign documents electronically. Each time that User uses the E-Sign Service, User is expressly (i) affirming that User is able to access and view the document (the “Document”) User is electronically signing via the E-Sign Service; (ii) consenting to conduct business electronically with respect to the transaction contemplated by the Document; and (iii) agreeing to the use of electronic signatures for the Document.

While many Users prefer the convenience of electronic signatures, using the E-Sign Service to electronically sign Documents is optional, and User can choose to manually sign Documents if User prefers. If User would like to manually sign a Document, User should (i) inform the party that sent User the Document of User’s decision to manually sign such Document; (ii) make sure that User does not electronically sign the Document via the E-Sign Service; and (iii) obtain a physical copy of the Document for User to sign. Obtaining a physical, non-electronic copy of the Document is User’s sole responsibility, and Gusto has no responsibility or liability with respect to such matter.

Gusto has no responsibility or liability with respect to the content, validity, or enforceability of any Document, nor is it responsible or liable for any matters or disputes arising from the Documents.

Gusto makes no representations or warranties regarding the validity or enforceability of electronic documents or electronic signatures. UNDER APPLICABLE U.S. STATE AND FEDERAL LAWS, ELECTRONIC SIGNATURES ARE NOT ENFORCEABLE ON SOME DOCUMENTS. IT IS USER’S RESPONSIBILITY TO CONSULT WITH AN ATTORNEY TO DETERMINE WHETHER A DOCUMENT WILL BE ENFORCEABLE IF IT IS ELECTRONICALLY SIGNED VIA THE E-SIGN SERVICE.



## 16. Gusto Makes No Representations Regarding Platform Availability

Gusto makes no representations or warranties about the Platform's uptime, availability, or permissibility in any particular geographical location. From time to time, scheduled system maintenance or emergency maintenance may occur, and during such maintenance periods, the Platform may be inaccessible and unavailable, with or without notice to User.

## 17. The Platform Can Cause Irrevocable Damage to User Content

The Platform's performance of actions initiated by User may irrevocably modify and/or delete User Content. **USER ACKNOWLEDGES AND AGREES THAT GUSTO IS NOT RESPONSIBLE FOR THE LOSS OR MODIFICATION OF ANY USER CONTENT AND THAT USER'S USE OF THE PLATFORM IS AT USER'S OWN RISK.**

## 18. Warranty Disclaimers

User's use of the Platform, Services, and Content is entirely at User's own risk. Gusto is not in the business of providing legal, regulatory, tax, financial, accounting, employment, or other professional services or advice. Any information provided by Gusto via the Platform or otherwise is meant for informational purposes only and should not be interpreted as professional advice. User should consult a professional that is trained or licensed in the relevant area if User needs such assistance. Notwithstanding the foregoing, Gusto's licensed health insurance brokers may provide professional advice regarding health insurance to Users that subscribe for Gusto's health insurance brokerage services. In addition, certain Partners have licensed professionals who may provide professional advice.

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE PLATFORM, SERVICES, AND GUSTO CONTENT 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 OR GUSTO CONTENT IN OR LINKED TO THE SERVICES. GUSTO CANNOT GUARANTEE THE ACCURACY OR COMPLETENESS OF USER CONTENT AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO USER CONTENT. GUSTO DOES NOT WARRANT THAT THE PLATFORM, SERVICES, OR GUSTO CONTENT WILL (I) MEET USER’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 MAKING SURE THAT DOCUMENTS WHICH ARE ELECTRONICALLY SIGNED VIA THE E-SIGN SERVICE ARE VALID AND ENFORCEABLE UNDER ANY APPLICABLE U.S. LOCAL, STATE, OR FEDERAL LAWS, OR THE LAWS OF ANY OTHER JURISDICTION.

If any error results, whether directly or indirectly, from Gusto’s reliance on information (or modifications to information) provided by User, an employee or independent contractor of User, an Account Administrator, an Authorized Representative, or anyone that Gusto reasonably believes to be User, an employee or independent contractor of User, an Account Administrator, or an Authorized Representative of User (each such error, a “Resulting Error”), then Gusto will attempt to correct the Resulting Error, but Gusto makes no warranties or guarantees that it will be able to partially or fully correct the Resulting Error.

Gusto does not warrant, endorse, guarantee, or assume responsibility for any product or service, including without limitation Third-Party Services, advertised or offered by a third party through the Platform or any hyperlinked website or service, and Gusto will not be a party to or in any way be responsible for monitoring any transaction between User and third-party providers of products or services.

Gusto works with third-party service providers to provide the Services, and unless otherwise stated in an agreement between User and any such third-party service

provider, the third-party service providers (i) make no warranty as to the accuracy or completeness of information provided to User, and (ii) disclaim express warranties or implied warranties imposed by law with respect to the services they provide, whether directly or indirectly, to User.

## 19. Indemnity

User 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) User’s access to or use of the Platform, Services, or Content; (ii) User Content; (iii) User’s violation or alleged violation of this Agreement; (iv) User’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; (v) User’s violation or alleged violation of any applicable law, rule, or regulation, including but not limited to wage and hour laws; (vi) User’s violation of the NACHA Rules; (vii) User’s gross negligence, fraudulent activity, or willful misconduct; (viii) Gusto’s or any other Indemnified Party’s use of or reliance on information or data furnished by User, an employee or independent contractor of User, User’s Account Administrator, or User’s Authorized Representative in providing the Services, or otherwise in connection with this Agreement; (ix) actions or activities that Gusto or any other Indemnified Party undertakes in connection with the Services or this Agreement at the direct request or instruction of anyone that Gusto or any other Indemnified Party reasonably believes to be User, an Account Administrator, or an Authorized Representative (each such action or activity, a “Requested Action”); (x) Gusto’s or any other Indemnified Party’s use of or reliance on information or data resulting from such Requested Actions; or (xi) User’s failure, or the failure of any Account Administrators or Authorized Representatives, to properly follow Gusto’s instructions with respect to the Services.

## 20. Limitation of Liability

Gusto is not responsible or liable for (i) User Content or anyone's reliance on User Content; (ii) Resulting Errors or any consequences or Claims directly or indirectly arising from Resulting Errors; (iii) any consequences or Claims directly or indirectly resulting from User's delay in providing, or User's failure to provide, Gusto with information necessary for its provision of Services; (iv) User's violation of the NACHA Rules; (v) unauthorized third-party actions taken in User's Account and any transactions, consequences, or Claims arising therefrom; (vi) User's negligence or any negligence of User's Account Administrator or Authorized Representative; (vii) any Claims, or portions of any Claims, that could have reasonably been avoided or mitigated by User through reasonable efforts; (viii) any circumstances or Claims arising out of or related to a Partner's use of User's Shared Information; (ix) any Requested Actions, or any consequences or Claims directly or indirectly resulting therefrom; or (x) User's failure, or the failure of any Account Administrators or Authorized Representatives, to properly follow Gusto's instructions with respect to the Services.

NEITHER GUSTO NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE PLATFORM, SERVICES, OR GUSTO CONTENT 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, SERVICES, OR CONTENT, 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 USER. IN NO EVENT WILL GUSTO'S TOTAL LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE PLATFORM, SERVICES, OR CONTENT EXCEED THE AMOUNTS USER HAS PAID TO GUSTO 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 GUSTO

AND USER.

## 21. Duty to Mitigate

If User becomes aware of, or reasonably should have been aware of, any facts, issues, information, or circumstances which are reasonably likely, whether alone or in combination with any other facts, issues, information, or circumstances, to lead to a Claim against Gusto or User in connection with this Agreement, User must use reasonable efforts to mitigate any loss that may give rise to such a Claim.

## 22. Term; Termination; Suspension

The Services and this Agreement will continue until they are terminated by either party. User may terminate the Services and this Agreement through User's Account. Gusto may terminate the Services and this Agreement by giving User at least thirty (30) days' prior written notice. In addition to Gusto's foregoing termination right, Gusto may immediately suspend or restrict User's Account; suspend or restrict User's access to the Platform or any Services; block User's ability to use any particular feature of a Service; or immediately terminate the Services and this Agreement, in each case with or without notice to User, in the event that: (i) Gusto has any reason to suspect or believe that User may be in violation of this Agreement; (ii) Gusto determines that User's actions are likely to cause legal liability for or material negative impact to Gusto; (iii) Gusto believes that User has misrepresented any data or information or that User has engaged in fraudulent or deceptive practices or illegal activities; (iv) Gusto has determined that User is behind in payment of fees for the Services and User has not cured such non-payment within five (5) days of Gusto providing User with notice of the non-payment; or (v) User 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 User. Furthermore, while Gusto strives to support a multitude of business and organization types, in certain unique situations, if Gusto cannot support the payroll-related filings for User's business or organization type, Gusto may immediately terminate the Services and this Agreement upon written notice to User.

The termination of any of the Services or this Agreement will not affect User'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 this Agreement. Sections 2 (to the extent that there are any unpaid fees for services rendered as of the time of termination of this Agreement), 4, 5, 6, 11, 13, 14, and 16 through 28 of this Agreement, and any sections of the Service Terms which by their nature should survive, will survive and remain in effect even if this Agreement is terminated, cancelled, or rescinded.

Upon termination of any of the Service(s) and/or termination of this Agreement, User's right to access and use such terminated Service(s) will automatically terminate; *provided, however*, that Gusto will generally continue to provide User with the ability to access User's Account in a limited capacity with respect to such terminated Service(s) to view and download information that was available in User's Account at the time of termination of such Service(s) (the "Limited Access Rights"). While User has Limited Access Rights, User must use reasonable efforts to adequately secure, and keep confidential, any passwords or credentials for User's Account, and any information accessible via User's Account. Gusto may deny the Limited Access Rights to User, or Gusto may revoke the Limited Access Rights at any time, in its sole discretion, if it has any reason to believe that User may have at any time breached Section 13 of this Agreement.

## 23. Changes to the Agreement, Platform, or Service

Gusto may modify the Agreement at any time, in Gusto's sole discretion. If Gusto does so, Gusto shall let User know either by posting the modified Agreement on the Platform or Site or through other communications. It is important that User reviews the Agreement whenever Gusto modifies it because if User continues to use the Platform or Services after Gusto has notified User of the modification and the modified Agreement has been posted on the Platform or Site, User is indicating to Gusto that User agrees to be bound by the modified Agreement. If User does not agree to be bound by the modified Agreement, then User may not continue to use the Platform or Services. Because the Platform and Services are evolving over time, Gusto may change or discontinue all or any part of the Platform, Services, or Gusto Content at any time and

without notice, at Gusto's sole discretion.

## 24. Governing Law

This Agreement shall be interpreted and construed in accordance with the laws of the State of California, without regard to the conflicts of laws principles thereof.

## 25. Arbitration

Notwithstanding any other provision in this Agreement, and except as otherwise set forth in this section, if either User or Gusto has any dispute, controversy, or claim, whether founded in contract, tort, statutory, or common law, concerning, arising out of, or relating to this Agreement, the Platform, or the Services, including any claim regarding the applicability, interpretation, scope, or validity of this arbitration clause and/or this Agreement (each of the foregoing, a "Legal Claim") that cannot be resolved directly between User 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 User and Gusto. A single arbitrator will be mutually selected by Gusto and User 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 User 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 User and Gusto. A judgment on the award may be entered and enforced in any court of competent jurisdiction. Gusto may, in its sole discretion, commence an action in any state or federal court of competent jurisdiction within the County of San Francisco, California, for any monetary amounts that User owes to Gusto (each, an "Action"). User hereby waives any objection to jurisdiction or venue, or any defense claiming lack of jurisdiction or improper venue, in any Action brought by Gusto in such courts.

User and Gusto agree and acknowledge that this 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 this Agreement. USER FURTHER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT USER AND GUSTO ARE EACH WAIVING THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY AS TO DISPUTES HEREUNDER AND THAT USER IS WAIVING ITS RIGHT TO PARTICIPATE IN ANY CLASS ACTION PROCEEDING ARISING FROM THIS AGREEMENT.

## 26. 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, 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 User.

Without limiting the generality of the foregoing or Section 18, the Platform and the Services rely on third-party technology and services, such as application programming interfaces, for Third-Party Services and web hosting services. Any change to the products or services offered by any of these third-party providers may materially and adversely affect, or entirely disable, User's use of or access to the Platform and the

Services. Likewise, Gusto cannot guarantee that any User Content hosted on a third-party server will remain secure.

## 27. General

This Agreement, including all applicable Service Terms, constitutes the entire agreement between Gusto and User regarding the Platform, Services, and Content and replaces all prior understandings, communications, and agreements, oral or written, regarding this subject matter. This Agreement may be modified only by a written amendment signed by the parties or as otherwise provided in Section 23. If any part of this Agreement is deemed to be unenforceable or invalid, that section will be removed without affecting the remainder of the Agreement. The remaining terms will be valid and enforceable. User may not assign this Agreement, by operation of law or otherwise, without Gusto's prior written consent. Any attempt by User to assign or transfer this Agreement, without such consent, will be null. Gusto may freely assign or transfer this Agreement without restriction. The provisions of this 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 Agreement, including those regarding modifications to this 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 failure to enforce any right or provision of this 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 Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

## 28. Electronic Transmission

This Agreement, and any amendments hereto, by whatever means accepted, shall 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 this Agreement or (ii) the fact that any signature or acceptance of this Agreement was transmitted or communicated through electronic means; and each party forever waives any related defense.

## 29. Contact Information

If User has any questions about this Agreement, the Platform, or the Services, User may contact Gusto at [support@gusto.com](mailto:support@gusto.com) or (855) 546-1818. Gusto, the provider of the Services, is located at 525 20th Street San Francisco, CA 94107. If User is a California resident, User may report complaints regarding the 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