

**Please note:** These terms will take effect on the earlier of March 22, 2024, or on the date you click to accept them in your Gusto Pro account. Your continued use of our products and services after March 22, 2024 will constitute your acceptance of these updates. To review the outgoing terms, please click [here](#).

## Last updated February 21, 2024

These Gusto Accountant Terms of Service (“**Accountant Terms**” or “**Terms**”), together with the Payroll Service Terms (“**Payroll Terms**”) and Gusto Employer Terms of Service (“**Gusto Employer Terms of Service**”) (collectively, the “**Accountant Agreement**” or this “**Agreement**”), contain the terms and conditions that govern the use of Gusto Pro which is Gusto’s proprietary accountant dashboard (“**Gusto Pro**”), through which Gusto offers products and services (the “**Accountant Service**”) and the Accountant Partner Program (defined below) to eligible users.

**ARBITRATION NOTICE: SECTION 12 OF THESE ACCOUNTANT TERMS CONTAINS TERMS THAT REQUIRE ACCOUNTANT TO RESOLVE DISPUTES THROUGH FINAL, BINDING ARBITRATION. ACCOUNTANT UNDERSTANDS THAT: (1) ACCOUNTANT WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST GUSTO ON AN INDIVIDUAL BASIS, AND (2) ACCOUNTANT WAIVES THE RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR SEEK RELIEF IN A COURT OF LAW AND HAVE A JURY TRIAL OF ACCOUNTANT’S CLAIMS.**

Capitalized terms used but not defined in these Accountant Terms have the meanings ascribed to them in the Payroll Terms and Gusto Employer Terms of Service, as applicable. To the extent any terms of these Accountant Terms conflict with terms of the Payroll Terms and/or Gusto Employer Terms of Service, the Accountant Terms will control with respect to the Accountant Service, and the Payroll Terms will control with respect to the Payroll Service. These Accountant Terms are Additional Terms as defined in the Gusto Employer Terms of Service.

The Accountant Agreement is a legally binding agreement between Gusto and the Accountant acting on their own behalf or that of a Client, each as defined below.

“**Accountant**” is the accounting firm, bookkeeping service provider, financial services company, or other business entity. For example, if you are accepting the terms of this Accountant Agreement in connection with creating a new Gusto Pro account for and on behalf of your limited liability company, your limited liability company is the Accountant. If Accountant manages a Client’s Payroll Services, the term “Employer” as used in the Payroll Terms and/or Gusto Employer Terms of Service shall, as applicable, mean or include “Accountant”.

A “Client” is an entity or individual that has authorized Accountant to manage its use of the Platform or Services via the Firm Account (defined below).

By checking the box presented with this Accountant Agreement, or accessing or using the Accountant Service, you agree to be bound by this Accountant Agreement.

## 1. Firm Accounts and Services

### A. Firm Accounts and Permissions

Accountant must create an account in order to access or use Gusto Pro (“**Firm Account**”). The Firm Account is affiliated with and owned by the Accountant and contains information related to the Accountant, its Clients and its Client’s Customer Accounts. If you are creating a Firm Account on behalf of and for Accountant, you are doing so as a Firm Administrator (as defined below) and you understand and acknowledge that Accountant (and not you) is the owner of the Firm Account. Accountant must authorize at least one representative to act as an administrator for the Firm Account (each, a “**Firm Administrator**”).

Each Firm Administrator will access the Firm Account through a Firm Administrator profile (“**Administrator Profile**”). The Firm

Administrator will be able to take certain actions within the Firm Account, including but not limited to, inviting additional firm members (“**Firm Members**”) to create a Firm Member profile (“**Firm Member Profile**”) and/or to become Firm Administrators. Firm Administrators and Firm Members (collectively, “**Firm Users**”) will be able to add Clients to the Firm Account, authorize the transfer of Customer Data from Client’s Customer Account to Third Party Services, accept additional Terms on behalf of Client, and accept authorization to pay Client’s Service Fees on Client’s behalf.

Accountant represents that by adding Clients to the Firm Account, Accountant is authorized by Client to act as an agent of Client’s business on the Platform. Accountant understands and agrees that Clients may provide information to Gusto at Gusto’s request. Such information may include but is not limited to information regarding the Firm Account and Accountant’s payment of Client Service Fees (defined below).

Accountant should regularly review Firm User permissions to ensure that only authorized individuals retain access to the Firm Account. If Accountant is unable to remove a Firm User from the Firm Account, Accountant must contact Gusto to request that such individual’s access be revoked. Gusto may review Firm User conduct within the Firm Account for compliance purposes, but is not obligated to do so. We encourage Accountant to review our [Help Center](#) content closely in order to ensure that Accountant is granting the minimum appropriate permissions to each Firm User Profile.

#### B. Accountant Services

Subject to Accountant’s compliance with this Agreement, Gusto will provide Accountant with the Accountant Services below. Certain Accountant Services may carry additional Service Fees, may be subject to Additional Terms, and/or may only be available to Accountants enrolled in certain Service Plans or who meet other eligibility criteria. Gusto reserves the right to change, modify, or terminate any of the Accountant Services at any time with or without notice.

- Access to Gusto Pro to manage and track Clients who in turn use Gusto to run payroll, view pay stubs, enroll in benefits, or access other Services;
- Manage Payroll Features on behalf of Clients;
- Add or refer new Clients;
- Manage Client billing preferences;
- View and manage other Firm Members that have access to and use of the Firm Account;
- View and manage Firm Administrators;
- Access to Gusto’s Partner Directory;
- Access to Gusto Academy;
- Access to bulk reporting; and
- Access to advisory insights.

## 2. Accountant Responsibilities Related to the Service

#### A. Accountant is responsible for securing Firm Account login information

Accountant is responsible for (a) the security and confidentiality of any credentials or log-in information used to access the Firm Account, (b) securing and maintaining confidential any information accessible via the Firm Account which may include Client Account information, and (c) following instructions Gusto may provide regarding the security of the Firm Account. Please review important information about how to protect your credentials and the Firm Account from fraud and online phishing schemes [here](#).

#### B. Accountant is responsible for all actions taken under the Firm Account

Accountant is responsible for all actions and transactions taken under or through the Firm Account, regardless of whether Accountant

knew of such actions (“**Authorized Actions**”). Authorized Actions may include but are not limited to (a) actions taken by a Firm User and (b) actions or transactions that a Firm User directs Gusto to take on Accountant’s behalf whether orally (e.g., over the phone to one of our team members) or in writing.

Accountant accepts all risks of unauthorized use of the Firm Account. Accountants must immediately notify Gusto if Accountant believes that the Firm Account, any of the Firm User Profiles or Firm User log-in credentials have been compromised. Gusto may suspend the Firm Account and/or any Client Customer Accounts, including all Firm User access to the Firm Account, if Gusto has reason to believe that the Firm Account or any of Firm User’s log-in credentials have been compromised.

Accountant agrees not to grant Firm Account access to, or disclose any Firm User log-in credentials to, Prohibited Third Parties. A “**Prohibited Third Party**” is a third party that seeks to access or accesses the Accountant Services or the Platform using a Firm User Profile or a Firm User’s log-in credentials, regardless of Accountant’s purported consent or authorization, in order to harvest, crawl, or scrape information from the Platform or Services without Gusto’s express written authorization.

### 3. Accountant Partner Program

Accountants may also participate in Gusto’s Accountant incentive program designed to reward Accountants that enroll Accountant Clients to Gusto through Gusto Pro with an Incentive (the “**Accountant Partner Program**” or “**Program**”). Accountants participating in the Accountant Partner Program are referred to as an “**Accountant Partner**” or “**Partner**”.

A “**Partner Client**” is the Client of an Accountant Partner that (a) Enrolls in Gusto through one of the Enrollment methods below, (b) has an employer identification number (“EIN”) not previously used on the Gusto payroll platform at the time of Enrollment, (b) runs at least one paid payroll with Gusto in which at least one employee is paid who will receive a Form W-2 at year end. Gusto may choose to accept, decline or expel any person, accounting firm or accountant, Partner or Partner Client from the Program at any time.

An Accountant Partner may enroll (the “**Enrollment**” or being “**Enrolled**”) a Partner Client to Gusto through Gusto Pro via any of the following methods: (1) adding the Partner Client to the Firm Account through the “Add Client” screen; (2) Partner Client creation of a Gusto account from a unique referral link generated through Accountant Partner’s Gusto Pro Account; or (3) any other permitted referral method made available by Gusto.

If Accountant Partner Enrolls a Partner Client through the “Add Client” screen, the Accountant Partner will be asked to select from one of the following “Incentives” or “billing options”: (1) one of the following “Volume Discount Incentives”: (a) bill Partner Client at a Discount, or (b) bill Partner at a Discount; or (2) bill Partner Client at the current advertised rate and Partner receives a Revenue Share (the “**Revenue Share Incentive**”). Accountant Partner’s selection of a Discount Incentive or the Revenue Share Incentive is considered an “**Incentive Selection**”.

If the Partner Client Enrolls through the unique Accountant Partner referral link, the Incentive Selection will default to (1) bill the Partner Client at a Discount. A Firm Administrator may change the Incentive Selection at any time through the Firm Account. More information about Incentive types can be found at [www.gusto.com/partners/accountants](http://www.gusto.com/partners/accountants) (the “Website”).

For purposes of the Volume Discount Incentives, “discount” shall mean the indicated discount off the current advertised price for Gusto Services as indicated by Partner’s applicable Program level on the Website (a “**Discount**”).

For purposes of the Revenue Share Incentive, “revenue share” shall mean a recurring cash payment from Gusto to Accountant Partner of an amount equal to the portion of the Partner Client’s monthly invoice amount as indicated by Accountant Partner’s applicable Program level on the Website (a “**Revenue Share**”). For purposes of revenue share calculations, “**Gusto Services**” means the cloud-based payroll and human resources services listed under a Employer’s Service Plan as described at [www.gusto.com/product/pricing](http://www.gusto.com/product/pricing) and does not include (a) any optional add-on services for which Gusto charges a fee, or (b) any of the non-payroll or non-human resources services, such as health insurance brokerage services, retirement savings services, educational savings plan services, tax-advantaged account services or any other non-payroll or non-human resources services which Gusto or its subsidiaries are currently providing or may provide in the future. In order to receive an applicable Revenue Share, the Accountant Partner must have linked a bank account to the Firm Account.

Once a Partner Client (1) is Enrolled and (2) runs a paid payroll with Gusto, Accountant Partner will be credited towards the

achievement of the Incentive, and, as applicable, (a) any resulting Discounts shall be effective or (b) any resulting Revenue Share for a given month shall become payable within thirty (30) days of the later of the following: (i) the end of such month in which a Partner or Partner Client is billed or (ii) the provision of a Form W-9 by Partner to Gusto.

Partner will have sixty (60) days from the end of each billed calendar month to notify Gusto of any bona fide dispute concerning a discrepancy of the applicable monthly Incentive amount determined by Gusto compared to Partner's own records, after which Partner waives its right to dispute applicable Discounts and/or Revenue Share amounts. In any such event, the parties will engage in good faith discussions to timely resolve such discrepancy.

The Program features "Free payroll for your practice" ("**Free Payroll**") and "Free HR tools for your practice" ("**Free HR Tools**") which offers eligible Partners twelve (12) months of free access to Gusto's Plus plan for their own firm. Partners must Enroll one (1) Partner Client every twelve (12) months to qualify for an additional twelve (12) months of free access. Partners may enjoy Free Payroll and Free HR Tools for up to 150 employees.

## 4. Accountant Data and Privacy

Accountant may upload content or information through the Platform, such as files, employment documents, messages, and personal information about Clients and Clients' Authorized Users. Accountant may also direct Clients and Clients' Authorized Users to upload such content or information directly for use in the Firm Account or any Accountant Services. Collectively, all such content or information is referred to herein as "**Accountant Data**".

Accountant is solely responsible for ensuring that the collection and/or processing of Accountant Data is compliant with all applicable laws and regulations. Accountant represents and warrants that Accountant has received all required rights, licenses, consents and authorizations to use and make available any Accountant Data uploaded or submitted to the Platform via the Firm Account, and that Accountant may instruct Gusto on what to do with such Accountant Data. For example, Accountant may elect to enable or disable third party integrations, manage permissions, and grant certain Client Authorized Users access to view or edit Accountant Data submitted by other Client Authorized Users. Because these instructions may result in the access, use, disclosure, modification or deletion of certain Accountant Data, Accountant should review the Gusto [Help Center](#) for more information about these choices, permissions and instructions. Accountant is solely responsible for responding to and resolving any dispute that may arise between Accountant and Client and/or Client's Authorized Users relating to or based on Accountant Data, and the Platform, or Services, or Accountant's failure to fulfill any of these responsibilities.

As a financial institution, Gusto is subject to certain retention requirements under state and federal law. As a result, certain types of Accountant Data may not be removed from the Platform. Gusto is not responsible or liable to Accountant for the removal or deletion of (or the failure to remove or delete) any Accountant Data. Accountant acknowledges and agrees that Gusto is not responsible for the loss or modification of any Accountant Data, and that Accountant's use of the Platform and Services is at Accountant's own risk.

Accountant understands and agrees that Accountant Data transmitted, entered or otherwise uploaded by Accountant, on Accountant's behalf, and by Client or by Client's Authorized Users to the Platform and Services will be processed in accordance with our Privacy Policy, as it may be updated from time to time, including processing for the purpose of improving our products and services. Our Privacy Policy is incorporated into these Terms by reference and is available at [www.gusto.com/about/privacy](http://www.gusto.com/about/privacy).

## 5. Accountant Payment Obligations

### A. Accountant Invoicing

If Accountant elects to receive Service Fee invoices on behalf of Clients ("**Client Service Fees**"), then Accountant is responsible for timely paying all invoices. Gusto will invoice Accountant for all Client Service Fees per this election. Accountant authorizes Gusto to debit Accountant Bank Account for all applicable fees as they become payable and to debit Accountant Bank Account for any outstanding Client Service Fees at any time. Accountant agrees to pay any invoice within fifteen (15) days of receipt via a payment method Gusto deems acceptable in our sole discretion. By electing to pay Client Service Fees on Client's behalf, Accountant understands and agrees that Customer and Accountant are jointly and severally liable for any unpaid Service Fees and for any

associated bank fees or costs of collection.

Unless we state otherwise, all fees are non-refundable. In the event of a refund, Accountant agrees to reimburse Gusto for any sales, use, and/or similar taxes arising from the provision of the Services that any federal, state, and/or local governments may impose.

Gusto may change any of our Client Service Fees at any time. In any such event, Gusto will notify the Accountant of the change at least thirty (30) days in advance. Accountant's continued use of the Platform or applicable Service(s) after a Client Service Fee change constitutes Accountant's acceptance of the change.

If we are unable to collect fees from Accountant by the payment due date for any reason, or if Accountant attempts to cancel or claw back fees properly debited by Gusto from Accountant's Bank Account under this Accountant Agreement, we may terminate or suspend the Firm Account and/or Client's Customer Account along with access to the Platform or Services (including, without limitation, the Payroll Service) until we receive the outstanding amounts due. In the event of termination or suspension of access to Firm Account, Gusto is not liable for any resulting consequences or Claims (including, without limitation, any consequences or Claims arising from unremitted or untimely remitted payroll taxes and/or unpaid or untimely wage or contract payments). Termination or suspension of the Firm Account and/or Client's Customer Account will not relieve Accountant's obligation to pay outstanding amounts due plus any applicable exceptions processing fees, bank fees, or charges for return items, plus interest at the lesser of eighteen (18%) per annum or the maximum rate permitted by law, plus attorneys' fees and other costs of collection as permitted by law.

**B. Accountant is Responsible for Maintaining Sufficient Bank Account Funds.**

If Accountant elects to be invoiced for Client Service Fees, then Accountant must maintain sufficient immediately available funds in Accountant's Bank Account(s) to cover all applicable fees, at the time required. For payments processed via ACH, such funds must be available no later than the close of business on the day prior to the debit date for any payment (as applicable, for payments processed via ACH). For more information on debit dates please visit our [Help Center](#).

Gusto may request verification of, or require Accountant to verify and/or provide Gusto evidence of, the balance of available funds in Accountant's Bank Account and reserves the right to cancel or refuse to process any payment if Gusto reasonably believes Accountant has not maintained sufficient funds in the Accountant's Bank Account or for any other reason Gusto deems reasonable in our sole discretion, without liability to Accountant. Without limiting Gusto's right, if (i) any debit from a Bank Account by Gusto under this Accountant Agreement fails or is returned due to Accountant's failure to maintain insufficient funds, (ii) Gusto reasonably suspects or determines that Accountant has misrepresented the balance of available funds in the Accountant's Bank Account, or (iii) Gusto suffers any loss due to Accountant's failure to maintain sufficient funds in the Accountant's Bank Account; then, Gusto may suspend or terminate the Client's Payroll Service, the Client's Employer Account or the Firm Account, charge Accountant debit failure fees or penalty, assess finance charges, recover the amount lost plus any fees and costs of collection from Accountant in accordance with this Accountant Agreement, report this information to applicable credit or financial institutions, or pursue any other remedy or remedying action that Gusto deems reasonable as permitted by law. Termination of the Client's Payroll Service, the Client's Employer Account or of Firm's Account does not relieve Accountant of the obligation to pay all Amounts Due or of any other obligations that Accountant may have under applicable law.

## 6. Accountant Beta Features

We may provide Accountant with access to beta, pilot, trial, or pre-release features or products (collectively "**Accountant Beta Features**") via Gusto Pro. Accountant Beta Features are provided as-is. We reserve the right to modify, change, or discontinue Accountant Beta Features at any time with or without notice. By accessing or using an Accountant Beta Feature, Accountant agrees to any Additional Terms that may apply to such Accountant Beta Feature, and to follow any and all additional rules or restrictions that we may place on the use of such Accountant Beta Feature.

## 7. No Professional Advice; No Fiduciary Relationship; No Employment Relationship

Accountant's use of Gusto Pro and the Accountant Services is entirely at Accountant's own risk. Accountant acknowledges that the Accountant Services and Gusto Content are meant for informational purposes only and are not intended to provide and should not be

construed as providing any legal, regulatory, tax, financial, accounting, employment, or other professional advice. Accountant is solely responsible for ensuring Accountant's compliance with applicable law and regulation, and nothing in the Gusto Content or Accountant Services (including, without limitation, any communications from our customer support team regarding Accountant's use of Gusto Pro or Accountant Services) should be construed as, or used as a substitute for, the advice of competent legal or applicable professional counsel. Accountant understands and agrees that Gusto is not acting in a fiduciary capacity for Accountant or Accountant's Clients in performing the Payroll Services. Gusto does not guarantee or warrant any results or outcome with respect to Gusto Pro, Accountant Services or Gusto Content.

## 8. Termination and Suspension

### A. Firm Account Termination

Accountant may cancel the Firm Account at any time from within the Firm Account. Unless we state otherwise, Accountant's termination of the Firm Account constitutes the termination of this Agreement. Unless we state otherwise, Gusto will not prorate any applicable Client Service Fees, and Firm Accounts canceled in the middle of a month will be charged the full month's fees for all Services to which Accountant was subscribed at the time of cancellation. Accountant understands and agrees that Accountant is solely responsible for ensuring Accountant's compliance with all applicable laws, including any wage and hour, taxation, and employment regulation that may affect Accountant's obligations to Clients and Client's Authorized Users paid through the Payroll Service following cancellation.

### B. Gusto's Termination and Suspension

Gusto may terminate or suspend the Accountant Services if you violate this Agreement or any other Gusto Agreement or any other Gusto terms or your use of the Accountant Services is improper or substantially exceeds or differs from normal use by other users, raises suspicion of fraud, misuse, security concern, illegal activity or unauthorized access issues.

### C. Effect of Termination

Upon termination of the Accountant Services, and except as otherwise stated in this section or the applicable Additional Terms, Accountant's rights to access and use all applicable Accountant Services(s) to which Accountant subscribed or enrolled will automatically terminate. The Firm Account and Firm User Profiles will remain accessible in a read only capacity, subject to compliance with this Agreement.

The termination of any of the Accountant Services or this Agreement will not affect Accountant'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. Any section of this Agreement or applicable Additional Terms which by their nature should survive termination will survive, including without limitation all applicable payment obligations, privacy rights and obligations of Gusto and Accountant under Gusto's Privacy Policy, Gusto's responsibilities to comply with federal anti-money laundering regulation, use restrictions and indemnity obligations, warranty disclaimers, and limitations of liability.

## 9. Indemnity

Accountant will indemnify and hold harmless Gusto and its officers, directors, employees, and agents (the "**Indemnified Parties**"), from and against damages, losses, and expenses arising out of any claims, actions, suits, proceedings, and demands (including, without limitation, reasonable legal and accounting fees) ("**Claims**"), arising out of (I) Accountant's, Firm User's, Client's or Client's Authorized User's (a) access to, use of, or participation in the Platform, Services, Programs or Gusto Content; (b) Accountant Data; (c) violation or alleged violation of this Agreement or any instructions provided by Gusto with respect to Accountant's, Firm User's, Client's or Client's Authorized User's use of the Platform, Programs, or Services; (d) violation or alleged violation of any third party right; (e) violation or alleged violation of any applicable law, rule, or regulation; (f) gross negligence, fraudulent activity, or willful misconduct; and (II) (a) Gusto's or any other Indemnified Party's use of or reliance on information or data furnished by or on behalf of Accountant; (b) actions that Gusto or any other Indemnified Party undertakes at the request or instruction of Accountant or anyone that Gusto or any other Indemnified Party reasonably believes to be Accountant or acting with authority on behalf of Accountant (each such action a



“Requested Action”); or (c) Gusto’s or any other Indemnified Party’s use of or reliance on information or data resulting from such Requested Actions.

## 10. Limitation of Liability

Gusto is not responsible or liable for (a) Accountant Data or anyone’s reliance on certain Accountant Data which may be made available via the Platform, Program, or Services; (b) Resulting Errors or any consequences or Claims directly or indirectly arising from Resulting Errors; (c) any consequences or Claims directly or indirectly resulting from Accountant’s delay in providing, or Accountant’s failure to provide, Gusto with information necessary for its provision of the Programs or Services; (d) Accountant’s violation of applicable law, rule, regulation or other applicable legal obligation; (e) unauthorized third-party actions taken in the Firm Account and any transactions, consequences, or Claims arising therefrom; (f) Accountant’s negligence or any negligence of Firm Users, or any more culpable acts or omissions of the same; (g) any Claims, or portions of any Claims, that could have reasonably been avoided or mitigated by Accountant through reasonable efforts; (h) any circumstances or Claims arising out of or related to a Third-Party Service’s use of Accountant Data; (i) any Requested Actions, or any consequences or Claims directly or indirectly resulting therefrom; or (j) Accountant’s failure to properly follow Gusto’s instructions with respect to the Products, Programs, Gusto Content, or Services.

NEITHER GUSTO NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE PLATFORM, PROGRAMS, SERVICES, OR GUSTO CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE 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 ACCOUNTANT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, 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, PROGRAMS, SERVICES, OR GUSTO CONTENT EXCEED THE AMOUNTS ACCOUNTANT HAS PAID TO GUSTO FOR USE OF THE PLATFORM, PROGRAMS, OR 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 ACCOUNTANT.

## 11. Changes to the Agreement, Platform, Programs, or Services

Gusto may modify this Agreement at any time, in Gusto’s sole discretion, effective upon posting of an updated version of this Agreement. It is important that Accountant reviews each modified version of the Agreement as Accountant’s continued use of the Platform, Programs, or Services after such changes are posted constitutes Accountant’s agreement to be bound by the modified Agreement. If Accountant does not agree to be bound by the modified Agreement, then Accountant may not continue to use the Platform, Programs or Services. Because the Platform, Programs and Services evolve over time, Gusto may change or discontinue all or any part of the Platform, Programs, or Services at any time and without notice, and without liability to Accountant, at Gusto’s sole discretion.

## 12. Arbitration

PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS AND INCLUDES, AMONG OTHER THINGS, A CLASS ACTION WAIVER. YOU ACKNOWLEDGE THAT YOU HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US. YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO REJECT THIS PROVISION AS PROVIDED IN SECTION 12.C BELOW.

- A. Informal Dispute Resolution. “**Dispute**” includes any past, present, or future dispute, claim (including initial claims, counter-

claims, third-party claims, or otherwise), or controversy relating to or arising out of this Agreement, the Platform or Services, whether in law, equity, or otherwise, including the validity or enforceability of this Section 12 or the Agreement. If a Dispute arises, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide a neutral and cost effective means of resolving the Dispute quickly. Before filing any Dispute in arbitration or, for an excluded matter, in court, you will try to resolve the specific issue underlying the Dispute informally by contacting our customer service team. We will also undertake reasonable efforts to contact you to resolve any Dispute informally before taking any formal action. If your Dispute is not resolved within sixty (60) days after you contact our customer service team, you or Gusto may initiate a formal action as described in this Section 12.

- B. Election to Arbitrate. You and Gusto agree that the sole and exclusive forum for resolution of a Dispute will be final and binding arbitration pursuant to this Section 12 (the “**Arbitration Provision**”), unless you opt out as provided in Section 12.C below or your Dispute is subject to an explicit exception to this Arbitration Provision. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable. Notwithstanding the foregoing, both you and Gusto retain the right: (1) to bring an individual action in small claims court (a “**Small Claims Action**”); or (2) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s intellectual property rights (an “**IP Protection Action**”).
- C. Opt-Out of Arbitration Provision. You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice as described below within thirty (30) days of the date of your electronic acceptance of these Terms (such notice, an “**Arbitration Opt-Out Notice**”) or, for current Accountants, within thirty (30) days of Gusto’s notice of modifications to these Terms. For your convenience we have provided a form Arbitration Opt-Out Notice [www.gusto.com/legal/opt-out](http://www.gusto.com/legal/opt-out). Please complete and email the completed form, including all required fields, to [legal-opt-outs@gusto.com](mailto:legal-opt-outs@gusto.com). If you don’t provide Gusto with a completed Arbitration Opt-Out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute except with regard to a Small Claims Action or an IP Protection Action, as expressly set forth in Section 12.B above. Your opt-out will be effective only for Disputes that arise after acceptance of the Terms, or the effective date of the updated Terms for which you have submitted an Arbitration Opt-Out Notice (whichever is later).
- D. Judicial Forum for Disputes. In the event that (i) you or we bring a Small Claims Action, or IP Protection Action; (ii) you timely provide Gusto with an Arbitration Opt-out Notice; or (iii) this Section 12 is found not to apply, the exclusive jurisdiction and venue of any Dispute will be the state and federal courts located in the County of San Francisco, CA and you and Gusto waive any objection to jurisdiction and venue in such courts. You and we both further agree to waive our right to a jury trial.
- E. WAIVER OF RIGHT TO LITIGATE. YOU UNDERSTAND THAT YOU WILL NOT HAVE A RIGHT TO LITIGATE DISPUTES THROUGH A COURT BEFORE A JUDGE UNLESS YOU TIMELY PROVIDE GUSTO WITH AN ARBITRATION OPT-OUT NOTICE. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE DISPUTES IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY ANY PARTY, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 12.B ABOVE.
- F. NO CLASS ACTIONS. You and Gusto agree that the arbitration of any Dispute shall only proceed on an individual basis. Neither you nor Gusto may bring a Dispute as a part of a class, group, collective, coordinated, consolidated or mass arbitration (each, a “**Collective Arbitration**”). Without limiting the generality of the foregoing, a Dispute against Gusto will be deemed a Collective Arbitration if (i) two (2) or more similar Disputes for arbitration are filed concurrently by or on behalf of one or more claimants; and (ii) counsel for the claimants are the same, share fees or coordinate across the arbitrations. “**Concurrently**” for purposes of this provision means that both arbitrations are pending (filed but not yet resolved) at the same time. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR GUSTO SHALL BE ENTITLED TO CONSOLIDATE, JOIN OR COORDINATE DISPUTES BY OR AGAINST OTHER INDIVIDUALS OR ENTITIES, OR ARBITRATE OR LITIGATE ANY DISPUTE IN A REPRESENTATIVE CAPACITY, INCLUDING AS A REPRESENTATIVE MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. IN CONNECTION WITH ANY DISPUTE, ANY AND ALL SUCH RIGHTS ARE HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVED. ANY CHALLENGE TO THE VALIDITY OF THIS SECTION 12.F SHALL BE DETERMINED EXCLUSIVELY BY THE ARBITRATOR.



- G. Arbitration Procedures. The party initiating arbitration shall do so with Judicial Alternatives and Mediation Services (“JAMS”). Disputes involving claims and counterclaims with an amount in controversy under \$250,000, not inclusive of attorneys’ fees and interest, shall be subject to JAMS’ most current version of the Streamlined Arbitration Rules; all other Disputes shall be subject to JAMS’s most current version of the Comprehensive Arbitration Rules and Procedures (the applicable rule set, the “JAMS Rules”). If you have any questions concerning JAMS or would like to obtain a copy of the JAMS Rules, you may call 1(800) 352-5267 or visit their web site at: [www.jamsadr.com](http://www.jamsadr.com). In the case of a conflict between the JAMS Rules and this Arbitration Provision, this Arbitration Provision shall control, subject to countervailing law, unless all parties to the arbitration consent to have the JAMS Rules apply. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the JAMS Rules. Arbitration will proceed on an individual basis and will be handled by a sole arbitrator. A single arbitrator will be mutually selected by Gusto and Member 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 JAM’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 JAM’s roster of commercial dispute arbitrators) (collectively, the “Arbitrator Requirements”). If Gusto and Member 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 JAMS shall appoint a single arbitrator in accordance with JAMS Rules that satisfies the Arbitrator Requirements. Notwithstanding any language to the contrary in this Section 12, if a party seeks injunctive relief that would significantly impact other Accountants as reasonably determined by either party, the parties agree that such arbitration will proceed on an individual basis but will be handled by a panel of three (3) arbitrators. Each party shall select one arbitrator, and the two party-selected arbitrators shall select the third, who shall serve as chair of the arbitral panel. That chairperson shall meet the Arbitrator Requirements. In the event of disagreement as to whether the threshold for a three-arbitrator panel has been met, the sole arbitrator appointed in accordance with this Section 12 shall make that determination. If the arbitrator determines a three-person panel is appropriate, the arbitrator may – if selected by either party or as the chair by the two party-selected arbitrators – participate in the arbitral panel. Except as and to the extent otherwise may be required by law, the arbitration proceeding and any award shall be confidential. This Arbitration Provision shall be construed under and be subject to the Federal Arbitration Act, notwithstanding any other choice of law set out in these Terms.
- H. Arbitration Location. Unless the arbitrator determines that an in-person hearing is necessary or you and Gusto otherwise agree, the arbitration may be conducted via videoconference, telephonically or via other remote electronic means. If your Dispute does not exceed \$10,000 not inclusive of attorneys’ fees and interest, then the arbitration will be conducted solely on the basis of the documents that you and Gusto submit to the arbitrator, unless the arbitrator determines that a videoconference, telephonic or in-person hearing is necessary. If your Dispute exceeds \$10,000, your right to a hearing will be determined by the JAMS Rules. Subject to such rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.
- I. Arbitration Fees. If we elect arbitration, we shall pay all the administrator’s filing costs and administrative fees (other than hearing fees). If you elect arbitration, filing costs and administrative fees (other than hearing fees) shall be paid in accordance with the JAMS Rules, or in accordance with countervailing law if contrary to the JAMS Rules.
- J. Arbitrator’s Decision. The arbitrator will render an award within the time frame specified in the JAMS Rules. The arbitrator’s decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.
- K. Survival and Severability of Arbitration Provision. This Arbitration Provision shall survive the termination of this Agreement. With the exception of Section 12.F, if a court decides that any part of this Arbitration Provision is invalid or unenforceable, then the remaining portions of this Arbitration Provision shall nevertheless remain valid and in force. In the event that a court finds that all or any portion of Section 12.F to be invalid or unenforceable, then the entirety of this Arbitration Provision shall be deemed void and any remaining Dispute must be litigated in court pursuant to Section 12.D.