

Last updated February 21, 2024

These Payroll Service Terms ("**Payroll Terms**"), together with the Gusto [Employer Terms of Service](#) ("**Gusto Employer Terms**") (collectively, the "**Payroll Agreement**"), contain the terms and conditions under which Gusto provides to eligible Employers certain payroll, contractor payments, and payroll tax related services (collectively, the "**Payroll Service**") through the Platform as described below. Capitalized terms used but not defined in these Payroll Terms have the meanings ascribed to them in the Gusto Employer Terms. To the extent any Payroll Terms conflict with terms of the Gusto Employer Terms, the Payroll Terms will control with respect to the Payroll Service. These Payroll Terms are Additional Terms as defined in the Gusto Terms of Service.

If you are an accountant or bookkeeper or other third party representative managing your client's use of the Payroll Service through Gusto Pro, these Payroll Terms and the [Gusto Accountant Terms of Service](#) govern your access to and use of the Payroll Service on behalf of your client(s), each of which is a Employer. In the event of a conflict between the Payroll Terms and the Gusto Accountant Terms of Service, the Payroll Terms will control with respect to the Payroll Service.

The Payroll Service is only available in the United States, excluding U.S. territories, and these Payroll Terms are applicable only to the Payroll Service as provided in the United States. However, certain non-U.S. payroll services may be available to qualified Employers, subject to Additional Terms and availability.

## 1. Payroll Service

Subject to Employer's compliance with these Payroll Terms, Gusto will provide Employer with the Payroll Service for the purposes of (each a "**Payroll Feature**"):

- Calculating Employer's payroll and associated taxes and liabilities;
- Processing Employer's payroll and making related payments (each, a "**Payment**") to Employer's designated employees, contractors, tax agencies, or other recipients (collectively, "**Payees**");
- Withholding, filing, and remitting payroll tax Payments and filings;
- Completing certain tax documents, including original and amended tax filings on Employer's behalf; and
- Creating and tracking paid and unpaid time off, hours worked, reimbursements and expenses and making certain related Payments.

Each Payroll Feature may carry additional Service Fees, may be subject to Additional Terms, and/or may only be available to Employers enrolled in certain Service Plans or who meet other eligibility criteria, as determined by Gusto. Gusto reserves the right to change, modify, or terminate any of the Payroll Features at any time with or without notice.

## 2. Eligibility

To use the Payroll Service, Employer must meet the below criteria and complete the below prerequisite actions (as applicable):

- (i) have a business registered in, and Bank Account(s) located in the United States (excluding U.S. territories);
- (ii) ensure that Employer and any Payees are eligible to receive payments via the Payroll Service and are not prohibited from making or receiving payments via the Payroll Services under applicable law;
- (iii) have applied for and received applicable tax agency account ID(s);
- (iv) designate a signatory;

- (v) complete, execute (if applicable) and submit all documents and information Gusto may require for providing the Payroll Service, including but not limited to Employer’s prior payroll information and any required authorizations or tax agency forms, including IRS Form 8655;
- (vi) deposit any applicable tax liabilities incurred prior to enrolling in or initiating the Payroll Service;
- (vii) submit any payroll tax returns to applicable tax agencies that were due for payroll tax liabilities incurred prior to enrolling in the Payroll Service;
- (viii) cancel any prior payroll or PEO services and inform applicable prior providers of such cancelation or termination; and
- (ix) comply with any additional instructions, guidelines, or policies (“**Payroll Policies**”) that Gusto may publish from time to time.

Gusto reserves the right to suspend or terminate the Payroll Service or any Payroll Feature without notice in the event that Gusto determines (in Gusto’s sole discretion) or has reason to believe that Employer has violated any of the above eligibility requirements.

### 3. Identity and Bank Account Verification

To help the government fight the funding of terrorism and money laundering activities, federal law requires financial institutions like Gusto to obtain, verify, record, and monitor information that identifies Employer’s business entity, each Administrator authorized to access and/or manage the Employer Account, and Employer’s designated [responsible party](#) (also referred to as Employer’s “signatory”) (collectively, “**Information Subjects**”). Accordingly, Gusto will require Employer to provide certain information to verify Information Subjects, which may include (but is not limited to) full name, address, date of birth, Employer taxpayer ID, telephone number, email address, business entity ownership documentation, and other information necessary to identify Employer’s entity information, Administrators, and/or signatory (“**Identification Information**”). Additionally, Gusto may also require Employer to provide identifying documentation about Information Subjects, which may include passports, drivers licenses, or other government issued identification (“**Identification Documents**”). Gusto may also use Identification Information and/or Identification Documents provided by Employer to confirm the identity of Administrators and their legal relationship to Employer in the event of a dispute regarding Employer’s Administrator(s)’ management of and/or access to the Employer Account.

Gusto will also need to collect, review and verify certain information about Employer’s Bank Account in order to confirm Employer’s eligibility for the Payroll Service. This information includes identifying information about the Bank Account such as (but not limited to) the account number and financial institution name, identifying information about the Bank Account signatory, as well as information about payment recipients and transactions (“**Employer Banking Information**”). Gusto will use Employer Banking Information to conduct Know Your Customer (“KYC”) reviews and Sanctions Screening as described in Section 4 (“Know Your Customer and Sanctions Screening”) below, to verify Bank Account ownership, to verify that the Employer and Employer’s Bank Account are eligible for the Payroll Service (as determined by us in our sole discretion), and to confirm and share Employer Banking Information with our service providers and/or Employer’s Bank Account provider. Please review our [Help Center](#) content for more information on how we conduct bank account and identity verification and what types of bank accounts we accept.

Employer represents and warrants that Employer has the authority to share Identification Information, Identification Documents, and Employer Banking Information with Gusto as set forth herein, and Employer understands and agrees that Gusto will handle such information in accordance with our [Privacy Policy](#). Employer further represents and warrants that all Identification Information, Identification Documents, and Employer Banking Information provided to Gusto are truthful, accurate and complete, and that, except as permitted in these Payroll Terms, Employer is not submitting such information on behalf of a third party. Employer is responsible for ensuring that all Identification Information, Identification Documents, and Employer Banking Information requested by Gusto is provided in a timely manner, and Employer understands that failure to timely provide may result in Gusto being unable to provide Employer with the Payroll Services and/or immediate termination of Payroll Services with or without notice and without liability to Employer.

Employer authorizes Gusto to obtain information about Employer as a business entity, and to report adverse business information about Employer to third parties including but not limited to federal or state tax authorities. Gusto reserves the right to terminate this Payroll Agreement and/or the Employer’s Account immediately with or without notice or liability if Gusto is unable to verify Employer’s

satisfactory financial standing, or for any other lawful business reason (including, without limitations, reasons that are confidential to Gusto or which Gusto may not legally disclose).

## 4. KYC and Sanctions Screening

Gusto's account opening and maintenance processes include controls designed to gather customer information required under the Bank Secrecy Act, FinCEN's Employer Due Diligence ("CDD") Rule, and other information required under Gusto's Know Your Customer ("KYC") program. Gusto's KYC program includes standards and controls designed to enable Gusto to form a reasonable belief as to a customer's true identity, the nature and purpose of the transactions a customer conducts, and the level of risk a customer's relationship and related financial activities may pose to Gusto.

All U.S. persons, including U.S. banks, bank holding companies, and non-bank subsidiaries, must comply with the sanctions regimes administered by the U.S. Treasury's Office of Foreign Asset Control's ("OFAC"). This means that Gusto may institute a hold on Employer's Bank Account or funds, or terminate this Agreement immediately without notice, if Gusto determines (in Gusto's sole discretion) that Employer or any of Employer's Administrators are or may be a Specially Designated National, if Employer or any of Employer's Administrators fall into the scope of a country-based sanction program, or if Employer attempts to send funds to a country or recipient that is sanctioned or that Gusto reasonably believes is sanctioned in Gusto's sole discretion.

## 5. Employer's Responsibilities

### A. Employer is Responsible for the Accuracy of all Payroll Information

For purposes of these Payroll Terms, "**Payroll Information**" means:

1. all information provided to Gusto by or on behalf of Employer in connection with the Payroll Service, including without limitation, information used to request or submit Payments;
2. information provided to Gusto by Employer's Payees or Members for purposes of the Payroll Service; and
3. all information or other documentation generated or provided by Gusto through the Platform for Employer's review based on the information listed in items (i) and (ii) above, including (but not limited to) pay statements, reports, payroll tax filings, tax forms, payroll summaries, and print checks (as applicable).

By submitting Payroll Information to Gusto, Employer represents that Employer is authorized to provide such Payroll Information and is doing so in compliance with all of Employer's applicable legal obligations. Employer is solely responsible for the accuracy, timeliness, and completeness of all Payroll Information. Gusto is entitled to rely on, and is not obligated to independently verify the accuracy of, Payroll Information except where required by law. Gusto will not be liable for any penalty, interest, Claims, or liability that results from inaccurate or incomplete Payroll Information, including without limitation, penalties, interest, Claims or liability resulting from Payments made using inaccurate or incomplete Payroll Information, whether such Payroll Information was provided by Employer or Employer's Payees or Members.

### B. Employer is Responsible for Complying with Applicable Law

Employer is solely responsible for ensuring that Employer's Payroll Information and use of the Payroll Service complies with all applicable laws, regulations, and contractual obligations or other legal requirements including (without limitation) anti-money laundering laws, wage and hour law, labor law, immigration law, tax law, and privacy laws.

Gusto does not guarantee that the Payroll Service will provide all functionality necessary for, or perform in a manner consistent with, all laws or legal obligations applicable to Employer or Employer's Payee(s). Employer acknowledges and understands that such laws and obligations vary by industry, region and city, and change over time. Employer assumes full and sole responsibility for use of the Payroll Service to achieve Employer's intended purpose and comply with Employer's applicable legal obligations.

### C. Employer is Responsible for Maintaining Sufficient Bank Account Funds

Employer must maintain sufficient immediately available funds in Employer's Bank Account(s) to cover all Payments, fees, reserve requirements (as applicable) and payroll taxes ("**Amounts Due**") 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](#). For fees, Employer understands and acknowledges that if Employer fails to timely pay fees for the Services or if Employer attempts to clawback or cancel fees properly debited by Gusto from Employer's Bank Account under the Payroll Agreement, then Gusto may terminate or suspend the Employer Account and/or Employer's access to Payroll Service until we receive the outstanding amounts due. Employer understands that Gusto will not calculate, remit, process, or submit payroll tax Payments and/or filings if Employer's access to the Payroll Service is suspended or terminated and Employer agrees that Employer is solely responsible for Employer's applicable legal obligations, including tax obligations.

Gusto may request verification of, or require Employer to verify and/or provide Gusto evidence of, the balance of available funds in Employer's Bank Account and reserves the right to cancel or refuse to process any Payment if Gusto reasonably believes Employer has not maintained sufficient Bank Account funds or for any other reason Gusto deems reasonable in our sole discretion, without liability to Employer. Without limiting Gusto's rights in Section 6 below, if (i) any debit from the Bank Account by Gusto under these Payroll Terms fails or is returned due to Employer's failure to maintain insufficient funds, (ii) Gusto reasonably suspects or determines that Employer has misrepresented the balance of available funds in the Employer's Bank Account, or (iii) Gusto suffers any loss due to Employer's failure to maintain sufficient funds in the Bank Account; then, Gusto may cancel or reverse any corresponding Payments processed via direct deposit transactions without liability to Employer, terminate the Payroll Services or the Employer Account, charge Employer a one-time fee or penalty, assess finance charges, recover the amount lost plus any fees and costs of collection from Employer in accordance with Section 10 of the Gusto Employer Terms, report this information to applicable credit or financial institutions, or pursue any other remedy or remediating action that Gusto deems reasonable as permitted by law. Termination of the Payroll Service or of Employer's Account does not relieve Employer of the obligation to pay all Amounts Due or of any other obligations that Employer may have under applicable law.

Employer understands and acknowledges that Gusto may reject, cancel, or reverse (if applicable) Employer's requested Payments to the applicable Payees if Employer fails to maintain sufficient funds in Employer's Bank Account, and 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 to Employer's Payees).

## 6. Gusto Reserves Certain Rights

### A. Payment Methods; Eligibility for Payment Methods

Gusto may process different Payment types through different payment methods. Payments to contractors may be subject to different restrictions or requirements than payroll Payments to employees.

Additional Terms may apply to certain payment methods, including but not limited to, Sections 7 and 8 below that have important terms applicable to Payments processed via ACH and wire transfer. Gusto reserves the right to change, modify, or terminate any or all of the payment methods available to Employer in our sole discretion at any time without notice or liability to Employer. Gusto further reserves the right to create or modify eligibility criteria for use of certain payment method(s) for any applicable period of time identified by Gusto, with or without notice to Employer and without liability to Employer. For more information on payment methods and associated requirements or restrictions please visit our [Help Center](#).

### B. Eligibility for Certain Processing Speeds

Certain Employers may qualify for a faster payment processing speed ("**Expedited Processing**"). Eligibility for Expedited Processing is determined by Gusto in Gusto's sole discretion, and may only be available for certain Payments (e.g., only Payments to employees), to Employers enrolled in certain Service Plans, or to Employers who are eligible for Payment processing via ACH, among other eligibility criteria. If Gusto determines that Employer or Employer's Payment(s) is eligible for Expedited Processing, Employer is then solely responsible for continuing to meet the criteria for continued access to Expedited Processing as described in our [Help Center](#) or applicable Payroll Policy. Gusto reserves the right to modify the eligibility criteria for Expedited Processing, revoke Employer's access

to Expedited Processing, or discontinue any or all of the Expedited Processing processing speeds at any time with or without notice and without liability to Employer.

### **C. Other Payment Limits**

Subject to applicable legal requirements, Gusto reserves the right to set any other limits on the amount, method, frequency, or speed of any requested Payment(s) at any time in Gusto's sole discretion, each with or without notice to Employer. Reasons for limits may be based on multiple factors, including (but not limited to): (i) Employer's lack of, or limited, Payments processing history with Gusto; (ii) past performance or standing of Employer's Account, including variations in Payment amounts or insufficient funds or other Bank Account errors; (iii) unusual activity in Employer's Account, including with respect to Payment amount, frequency and other factors; (iv) institutional or market failures or reasonable risk of failures (as determined by Gusto); (v) Employer's participation in a market or industry offering higher risk goods or services (e.g. cannabis); or (vi) Employer's Payee(s). Gusto may modify such limits or requirements at any time in Gusto's sole discretion and with or without notice to Employer and without liability to Employer.

### **D. Debit Failures; Holds**

If (i) any amount debited from the Bank Account by Gusto under these Payroll Terms fails or is returned for any reason, or (ii) Gusto suffers any loss due to such failure or return, Gusto may cancel or reverse any corresponding Payments processed via direct deposit without liability to Employer, terminate the Payroll Services or the Employer Account, charge Employer a one-time fee or penalty, assess finance charges, recover the amount lost plus any fees and costs of collection from Employer in accordance with Section 10 of the Gusto Employer Terms or any other manner permitted under applicable law, and/or report this information to applicable credit or financial institutions.

Gusto may also, in its sole discretion and with or without notice or cause, place holds on any Payments Employer initiates or terminate the Payroll Service (i) in the event that Employer fails to comply with or refuses to comply with Employer's obligations under the Gusto Terms or these Payroll Terms, including Employer's obligation to maintain sufficient funds in Employer's Bank Account; (ii) in order to conduct further due diligence and protect against potential risk or fraud, consistent with Gusto's obligations under applicable state money transmission laws and federal anti-money laundering laws; or (iii) for any other lawful business reason, in each case without liability to Employer.

## **7. Processing Payments via ACH**

### **A. Authorization to Debit the Bank Account**

Employer authorizes Gusto to debit Employer's Bank Account in the amounts necessary to (i) fund Employer's requested Payments to Payees; (ii) pay any Service Fees or charges associated with the Payroll Service; (iii) pay payroll taxes; (iv) pay any debit, correction or reversal entry fee or cost; (v) verify the Bank Account via test deposit or debit (if applicable); and (vi) pay any other amount due, including for other Services or Programs provided by Gusto outside of the Payroll Service. In the event that Gusto debits slightly less than what is required to be remitted to the applicable taxing authority on Employer's behalf from the Bank Account, Gusto will cover the difference using Gusto's own funds. In the event that Gusto withdraws slightly more than what is required, Employer will not be entitled to a refund or credit for that amount. Gusto is not responsible for determining whether Employer's Bank Account has deposit or withdrawal restrictions. These authorizations will remain in effect until and unless Employer gives Gusto written notice to terminate them. Such written notice of termination must afford Gusto and the Bank reasonable opportunity to act upon such notice.

### **B. Payee Authorizations for Direct Deposits**

Employer is responsible for obtaining and maintaining all required consents and authorizations from Employer's Payee(s) for Gusto to process direct deposits to Payee bank accounts. Employer represents and warrants that (i) Employer has received authorization from each Payee to allow Employer to make Payments to them via the Payroll Service and to make any necessary adjustments or corrections to such Payments, as appropriate, and (ii) at the time a Payment is made via the Payroll Service Employer has no knowledge that the authorization(s) have been revoked or terminated.

### **C. Canceling or Reversing a Payment Processed via ACH**

Subject to Gusto's obligations under applicable state money transmission laws, Employer may cancel a Payment if Gusto has not yet processed a direct deposit(s) for such Payment. For more information, please visit our [Help Center](#). Once a direct deposit(s) has been processed, Employer will be unable to cancel or correct the Payment, and will only be able to request that Gusto reverse the deposit(s) (a "**Reversal**"). Gusto may impose a fee for, or reject, a Reversal request for any reason without notice or liability to Employer. Reversals will only be processed (i) in accordance with the NACHA Rules and (ii) if Employer submits a Reversal request to Gusto no more than five (5) business days after the applicable Payment was processed. Employer understands and agrees that (i) Reversals may be unsuccessful or fail to return some or all of Employer's applicable Payment for reasons beyond Gusto's control, including (without limitation) insufficient funds in the recipient Payee's bank account or bank errors; (ii) Gusto will be unable to reverse Payments or recoup funds remitted to Employer's applicable tax agencies through the Payroll Service; and (iii) Employer is solely responsible for recouping or attempting to recoup funds associated with unsuccessful Reversals outside of Gusto.

#### **D. Other Limitations & Obligations**

The Payroll Service does not support international ACH transactions. Gusto is not responsible for re-submitting a failed direct deposit if Gusto initiated that direct deposit in compliance with these Payroll Terms. If Employer requests a Payment via the Payroll Service on a day when the ACH is closed, Gusto will undertake commercially reasonable efforts to process such Payment on the next available business day, subject to these Payroll Terms. Employer acknowledges that Employer is the Originator of each Payment Gusto makes via ACH on Employer's behalf and assumes the responsibilities of Originator under the NACHA Rules. Employer will indemnify Gusto as Third Party Sender for any Claims which result from Gusto's obligations to indemnify any third party under the NACHA Rules.

## **8. Wire Transfers**

Gusto may require certain Employers to transfer funds for Payments to Gusto via wire transfer. For more information on wire transfers, please visit our [Help Center](#). Employer understands and acknowledges that certain banks may charge a fee to send or receive a wire transfer. In the event that Gusto requires Employer to transfer funds via wire transfer, Employer shall be solely responsible for payment of any such fees, whether imposed by Employer's bank or Gusto's bank, and agrees to reimburse Gusto for any wire transfer fees that Gusto may incur in receiving Employer's funds via wire transfer.

## **9. Failed Direct Deposits**

In the event that Employer's requested direct deposit Payment fails and the funds are returned to Gusto ("**Unpaid Funds**"), Gusto will notify Employer and Employer authorizes Gusto to credit Employer's Bank Account via direct deposit in order to return such Unpaid Funds to Employer. Employer is solely responsible for contacting the relevant Payee(s), complying with all applicable unclaimed property laws, updating and/or re-submitting Payroll Information in order to re-perform the direct deposit, and/or otherwise resolving the Unpaid Funds. Employer expressly releases Gusto from all liability and Claims arising from applicable unclaimed property laws. Gusto will not, and is not obligated to, defend or indemnify Employer in the event of an audit, examination, assessment, or other enforcement action related to the Unpaid Funds.

## **10. Payroll Tax Filing through the Payroll Service; Responsibility for Tax Filings**

By enrolling in the Payroll Service, Employer agrees to appoint Gusto as Employer's reporting agent for tax reporting and filing purposes and, as applicable, authorizes Gusto to instruct Employer's applicable tax agencies to debit Employer's Bank Account for any payroll taxes due. Employer is responsible for completing all required tax agency forms and electronic authorizations to confirm such appointment and instructions. In order for Gusto to file tax returns on Employer's behalf, (i) Employer must process at least one payroll through the Payroll Service; (ii) the payroll must be paid out to the applicable Payees; and (iii) Employer must timely provide all requested Payroll Information to Gusto and ensure that such information is accurate and complete. Gusto will not file Employer's payroll tax returns and will be unable to assist Employer in resolution of any payroll tax issues via the Payroll Service if the above criteria are not satisfied, and Gusto is not responsible for any resulting Claims or consequences. Gusto cannot represent Employer in tax matters, and except as specifically provided in these Payroll Terms, Gusto cannot file and pay taxes on Employer's behalf.

Electronic Filings and Payments: Employer may be given the option, or may be required, to pay taxes electronically, or to file tax returns electronically (collectively “**Electronic Tax Processing**”). Employer consents to the disclosure to the applicable tax authority or agency of all information pertaining to Employer’s use of Electronic Tax Processing.

Service Fees and Payroll Tax Filings: If Gusto is unable to collect Service Fees from Employer by the applicable payment due date for any reason, or if Employer attempts to cancel or claw back fees properly debited by Gusto from Employer’s Bank Account under these Terms, we may terminate or suspend the the Payroll Service until we receive the outstanding amounts due. In the event of suspension or termination of the Payroll Service, Gusto may refund any unpaid payroll taxes to the Employer Bank Account.

Employer Responsibility for Timely Filings: Even though Employer has authorized Gusto to file payroll tax returns and make payroll tax payments, ultimately, Employer is held solely responsible by taxing authorities for the timely filing of tax returns and the timely payment of payroll taxes. Gusto recommends that all Employers enroll in the U.S. Treasury Department’s electronic tax payment system to monitor Employer’s IRS account and ensure that timely tax payments are being made on Employer’s behalf, as outlined in our [Help Center](#). State tax authorities may offer similar means to verify tax payments, and Gusto encourages Employer to contact Employer’s tax counsel, accountant, or the applicable state tax agency directly for details. Please visit our [Help Center](#) for more information on how to contact state tax agencies.

Employer Responsibility for Accurate Payroll Information used for Tax Filings: Gusto may, at Gusto’s sole discretion, use commercially reasonable efforts to assist Employer in removing certain tax penalties or resolving blocked tax payments that arise due to incorrect or incomplete Payroll Information, but Gusto is not obligated to. In the event that Gusto provides such assistance, Employer (i) authorizes Gusto to communicate with and share Payroll Information with the tax agency on Employer’s behalf, and (ii) agrees to fully cooperate with Gusto and provide Gusto with all assistance required at Employer’s own expense, including but not limited to signing additional authorization forms, timely completing paperwork or providing information requested by Gusto or the applicable tax authority, and/or procuring any abatements that may be available to Employer, as applicable. Employer understands that any such assistance from Gusto does not constitute and should not be construed as professional advice or guidance of any kind.

Employer Acknowledgements: Employer understands and agrees that Employer is solely responsible for ensuring that the calculated payroll and payroll tax amounts properly reflect any industry rules, collective bargaining agreements, and/or laws or regulations that may apply to Employer’s business. Employer further acknowledges that Gusto is not responsible for and cannot control the acts or omissions of tax agencies, and that tax agencies will review and process tax filings and notices at their own discretion and according to their own processing schedules. Employer also accepts final responsibility for any audits or assessments by any tax agency or authority, including (without limitation) any assessments or audits resulting from Employer’s failure to provide correct and complete Payroll Information. In the event that Gusto fails to timely remit payroll taxes to the applicable tax agency on Employer’s behalf or fails to timely submit a tax filing to the applicable tax agency on Employer’s behalf, and in each case the applicable Payments were submitted by Employer in compliance with these Payroll Terms (each a “**Gusto Error**”), Gusto’s sole responsibility and liability shall be limited to the following: (i) Gusto shall remit applicable payroll taxes to the appropriate tax agency; and (ii) Gusto shall reimburse Employer or pay directly to the appropriate tax agency the amount of any penalties directly arising from such failure(s). Notwithstanding the foregoing, Employer must use prompt and reasonable efforts to mitigate any penalties or losses resulting from such failure(s), including, without limitation, cooperating with Gusto and providing Gusto with all assistance required at Employer’s own expense, including but not limited to signing (e-sign or otherwise) additional authorization forms, timely completing paperwork or providing information requested by Gusto or the applicable tax authority, and/or procuring any abatements that may be available to Employer, as applicable. Gusto will not be responsible or liable for any losses, claims, or penalties (including, without limitation, increased tax rates) that may arise from Employer’s failure to so mitigate. Employer is responsible for promptly notifying Gusto of tax notices, tax bills, changes to tax rates or deposit schedules, or other modifications or communications from applicable tax agencies, and in any case no less than thirty (30) days prior to any applicable response date.

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

Employer understands and agrees that (i) Gusto is not acting in a fiduciary capacity for Employer or Employer’s business in performing the Payroll Services; (ii) any information that Gusto or Gusto’s employees, representatives or agents may provide in connection with the Payroll Service is for informational purposes only and should not be construed as legal, tax, accounting, or other professional advice of

any kind; and (iii) nothing in the Payroll Service should be construed to create any type of employer relationship or joint employment relationship between Gusto and Employer's Payees for any purpose.

## 12. No Professional Use

Employer agrees not to use the Payroll Service on a professional basis for any third party, except as may be expressly permitted by Gusto. If you are an accountant or bookkeeper or other third party representative managing your client's or an Employer's use of the Platform or Services through Gusto Pro, please review the additional terms that apply to you [here](#).

## 13. Investment of Payroll Funds

In certain jurisdictions, Gusto provides Payments in connection with the Payroll Services as a licensed money transmitter (or its equivalent). More information regarding Gusto, Inc.'s money transmission licenses, and relevant contact information, is available [here](#).

Amounts received by Gusto for payroll direct deposits and payroll taxes ("**Payroll Funds**") will be held by Gusto in accounts at Gusto's financial institution partners (collectively, the "**Payroll Account**") until those payments are made to the applicable Payees. Gusto may invest the Payroll Funds in accordance with Gusto's applicable investment guidelines and consistent with state money transmission laws (as applicable). Employer does not have any ownership interest (either legal or beneficial) in these investments and will not receive any interest or other return on funds held in the Payroll Account. Gusto owns all income, interest, or return from funds in the Payroll Account. Gusto will indemnify Employer against any loss of the principal amount of the Payroll Funds caused by Gusto while holding the funds in the Payroll Account.

## 14. Termination; Effect of Termination of the Payroll Service

Gusto may immediately terminate Employer's access to the Payroll Service at any time, with or without notice or liability to Employer. Employer may terminate the Payroll Service at any time from within Employer's Account. Employer acknowledges and understands that termination of the Payroll Service (whether by Employer or by Gusto) may not be reversible. Employer understands and agrees that Employer's failure to properly terminate the Payroll Service from within Employer's Account may result in Gusto continuing to process and/or file payroll tax filings on Employer's behalf until such termination is complete, that these filings may be incomplete or duplicate filings of other filings for the Employer sent outside of Gusto, and that Gusto is not liable for any such result or consequences arising therefrom.

Effect of Termination on Payments: Upon termination (by Employer or by Gusto), Gusto will continue to process any requested Payments as directed by Employer prior to termination and Employer is responsible for ensuring that all necessary authorizations and consents remain in effect through such payment processing period. Employer will be unable to submit additional Payroll Information for the purpose of initiating further Payments via the Payroll Service following termination.

Effect of Termination on Payroll Tax Filings: Upon termination of the Payroll Service (whether by Employer or by Gusto), Employer may be asked to elect whether and how Gusto should make certain tax filings on Employer's behalf associated with such termination ("**Final Filings**"). Gusto encourages Employer to consult with an accountant or tax professional in making such elections for the Final Filings, and Employer is solely responsible for the consequences of such elections. For the avoidance of doubt, Gusto cannot assist in winding down Employer's business or in closing Employer's applicable tax agency accounts.

If Employer fails to promptly provide Gusto with Employer's elections regarding those Final Filings, then Employer authorizes Gusto to make or not make such Final Filings in Gusto's sole discretion. Gusto is not responsible or liable for (i) any consequences or Claims arising (directly or indirectly) from Gusto's filing of, or failure to file, such Final Filings; or (ii) any Resulting Errors, or any consequences or Claims arising from any Resulting Errors, in the Final Filings. Employer further acknowledges that in some cases, Gusto may not be able to make Final Filings on your behalf following termination of the Payroll Service, and Employer understands and agrees that Employer is solely responsible for compliance with applicable tax law and payment of applicable payroll taxes. Please visit our [Help Center](#) for more information regarding which Final Filings Employer may be responsible for following termination.



