

Last updated February 21, 2024

These Members Terms of Service ("**Members Terms**" or "**Terms**") form part of the binding contract between you as an independent contractor, employee, or other member of a business organization with an existing Gusto account ("**you**", "**your**", or "**Member**") and Gusto, Inc. and its subsidiaries and affiliates ("**Gusto**", "**us**", "**we**" or "**our**"). For purposes of these Members Terms, we refer to independent contractors as "**Contractor**" and employees "**Employees**". Collectively, Contractors and Employees are referred to as "**Members**". The company with an existing Gusto account that invited you to join Gusto is referred to as "**Employer**."

These Members Terms contain the terms and conditions that govern your use of Gusto's people platform, including our applications, websites, software, and support services (the "**Platform**") through which we offer products and services ("**Services**") to end users directly or through a third party program.

By clicking the applicable button to indicate acceptance of these Members Terms, or by accessing or using the Platform, including any Services, you agree to be bound by and comply with these Terms, and any Additional Terms (defined below) specific to Services that Member accesses or uses, and our [Acceptable Use Policy](#), which is hereby incorporated into this Agreement (collectively, this "**Agreement**"). If you are accepting this Agreement on behalf of Contractor (e.g. in your capacity as an employee or agent of Contractor) then you represent that you have the authority to bind Contractor to this Agreement and that Contractor accepts this Agreement.

ARBITRATION NOTICE: SECTION 16 OF THESE TERMS CONTAINS PROVISIONS THAT REQUIRE YOU AND GUSTO TO RESOLVE MOST DISPUTES THROUGH FINAL, BINDING ARBITRATION. IN SUCH CASES, YOU UNDERSTAND THAT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST GUSTO ON AN INDIVIDUAL BASIS, AND (2) YOU WAIVE THE RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR SEEK RELIEF IN A COURT OF LAW AND HAVE A JURY TRIAL OF YOUR CLAIMS.

1. Member Account

Employer has agreed to the Gusto Employer Terms of Service and created an Employer Account in order to (a) enable you to access the Platform and Services and (b) authorize you to create an account with Gusto ("**Member Account**"). The Member Account is affiliated with the Employer that invited you, and we are providing you with access to the Member Account at the direction of Employer.

To be eligible to create a Member Account, you must have (a) home and work addresses in the United States, (b) a bank account in the United States if receiving payment through direct deposit, (c) a social security number. If you are using the Member Account to enable Employer to process payments to you via the Platform, you represent and warrant that you are eligible to create a Member Account and have provided all requisite consents or authorizations to Employer to enable Employer to do so.

You must enter a unique username and password in order to access the Member Account, and must keep the username and password confidential. You accept all risks of unauthorized use of the Member Account if security and confidentiality of the Member Account credentials are not maintained. If you believe that the Member Account credentials have been accessed or compromised by an unauthorized third party, you should contact us immediately. Gusto reserves the right to prevent access to the Member Account if we have reason to believe that the Member Account or credentials have been compromised.

2. Services Available to Members

Your Member Account may enable you to access and receive Employer-Provided Services and/or Member Services, each as defined and further described below. Contractors may not be eligible for some or all Employer-Provided Services or Member Services. Certain Third-Party Services (as defined below), Employer-Provided Services, and Member Services are or may be subject to additional terms ("**Additional Terms**").

A. Employer-Provided Services and Employer Data

Employer-Provided Services are the Services that are only made available to you as a result of your relationship with Employer, and Employer must sign up for or opt-into Employer-Provided Services in order for you to access them using your Member Account. Employer-Provided Services include (a) the ability to access and provide information and tasks associated with Employer's business (e.g. entering your time off, drafting a performance review) and (b) accessing or enrolling in certain Services that Employer makes available to you as a member of Employer's business organization (e.g. health benefits). If you have questions about using any Employer-Provided Services you should direct them to Employer. Employer may revoke or modify your access to Employer-Provided Services at any time, subject to any applicable Additional Terms.

Personal information and documentation that you upload to your Member Account for use in Employer-Provided Services is referred to as **Employer Data**. Gusto processes and retains Employer Data at the direction of Employer and in accordance with applicable law and legal obligations. You understand and acknowledge that Employer Data will be visible to other Members, Employer, and Employer's authorized Employer Account representative(s) ("**Administrator(s)**") depending on Employer's choices. Employer may also elect to enable Third-Party Services (as defined below) which will result in Employer Data being shared with a third-party and subject to that third-party's privacy policy. You understand and agree that Employer's choices may result in the access, use, deletion, disclosure or modification of certain Employer Data.

You understand and agree that Employer is solely responsible for (i) notifying or informing you of any relevant policies, practices, settings, or choices Employer may elect or apply that may impact Gusto's processing of Employer Data; (ii) obtaining your permission and/or consent as may be legally required in order to lawfully use Employer Data you input in order to operate your access to Employer-Provided Services via the Platform; (iii) ensuring that any transfer and/or processing of Employer Data pursuant to this Agreement is lawful, and; (iv) responding to and resolving any dispute that may arise between you and Employer relating to or based on Employer Data, the Platform, or Services, or Employer's failure to fulfill any of these responsibilities.

Employer is your first point of contact for questions, concerns, or issues concerning the use of or access to Employer-Provided Services, other than questions about your access to the Platform or your Member Account. However, Gusto reserves the right to intervene directly and take what we determine to be appropriate action in the event that Employer is unable to resolve your issue, or we believe there is a risk of harm to Gusto, Member(s), third parties, or the Services. Gusto may monitor use of the Platform and Services for compliance with this Agreement, but is not obligated to do so. You agree to cooperate with Gusto in the event of any such direct intervention.

B. Member Services and Member Data

Separate from and in addition to Employer-Provided Services, and subject to any applicable Additional Terms and eligibility criteria, your Member Account may enable you to access certain Third-Party Services (as defined in Section 3 below) and/or Services available to you directly (each, a "**Member Service**" and collectively "**Member Services**"). Contractors may not be eligible for some or all Member Services. We are providing eligible Members with access to Member Services subject to such Members' compliance with this Agreement, regardless of such Members' relationship with Employer. In other words, eligible Members' use of and access to Member Services will continue after dismissal from Employer's business and cannot be revoked or modified by Employer. Notwithstanding the foregoing, we reserve the right to suspend or revoke your access to any or all of any or all of the Member Services if we have reason to believe that Employer or you have violated this Agreement, any agreement with us including agreements regarding Member Services, or applicable law.

Member Services include, among other things, an ability to access certain limited functions within your Member Account after termination of your relationship with an Employer. Personal information and documents that you input to the Platform for the use of Member Services is referred to herein as "**Member Data**." Member Data will be processed and retained by Gusto in accordance with our legal obligations and our [Privacy Policy](#) as it may be updated from time to time. The Privacy Policy is incorporated into this Agreement with full force and effect.

You are solely responsible for following instructions that we provide you with respect to the Platform and Member Services, and for timely providing Gusto with accurate and complete information required for Gusto to perform the Member Services. Gusto's performance of Member Services will rely on information you provide to Gusto. Gusto is entitled to rely on all such information and is not required to independently verify or correct any such information. You accept sole responsibility for any liability arising from your failure to correct or update such information.

3. Third-Party Services

You may be able to elect to receive services from our third party partners (each a **“Third-Party Service”**), whether directly via a Member Service or via an Employer-Provided Service. Gusto is not responsible for and does not own any such Third-Party Services or any material, information, or results that may be made available through any Third-Party Services. You are solely responsible for, and assume all risk from, your choice to receive, use or access any Third-Party Service. If you choose to and authorize Gusto to share Member Data with a Third-Party Service (**“Shared Member Data”**) then you (a) represent you have all legal rights to do so, (b) assume all risks related to such Shared Member Data, (c) acknowledge you are solely responsible for the accuracy of such Shared Member Data, and (d) agree that you are solely responsible for the lawfulness of sharing such Shared Member Data with the applicable Third-Party Service. You waive and release any Claim against Gusto and its directors, officers, and employees arising out of a Third-Party Service’s use of Shared Member Data.

The Platform and Services may also contain links to third-party websites or resources. We provide these links only as a convenience and Gusto does not operate or control such websites or resources and is not responsible for the content, products, or services, or links available or displayed on those websites or resources. You are solely responsible for, and assume all risk arising from, your use of any Third-Party Service, third-party websites or resources.

4. Direct Deposit

The terms in this Section only apply to Employees that elect to receive wages via direct deposit through the Platform.

You may elect to instruct Employer, via the Platform, to deposit your paycheck into a bank account in your name. You may also designate amounts of your choosing from your paycheck to be deposited into multiple bank accounts in your name. If you have designated a specific amount of your paycheck to be transferred to a bank account, you can change or cancel this election at any time via the Platform. Any changes will be applied to the first paycheck that is deposited at least four (4) business days after you submit the change.

If you are using the Platform to receive wages via direct deposit, you must use the designated sections of the Platform to submit or change instructions regarding the direct depositing of your paycheck. If you attempt to submit or change instructions by any means other than through the designated sections of the Platform, Gusto will have absolute discretion to determine whether to follow such instruction, and will have no liability to you for either following, or not following, such instructions.

5. Contractor Payments

If you are a Contractor receiving payments from Employer via the Platform, the following terms in this Section 5 apply to you (**“Contractor Payment Terms”**).

You represent and warrant that you meet the following eligibility criteria:

1. Your bank account is located in the United States; and
2. You have completed Form W-9.

You further agree to comply with all applicable laws and regulations. You understand and agree that Employer is solely responsible for your work authorization and/or employment classification and you release Gusto from any liability arising therefrom.

6. Beta Features

We may provide you with access to beta, pilot, trial, pre-release features or products (collectively **“Beta Features”**) via the Platform, either directly or through Employer. Beta Features are provided as-is. We reserve the right to modify, change, or discontinue Beta Features at any time with or without notice. By accessing or using a Beta Feature you agree to any Additional Terms that may apply to such Beta Feature, and to follow any and all additional rules or restrictions that we may place on the use of such Beta Feature.

7. Privacy Policy

Gusto may collect, use, and disclose your information pursuant to our [Privacy Policy](#), which is incorporated into this Agreement by reference and may be updated from time to time.

8. Gusto's Proprietary Rights

Gusto and our licensors are the exclusive owners of:

- The Platform, Services, and all content included therein (excluding Member Data, Employer Data and Third Party Services) ("**Gusto Content**");
- Any and all modifications, enhancements, upgrades and updates to the Platform, Services, and Gusto Content; and
- All copyrights, trademarks, service marks, trade secrets, patents and other intellectual property rights to the Platform, Services, and Gusto Content (registered or unregistered).

All rights not expressly granted to Member in this Agreement are reserved by us or our licensors. This Agreement does not grant Member any right to copy, transmit, transfer, modify or create derivative works of the Platform, Services, or Gusto Content, or reverse engineer, reverse compile, reverse assemble or otherwise determine or derive source code of the Platform, Services, or Gusto Content, or any other right in or to the Gusto Content not specifically set forth herein.

You acknowledge that the Platform, Services, and Gusto Content is protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter, or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated into the Platform, Services, and Gusto Content.

If you send us any feedback or suggestions ("**Feedback**"), that Feedback is given entirely voluntarily and you grant Gusto an unlimited, irrevocable, perpetual, sublicensable, transferrable, royalty-free license to use any such Feedback as we see fit in our sole discretion without obligation, compensation or restriction of any kind. Such Feedback may include, but is not limited to, responses to any surveys Gusto conducts about your experience with the Platform or Services.

Gusto grants Member a limited, non-exclusive, non-transferable, non-sublicensable license to access, use, and view the Gusto Content, Platform, and Services solely as necessary to use the Services and in accordance with this Agreement and all applicable Additional Terms.

9. Consent to Receive SMS/MMS Messages

Gusto will send the following types of SMS messages to Members: (1) one-time pin or verification codes, (2) links to access or download services, (3) notifying about user account activity, (4) service alerts and (5) soliciting feedback about your customer service experience. Message frequency may vary. Standard message and data rates may apply. Note that Gusto will not send you autodialed marketing SMS or MMS messages unless you expressly agree in writing to receive such messages. If you would like to opt out of receiving SMS messages, reply HELP for help or STOP to cancel. For more information, please see our [Privacy Policy](#).

You certify, warrant and represent that the telephone number you have provided to us is your contact number and not someone else's number. You represent that you are permitted to receive calls and text messages at the telephone number you have provided to us. You agree to promptly alert us whenever you stop using a telephone number. Gusto and our agents, representatives, affiliates and anyone calling on our behalf may use such means of communication described in this section even if you will incur costs to receive such phone messages, text messages, e-mails or other means. We may modify or terminate our SMS messaging services from time to time, for any reason, and without notice, including the right to terminate SMS messaging with or without notice, without liability to you.

10. No Professional or Legal Advice; No Guaranteed Outcomes

Your use of the Platform and Services is entirely at your own risk. Except as and unless otherwise stated in applicable Additional Terms, you acknowledge that the Platform, 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. You are solely responsible for ensuring your compliance with applicable laws and regulations, and nothing in the Gusto Content, Platform, or Services (including, without limitation, any communications from our Employer Care team regarding your use of the Platform, or Services) should be construed as, or used as a substitute for, the advice of competent legal or applicable professional counsel. Gusto does not guarantee or warrant any results or outcome with respect to the Platform, Services or Gusto Content.

11. Termination

Termination by Gusto: We may immediately terminate this Agreement and the Member Account without notice or liability to you. We are not responsible or liable for any losses, damages, penalties, or expenses related to our termination of this Agreement

Termination by Member: If you wish to terminate this Agreement or the Member Account please contact Employer Support.

Effect of Termination: Upon termination of this Agreement, your access to the Member Account and certain Services will immediately cease. Termination of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to such termination.

Any sections or subsections of these Members Terms or any applicable Additional Terms which by their nature should survive, will survive termination of these Members Terms including but not limited to Sections 11, 12, 13, 14, and 16.

12. Warranty Disclaimers

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 EMPLOYER DATA, MEMBER DATA, OR ANY INFORMATION INPUT INTO THE PLATFORM OR SERVICES BY MEMBER AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SUCH EMPLOYER DATA, MEMBER DATA, AND INFORMATION. GUSTO DOES NOT WARRANT THAT THE PLATFORM, SERVICES, OR GUSTO CONTENT WILL (I) MEET MEMBER'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.

Gusto makes no representations or warranties about the Platform's uptime, availability, or permissibility in any particular geographical location. From time to time, Gusto may conduct scheduled or emergency system maintenance, during which time the Platform may be inaccessible and unavailable, with or without notice. The Platform and Services rely on third-party technology and services (e.g. web hosting services). Any change to the services offered by these third-party providers may entirely disable, reduce, or adversely affect your use of or access to the Platform and Services.

Any error that results from Gusto's reliance on information provided by or on behalf of Employer or Member is a "**Resulting Error**". Gusto makes no warranties or guarantees that it will be able to partially or fully correct Resulting Errors.

No oral or written information or advice given by Gusto, its agents, or employees will create a warranty or in any way increase the scope of the warranties in this Agreement.

13. Indemnity

To the extent permitted by applicable law, Member agrees to indemnify and hold harmless Gusto and its officers, directors, employees,

successors, assigns, representatives, subsidiaries, affiliates, and agents (the “**Indemnified Parties**”), from and against any losses, damages, expenses, claims, actions, disputes, suits, proceedings, and demands (including, without limitation, reasonable legal and accounting fees) (“**Claims**”), without regard to merit or lack thereof arising out of or related in any way to (i) your access to or use of the Platform, Services, or Gusto Content; (ii) Member Data; (iii) Member’s violation or alleged violation of this Agreements or any instructions provided by Gusto with respect to use of the Platform or Services; (iv) Member’s violation or alleged violation of any third party right; (v) Member’s violation or alleged violation of any applicable law, rule, or regulation; (vi) Member’s gross negligence, fraudulent activity, or willful misconduct; (vii) Gusto’s or any other Indemnified Party’s use of or reliance on information or data furnished by or on behalf of Member; (viii) actions or activities that Gusto or any other Indemnified Party undertakes at the request or instruction of Member or anyone that Gusto or any other Indemnified Party reasonably believes to be acting with authority on behalf of Member (each such action or activity, a “**Requested Action**”); or (ix) Gusto’s or any other Indemnified Party’s use of or reliance on information or data resulting from such Requested Actions.

14. Limitation of Liability

To the extent permitted by applicable law, Gusto is not liable, and Member agrees not to hold Gusto responsible for, any damages or losses resulting directly or indirectly from (i) Member Data or Gusto’s or a third party’s reliance on certain Member Data; (ii) Resulting Errors; (iii) Member’s delay in providing, or failure to provide, Gusto with information necessary for its provision of the Services; (iv) Member’s violation of applicable law, rule, regulation or other applicable legal obligation; (v) unauthorized third-party actions taken in Member’s Account or sharing of your Member Account credentials; (vi) Member’s negligence; (vii) Employer’s negligence; (viii) any Claims that could have reasonably been avoided or mitigated by Member through reasonable efforts; (ix) a Third-Party Service’s use of Employer Data or Member Data any Requested Actions; (xi) Member’s failure, or the failure of Employer, to properly follow Gusto’s instructions with respect to the Services; or (xii) Member’s use or inability to use the Platform or 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, GUSTO CONTENT, THIRD PARTY CONTENT, OR THIRD-PARTY SERVICES, WHETHER SUCH DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT GUSTO HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO USER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL GUSTO’S TOTAL LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE PLATFORM, SERVICES, OR GUSTO CONTENT EXCEED \$500 US DOLLARS.

15. Changes to the Agreement, Platform, or Services

We may modify this Agreement at any time, in our sole discretion, effective upon posting of an updated version of this Agreement. Such amendments or changes will be effective upon the effective date and posting of the updated version of this Agreement. You will be notified of any change in the manner provided by applicable law prior to the effective date of the change. You should review each modified version of this Agreement as your continued use of the Platform or Services after such changes are posted constitutes your agreement to be bound by the modified Agreement. If you do not agree to be bound by the modified Agreement, then you may terminate your Member Account as provided in this Agreement. Because the Platform and Services evolve over time, we may change or discontinue all or any part of the Platform or Services at any time and without notice at our sole discretion.

16. Dispute Resolution By Binding 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 16.D BELOW.

- A. Informal Dispute Resolution. As used in this Section 16, “**Dispute**” includes any past, present, or future dispute, claim, 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 16 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 you with a neutral and cost effective means of resolving the dispute quickly. You agree that 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. Similarly, Gusto will undertake reasonable efforts to contact you to resolve any Dispute we may have informally before taking any formal action. If a Dispute is not resolved within sixty (60) days after you contact our customer service team, you or Gusto may initiate an arbitration proceeding for Disputes as described below.
- 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 16 (the “**Arbitration Provision**”), unless you opt out as provided in Section 16.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, the misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents or other intellectual property rights (an “**IP Protection Action**”). Disputes include matters arising as initial claims, counter-claims, cross-claims, third-party claims, or otherwise.
- C. Opt-Out of Arbitration Provision. You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice to legal-opt-outs@gusto.com, within thirty (30) days of the date of your electronic acceptance of these Members Terms (such notice, an “**Arbitration Opt-Out Notice**”) or, for current Members, within thirty (30) days of Gusto’s notice of modifications to these Members Terms. Such Arbitration Opt-Out Notice must clearly state that you are rejecting arbitration; identify these Terms to which it applies by the effective date of the Terms; and provide your name and address. 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 16.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 16 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 16.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 16.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. 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 16.G, if a party seeks injunctive relief that would significantly impact other Members 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 16.G 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 this Agreement.
- 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 16.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 16.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 16.D.

17. Governing Law

This Agreement is governed by, and all Disputes shall be resolved in accordance with, the Federal Arbitration Act, as set forth above, and the laws of the State of California without regard to the conflicts of laws provisions thereof.

18. Force Majeure

Gusto is not liable for any delay or failure in performance of its obligations from any cause beyond Gusto's control, including, but not limited to, acts of God, changes to laws or regulations, embargoes, wars, terrorist acts, failures by a third-party technology service provider, riots, fires, earthquakes, floods, pandemics, power outages, strikes, weather conditions, acts of hackers, acts of internet service providers, acts of any other third party, or acts or omissions of Employer or Member.

19. General

- A. Entire Agreement. This Agreement constitutes the entire agreement between Gusto and Member regarding the Platform and Services and replaces all prior agreements, oral or written, regarding this subject matter. If any part of this Agreement is deemed to be unenforceable or invalid, that section will be removed without affecting the validity or enforceability of the remainder of the Agreement, except as provided in Section 16.K.
- B. Assignment. Member may not assign this Agreement, by operation of law or otherwise, without Gusto's prior written consent. Any attempt by Member 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.
- C. Notices. 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.
- D. Waiver and Remedies. 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.

20. Contact Information

If Member has any questions about this Agreement or the Member Services, Member may contact Gusto at support@gusto.com. Gusto will not be able to accept Member questions, Feedback, or complaints at Gusto's physical locations. If Member is a California resident, Member may report complaints regarding the Member 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