

These updated terms will take effect on May 23, 2024, or on the date you accept them in your Gusto account, whichever is earliest. Your continued use of the 401(k) Automation Service after May 23, 2024 will constitute your acceptance of these updated terms.

Last Updated: May 2, 2024

These 401(k) Automation Terms of Service (the “**401(k) Automation Terms**”), together with the Gusto Employer Terms of Service Agreement available at <https://gusto.com/legal/terms> (the “**Gusto Employer Terms**”) and the Payroll Service Terms available at <https://gusto.com/legal/terms/payroll> (the “**Payroll Terms**”) (collectively, the “**401(k) Automation Agreement**”) contain the terms and conditions under which Gusto provides eligible Employers (each, a “**Customer**”) with the ability to transfer certain information from their Employer Account to their 401(k) Plan Account (as defined below) and vice versa using Pay(k)onnect LLC’s (“**Pay(k)onnect**”) data transfer functionality made available through the Platform (“**401(k) Automation Service**”).

These 401(k) Automation Terms are “Additional Terms” under the Gusto Employer Terms. Capitalized terms used but not defined in these 401(k) Automation Terms have the meanings ascribed to them in the Gusto Employer Terms and/or the Payroll Terms, as applicable. To the extent any 401(k) Automation Terms conflict with the terms of the Gusto Employer Terms or the Payroll Terms, the 401(k) Automation Terms will control with respect to the 401(k) Automation Service, followed by the Payroll Terms and, lastly, by the Gusto Employer Terms.

If you are an accountant or bookkeeper or other third party representative managing your client’s use of the 401(k) Automation Service through Gusto Pro, the 401(k) Automation Agreement and the Gusto Accountant Terms of Service govern your access to and use of the 401(k) Automation Service on behalf of your client(s), each of which is a Customer.

By enrolling in, accessing or using the 401(k) Automation Service, effective as of the date of such action, the individual performing such action represents (i) that they are authorized to bind Customer to the 401(k) Automation Agreement and (ii) that Customer agrees to be bound by the 401(k) Automation Agreement.

THE GUSTO EMPLOYER TERMS CONTAIN A MANDATORY ARBITRATION CLAUSE AS WELL AS INFORMATION REGARDING LIMITATIONS OF GUSTO’S LIABILITY AND WARRANTY DISCLAIMERS, CUSTOMER’S INDEMNIFICATION OBLIGATIONS, AND CUSTOMER’S DUTY TO MITIGATE DAMAGES.

1. 401(k) Automation Service

Subject to Customer’s compliance with the 401(k) Automation Agreement, Gusto will use commercially reasonable efforts to provide Customer with the 401(k) Automation Service as described below.

A. Eligibility

To use the 401(k) Automation Service, Customers must (i) offer 401(k) retirement benefits through one of the providers listed at <https://gusto.com/product/Automation/pay-k-onnect> (each an “**Eligible Plan Provider**”) (ii) have access to the Eligible Plan Provider account through which Customer manages the 401(k) retirement benefits plan (“**401(k) Plan Account**”), and (iii) complete all required steps or processes that may be requested by Gusto or by Customer’s Eligible Plan Provider in order to facilitate the transfer of Payroll Information from Customer’s Employer Account to Customer’s 401(k) Plan Account via the 401(k) Automation Service. Customer understands that Gusto is not responsible for identifying, assisting with, or complying with any such applicable processes or requirements from Customer’s Eligible Plan Provider and that such responsibilities fall solely to Customer. From time to time, Gusto may facilitate certain process requirements from Customer’s Eligible Plan Provider but Gusto is not required to do so, nor is Gusto responsible for any results arising from Customer’s use of such facilitation.

B. 401(k) Automation Service Functionality & Limitations

The 401(k) Automation Service will enable Customer to transfer Payroll Information from Customer's Employer Account to their 401(k) Plan Account (or vice versa) via Pay(k)onnect's automated and/or cloud-based middleware services. Customer understands and agrees that Payroll Information that has been transferred from the Employer Account via the 401(k) Automation Service constitutes "Shared Employer Data" as defined in the Gusto Employer Terms. Customer is solely responsible for the accuracy of Payroll Information, including the accuracy and compliance of any calculated contributions or deductions, as further described in Section 5 of the Payroll Terms. Customer assumes full and sole responsibility for use of the 401(k) Automation Service to meet Customer's intended purposes and comply with Customer's legal obligations.

C. Eligible Plan Providers

Eligible Plan Providers may prevent, or may impose additional requirements upon Customer in order to complete, the transfer of Payroll Information to and/or from Customer's 401(k) Plan Account and Gusto is not responsible for identifying, communicating, or complying with any such requirements on Customer's behalf. Eligible Plan Providers may prohibit or otherwise restrict Customer's ability to use the 401(k) Automation Service to automate the transfer of Payroll Information to the Customer 401(k) Plan Account. Customer understands and agrees that Customer is solely responsible for the relationship with Customer's Eligible Plan Provider(s).

D. Responsibility for Compliance with Legal Requirements

Customer is solely responsible for ensuring Customer's compliance with applicable legal requirements, including Customer's fiduciary responsibilities as plan sponsor (as applicable). Such requirements and responsibilities may include, but are not limited to, Customer's obligation to ensure that Customer's 401(k) retirement plan is administered in accordance with Customer's 401(k) retirement plan documents and requirements (as applicable).

E. Responsibility to Ensure Receipt of Information

Customer is solely responsible for ensuring the receipt of any data or information transferred from their Employer Account to their 401(k) Plan Account or Eligible Plan Provider via the 401(k) Automation Service. In the event that Customer determines that any information transferred via the 401(k) Automation Service was not received by Customer's Eligible Plan Provider or in Customer's 401(k) Plan Account, Customer must promptly notify Eligible Plan Provider and inform Gusto of the same via email at 401kimplementation@gusto.com.

2. Service Fees and Charges

Customer agrees to pay the Service Fee for the 401(k) Automation Services as listed in Customer's Employer Account.

3. No Fiduciary Relationship; No Investment Advice

Gusto is not a fiduciary of any 401(k) plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), or otherwise. The 401(k) Automation Service does not contain and will not enable Customer to receive investment advice or investment management services from Gusto, or Gusto's agents or representatives, of any kind in any capacity. No statement made by a Gusto employee, agent, or representative will limit or modify this section. Gusto recommends that Customer consult with a legal counsel or tax expert prior to Customer's use of the 401(k) Automation Service.

4. Privacy

By using the 401(k) Automation Service, Customer authorizes Gusto to share certain personal information, including Payroll Information, with Pay(k)onnect in order for Pay(k)onnect to transfer such information to Customer's 401(k) Plan Account. Pay(k)onnect maintains its own [Privacy Policy](#) that governs how Pay(k)onnect collects, uses, and discloses information from Customers. Gusto is not responsible for Pay(k)onnect's or Eligible Plan Providers' handling of Shared Employer Data.

5. Gusto Is Not Responsible for Things Gusto Cannot Control

The 401(k) Automation Service relies on third-party technology and services such as application programming interfaces, Pay(k)onnect's middleware and flat file transfer technologies as well as their supporting hardware infrastructure, the technology systems used by Eligible Plan Providers, and others. Any change to the products or services offered by any of these third parties may materially and adversely affect, or entirely disable, Customer's use of or access to the 401(k) Automation Service. Gusto is not responsible for any operational or procedural requirements that may be imposed upon Customer by Eligible Plan Providers in relation to the 401(k) Automation Service.