

# Terms of Service

Date: June 29, 2017

YOUR USE OF THE PROPRIETARY DAVYN EMPLOYEE SELF SERVICE (ESS) SOFTWARE SERVICE (THE "SERVICE"), IS SUBJECT TO THESE TERMS OF SERVICE. IN ORDER TO USE THE SERVICE, YOU MUST AGREE TO THESE TERMS OF SERVICE ("AGREEMENT"). IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT USE THE SERVICE.

This Agreement governs your use of the Service however accessed, including via an Internet browser, smartphone, tablet, or other mobile device.

## 1. Term and Termination

- 1.1. This Agreement will remain in effect until all subscriptions granted in accordance with this Agreement have expired or this Agreement is terminated by you or Davyn ESS (the "Term"). If you elect to use the Service for a free trial period, and do not purchase a subscription before the end of such period, this Agreement will expire at the end of the free trial period.
- 1.2. Subscriptions purchased by you commence on the start date specified upon payment and continue for the subscription term selected at the time of payment. Subscriptions automatically renew, as described in Section 4.1.
- 1.3. Davyn ESS may terminate this Agreement at any time in the event you materially breach this Agreement and do not cure such breach within 30 days of written notice (including notice by email) provided by Davyn ESS. Davyn ESS may immediately terminate your access to the Service without liability if it has a good faith belief that you are in violation of Sections 3.1 or 11 of this Agreement. Davyn ESS may also downgrade, suspend or terminate your access to the Service without liability, after we provide you with 30 days' advance written notice, if (a) you fail to affirmatively agree to material modifications to this Agreement pursuant to Section 2.1 below, or (b) you do not log in to or otherwise use the Service for a period of 180 days or more if you have a paid account and for a period of 60 days or more if you have a free account. For instances other than non-payment or violation under Section 3.1, in the event you cancel your account or this Agreement is terminated by Davyn ESS or you, Davyn ESS will refund to you any prepaid fees covering any period of the term remaining after the date of termination for all subscriptions. However, no refund will be granted for the then-current month.

## 2. Modification of this Agreement

- 2.1. The Service may be made available in free or paid versions at different levels. Not all features and functionality of the Service may be available in each version or level. Davyn ESS reserves the right, in its sole discretion, to modify, add, or remove portions and/or functionality of the Service, or to modify, add, or remove portions of this Agreement at any time after making such modified Agreement available to you. The revised Agreement will be effective immediately upon being made available to you, except that in the event any such modification materially alters your rights hereunder, Davyn ESS will attempt to notify you directly by sending a message to the email address that you have provided to us. Your use of the Service after modifications to this Agreement become effective constitutes your binding acceptance of such changes. If you are dissatisfied with the terms of the Agreement

or any modifications to the Agreement or Service, you agree that your sole and exclusive remedy is to terminate this Agreement and discontinue any use of the Service.

### 3. Usage Rights; Restrictions; Support

- 3.1. During the Term, Davyn ESS grants you a limited, non-transferable, non-sublicensable, non-exclusive right to access and use the hosted software products and related documentation included in the Service and all modifications and/or enhancements to any of the foregoing (“Software”) via a web browser or other device owned or controlled by you for your internal business use. You agree to use the Service only in compliance with all applicable local, state, national, and international laws, rules and regulations (“Applicable Law”). You shall not, and shall not agree to, and shall not authorize, encourage or permit any third party to:
- use the Service to upload, transmit or otherwise distribute any content that is unlawful, defamatory, harassing, abusive, fraudulent, obscene, threatening, abusive, hateful, contains viruses, or is otherwise objectionable as reasonably determined by Davyn ESS;
  - use the Service for any fraudulent or inappropriate purpose;
  - attempt to decipher, decompile, delete, alter or reverse engineer any of the Software;
  - duplicate, make derivative works of, reproduce or exploit any part of the Service without the express written permission of Davyn ESS;
  - use any robot, spider, other automated device, or manual process to monitor or copy any content from the Service other than copying or exporting of the Data as contemplated in the Documentation; or
  - rent, lease, distribute, or resell the Software, or use the Software for developing a competitive solution (or contract with a third party to do so), or remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Software or displayed in connection with the Service.
- 3.2. Davyn ESS shall: (i) provide you with basic support in connection with your use of the Service at no additional charge, and with upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (which Davyn ESS shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday UTC - 4:00), or (b) any unavailability caused by circumstances beyond Davyn ESS’s reasonable control, including acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Service only in accordance with Applicable Law.
- 3.3. Davyn ESS shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the Services, and the security of your Data. Davyn ESS shall not (a) disclose your Data except as compelled by Applicable Law or as you expressly authorize in writing, or (b) access your Data except to provide the Service and prevent or address service or technical problems, or at your express request in connection with customer support matters. In the event we are compelled by Applicable Law to disclose your Data, we will provide you with notice thereof, (in advance, if possible) if permitted by Applicable Law.
- 3.4. You are solely responsible for your Data, and all uses of your Data that occur through your account.

## 4. Payment Terms

- 4.1. Your subscription to the Service renews automatically for the same term selected upon initial payment (e.g., month-to-month, annual, etc.). You may change your subscription term at any time by contacting us using one of the methods set forth in the Contact Information section below. If you are paying by credit card, your credit card will be charged once a month for monthly subscriptions and at the time your annual subscription payment has been depleted based on your number of employees and subscribed services. Davyn ESS will email you a receipt when your card has been charged. If your card cannot be charged, your access to Services may be suspended and you will need to update your card information in order to resume use. There will be no refunds or credits for partial months of service.
- 4.2. Annual subscription pricing requires a one-year minimum commitment. If you cancel your subscription, or your subscription is suspended for nonpayment, before the end of the one-year commitment period, you will no longer qualify for annual subscription pricing and you will be charged the difference between the monthly and annual commitment pricing for the number of months your subscription was active.
- 4.3. All fees are exclusive of all taxes or duties imposed by governing authorities. Other than sales taxes which we may be required to collect from you and remit to appropriate taxing authorities, you alone are responsible for payment of all such taxes or duties.
- 4.4. Davyn ESS may at any time, upon notice of at least 90 days or a longer period if required by Applicable Law, change the price of your subscription or any part thereof, or institute new charges or fees. Price changes and institution of new charges implemented during your annual subscription period will come into effect for any subsequent annual subscription periods and to all new subscribers after the effective date of the change. If you do not agree to any such price changes, then you must cancel your subscription and stop using the Service prior to the commencement of the renewal subscription period for which the price change applies.

## 5. Intellectual Property Rights

- 5.1. As between the parties, Davyn ESS owns and shall retain all right, title and interest in and to (a) the Software and the Service, including all intellectual property rights, and (b) transactional, performance and metadata related to your use of the Service. Davyn ESS may collect, use and disclose all such transactional and performance data for its business purposes (including software use optimization and product marketing) provided that such use does not reveal your identity, any of your confidential information or any personally identifiable information that belongs to you or your employees.
- 5.2. You retain all right, title and ownership interest to your Data. Davyn ESS has no right, title or interest in any personally identifiable information related to your Data.
- 5.3. You have no obligation to give Davyn ESS any suggestions, enhancement requests, recommendations, comments or other feedback (“Feedback”) relating to the Service. To the extent you provide any Feedback to Davyn ESS, Davyn ESS may use and include any such Feedback to improve the Services or for any other purpose. Accordingly, if you provide Feedback, you agree that Davyn ESS shall own all such Feedback and Davyn ESS and its affiliates, licensees, clients, partners, third-party providers and other authorized entities may freely use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Service or other related technologies, and you hereby assign, irrevocably, exclusively and on a royalty-free basis, all such Feedback to Davyn ESS.

## 6. Publicity

- 6.1. During the Term, Davyn ESS may disclose your name as a customer of Davyn ESS and/or subscriber of the Service, and you hereby grant Davyn ESS the right to display your name and logo in its marketing materials and on Davyn ESS's public website, in each case in accordance with any branding guidelines you may provide to Davyn ESS.

## 7. Warranties and Limitation of Liability

- 7.1. Davyn ESS represents, warrants, and covenants as follows: (a) the Software will perform substantially in accordance with the technical requirements documents that are generally provided by Davyn ESS in connection with the Software ("Documentation"); and (b) any professional services performed for you by Davyn ESS will be performed in a professional and workmanlike manner, with the degree of skill and care that is required by sound professional procedures and practices.
- 7.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, DAVYN ESS DOES NOT WARRANT THAT OPERATION OF THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED.
- 7.3. EXCEPT FOR (I) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (II) A PARTY'S VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (III) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER OR (IV) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT, AND (B) THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER WITH RESPECT TO THIS AGREEMENT IS LIMITED, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, TO THE FEES COLLECTED BY DAVYN ESS FROM YOU PURSUANT TO THIS AGREEMENT IN THE SIX MONTHS PRECEDING THE EVENT FROM WHICH THE LIABILITY AROSE.

## 8. Security Breach

- 8.1. External Breach: In the event of a security breach by anyone other than your employee, contractor or agent, upon discovery of such breach, Davyn ESS will: (a) initiate remedial actions that are in compliance with applicable law and consistent with industry standards; and (b) notify you of the security breach, its nature and scope, the nature and scope of remedial actions Davyn ESS will undertake, and the timeline within which Davyn ESS expects to remedy the breach.
- 8.2. Internal Breach: In the event of a security breach by your employee, contractor or agent, you shall have sole responsibility for initiating remedial actions and shall notify Davyn ESS immediately of the breach and steps you will take to remedy the breach.

## 9. Indemnification

- 9.1. You agree to indemnify, defend and hold harmless Davyn ESS, and its affiliates, officers, agents, and employees from and against any costs, damages, expenses (including reasonable attorneys' fees), judgments, losses and other liabilities (including amounts paid in settlement) ("Liabilities") incurred as a result of any third-party action, claim, demand, proceeding or suit ("Claim") to the extent arising from or connected with your use of the Software and/or Service in breach of this Agreement.

## 10. Governing Law

- 10.1. This Agreement shall be constructed and governed in accordance with the laws of the Republic of Trinidad and Tobago.

## 11. Compliance with Laws; Disclaimers

- 11.1. Each Party shall comply with all Applicable Law in connection with its own activities in relation to this Agreement. The Service can be configured and used in ways that do not comply with Applicable Laws and it is your sole responsibility to monitor your employees' use and your use of the Service to ensure that such use complies with and is in accordance with Applicable Law. In no event shall Davyn ESS be responsible or liable for your failure to comply with Applicable Law in connection with your use of the Service.
- 11.2. Davyn ESS does not provide its customers with legal advice regarding compliance, data privacy or other relevant Applicable Law in the jurisdictions in which you use the Service, and any statements made by Davyn ESS to you shall not constitute legal advice.
- 11.3. You acknowledge that Davyn ESS exercises no control over your specific human resource practices implemented using the Service or your decisions as to employment, promotion, advancement, termination, notification, or compensation of any employee or authorized user of the Service. You further agree and acknowledge that Davyn ESS does not have a direct relationship with your employees and that you are responsible for all contact, questions, Data updates and collection, with your employees. In addition, you are responsible for the privacy (including adopting and posting your own privacy policies governing your treatment of your employees' Data), collection, use, retention and processing of your employees' Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all applicable laws. Davyn ESS hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.

## 12. Entire Agreement

- 12.1. This Agreement encompasses the entire agreement between you and Davyn ESS with respect to the subject matter hereof and supersedes all prior representations, agreements and understandings, written or oral.

## Contact Information

If you have any questions about the Service or this Agreement, you may call us at 1- 868-674-9788, email us at [support@davyness.com](mailto:support@davyness.com), or write to us at:

Davyn

52 Nanan Street, Aranguez

Trinidad & Tobago