

Master Service Agreement

Terms & Conditions



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Terms and Conditions

These Terms and Conditions (the "Agreement") govern the provision of services by **PortPal Solutions S.L.**, a company registered in the Canary Islands, Spain, with Tax Number B70652029 and registered office at Plaza Fuero Real de Gran Canaria, n4, 35004 Las Palmas de Gran Canaria. By using our Software-as-a-Service (SaaS) offerings, you agree to comply with the following terms and conditions, which reference our "Security, Backup Data, SLA, and Architecture" document.

1. General Terms

PortPal Solutions S.L. provides SaaS licenses under the following terms for companies and individuals (referred to as "Client") based in the Canary Islands, Spain. These services are available for business purposes only, and all Clients agree to use the services in accordance with this Agreement.

2. Access and Use of SaaS Services

- **2.1 License.** Upon payment of the applicable fees, PortPal Solutions S.L. grants the Client a limited, non-transferable, non-exclusive license to access and use the SaaS services for the number of authorized users specified in the quote and invoice.
- **2.2 Restrictions.** The Client agrees not to reverse-engineer, modify, or create derivative works from the SaaS service. The Client must ensure that the service is used only for lawful purposes, and any violation may result in the immediate termination of the Client's access to the service.
- **2.3 Service Availability.** PortPal Solutions S.L. guarantees uptime as outlined in our Service Level Agreement (SLA), which is detailed in the "Security, Backup Data, SLA, and Architecture" document.

3. Fees and Payments

- **3.1 Fees.** All fees for SaaS services must be paid as per the agreed terms in the invoice or contract. The fees are non-refundable once the service is provided, except as explicitly stated in this Agreement.

- **3.2 Taxes.** All applicable taxes, including IGIC (Impuesto General Indirecto Canario), shall be borne by the Client. Failure to pay the applicable taxes may result in the suspension of services.
- **3.3 Payment Terms.** Payment for services must be made within 15 days from the invoice date via bank transfer to the account detailed on the invoice. Failure to comply may result in the suspension or termination of the service.

4. Security, Backup, and Data Policies

All security, backup, and data-related processes are handled as described in the "Security, Backup Data, SLA, and Architecture" document, which is incorporated into these Terms and Conditions by reference. Clients are advised to familiarize themselves with this document to understand PortPal's approach to encryption, data retention, and incident response.

5. Access to Features & Updates

Customers with an active contract are entitled to benefit from all corrective and evolutive features and functionalities released by PortPal during the contract term. This includes regular updates aimed at improving system performance, introducing new capabilities, and ensuring compliance with evolving industry standards.

Furthermore, the maintenance of any customizations developed and paid for by the customer will also be covered, but only while the contract remains active. Upon contract termination, access to updates and maintenance services, including those related to customizations, will be discontinued unless otherwise agreed in writing.

6. Termination and Suspension

- **6.1 Termination by Client.** The Client cannot terminate this Agreement prior to the duration stated in the quote and invoices. However, the Client has a 30-day period from the start of the contract to decide if they wish to cancel and receive a full refund. After

this period, the Client is committed to the full duration of the contract, and no early termination will be permitted. Any outstanding fees must be paid in full.

- **6.2 Termination by PortPal.** PortPal Solutions S.L. reserves the right to terminate or suspend services immediately if the Client fails to comply with any of the terms set out in this Agreement or is involved in activities that could damage the integrity of the service or breach security.
- **6.3 Data Access Upon Termination.** Upon termination or expiration of the Agreement, PortPal Solutions S.L. will deliver a backup of the database containing the information generated by the Client, furthermore the Client will have access to their data for 30 days via PortPal website. After this period, all data will be securely deleted.
- **6.4 Automatic Renewal.** Unless the Client provides written notice to PortPal Solutions S.L. at least two (2) weeks prior to the expiration of the current contract term expressing their intention not to renew, this Agreement will automatically renew for successive terms equal in duration to the initial term. This automatic renewal applies to the first renewal and all subsequent renewals thereafter. All terms and conditions of this Agreement will continue to apply during each renewal term, except that the price will be adjusted to reflect changes in the official Consumer Price Index (CPI) of the country. The adjusted price will correspond to the percentage change in the CPI over the preceding contract term, ensuring the price aligns with current economic conditions.

7. Limitation of Liability

To the maximum extent permitted by law, PortPal Solutions S.L. will not be liable for any indirect, incidental, special, or consequential damages arising from the use of its services. The maximum liability for direct damages shall not exceed the total amount paid by the Client in the 12 months preceding the claim.

8. Governing Law and Jurisdiction

This Agreement is governed by the laws of Spain, specifically the laws applicable in the Canary Islands. Any disputes arising from this Agreement shall be subject to the exclusive jurisdiction of the courts in Las Palmas de Gran Canaria.

9. Confidentiality and Data Protection

Both parties agree to maintain strict confidentiality regarding all information related to suppliers, clients, and any personal data obtained during the course of this Agreement. This includes, but is not limited to, personal identification details such as names, identification numbers, dates of birth, and gender.

Each party commits to complying with all applicable data protection laws and regulations, including the General Data Protection Regulation (EU) 2016/679 ("GDPR") and the Spanish Organic Law 3/2018 on the Protection of Personal Data and Guarantee of Digital Rights ("LOPDGDD").

Both parties shall:

1. Lawful Processing: Process personal data only on documented instructions from the other party and solely for the purposes specified in this Agreement.
2. Technical and Organizational Measures: Implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, safeguarding personal data against unauthorized or unlawful processing, accidental loss, destruction, or damage.
3. Confidentiality Obligations: Ensure that all personnel authorized to process personal data are committed to confidentiality or are under an appropriate statutory obligation of confidentiality.
4. Sub-processing: Any authorized sub-processor must comply with the same data protection obligations as set out in this clause.
5. Data Subject Rights: Assist the other party in responding to any requests from data subjects exercising their rights under applicable data protection laws, including access, rectification, erasure, restriction, portability, and objection.
6. Data Breach Notification: Notify the other party without undue delay upon becoming aware of any personal data breach. Provide all necessary information to comply with legal obligations, including those under Articles 33 and 34 of the GDPR.
7. Data Transfers: Not transfer personal data outside the European Economic Area unless such transfer complies with the requirements of Chapter V of the GDPR.

8. Data Retention and Deletion: Upon termination or expiration of this Agreement, at the choice of the other party, delete or return all personal data and certify that no copies have been retained, unless retention is required by law.
9. Compliance and Audits: Make available all information necessary to demonstrate compliance with the obligations laid down in this clause and allow for audits or inspections conducted by the other party or an auditor mandated by them.
10. Impact Assessments: Provide assistance in carrying out data protection impact assessments and prior consultations with supervisory authorities, as required under Articles 35 and 36 of the GDPR.

In the event of a data breach or any unauthorized disclosure of confidential information, the responsible party shall promptly notify the other party and take all necessary steps to mitigate the effects of the breach in accordance with applicable laws and regulations.

Both parties acknowledge that failure to comply with the provisions of this clause may result in legal consequences, including fines and penalties under the GDPR and the LOPDGDD.

10. Business Continuity and Source Code Escrow

In the event that PortPal Solutions S.L. ceases operations due to bankruptcy, dissolution, or any other cause preventing the continued provision of its SaaS services, the Customer shall have the right to choose one of the following options to ensure business continuity:

A. Direct Transfer of Code and Instance:

1. PortPal Solutions S.L. shall provide the Customer with:
 - 1.1. A full copy of the source code of the software, including all necessary documentation.
 - 1.2. A fully operational instance of the software, including a dedicated server with the latest running version and latest backup.
2. The Customer shall receive a perpetual, non-exclusive license to use the provided software instance solely for its internal business operations.

B. Third-Party Escrow Agreement:

1. Upon Customer request and at its own expense, the Customer may designate an independent third-party escrow provider (the "Escrow Agent") to hold the following materials for the duration of this Agreement:
 - 1.1. The full source code and all necessary software components.
 - 1.2. A continuously updated backup of the software instance used by the Customer.
2. In the event of bankruptcy or service discontinuation by PortPal Solutions S.L., the Escrow Agent shall release the materials to the Customer, allowing them to continue operations.

Activation of Escrow Rights

1. The Customer may invoke this clause upon the occurrence of a material insolvency event, bankruptcy filing, or failure by PortPal Solutions S.L. to provide services for more than 15 consecutive days without resolution.
2. In such a case, PortPal Solutions S.L. or the Escrow Agent shall provide the necessary materials within 15 business days from the formal request by the Customer.

Limitations and Conditions

1. The Customer shall not resell, distribute, or modify the software for third-party use without prior written approval from PortPal Solutions S.L. or its legal successors.
2. The Customer shall bear any costs associated with third-party escrow services.

11. Miscellaneous

- **9.1 Entire Agreement.** This Agreement, together with the referenced "Security, Backup Data, SLA, and Architecture" document, constitutes the entire understanding between the Client and PortPal Solutions S.L. regarding the use of SaaS services.
- **9.2 Amendments.** PortPal Solutions S.L. reserves the right to modify these Terms and Conditions at any time. The updated Agreement will be posted on our website, and continued use of the service constitutes acceptance of the revised terms.