

# Xmartclock® Services Agreement

Updated June 8, 2020

Effective January 10, 2017

Thank you for choosing Xmartclock®

This Agreement is executed between You and Xmartclock®, and describes your rights to use the Platform and Services identified in section 1.1. For your convenience, we have written some of the terms of this Agreement in question and answer format. You must read the entire Agreement because all terms are important and, together, constitute a Legal Agreement that will be applied once you accept it.

## 1. Scope of the Contract, acceptance and changes

1.1. What services are the subject of this Contract? Cloud platform for management and administration of time and assistance Xmartclock®

1.2. What terms should I comply when using the Services? Our goal is to create a safer environment, and that is why we require that, when using the Services, users comply with these terms ("this Agreement"). It is forbidden for the user to use the Services in a way that violates the rights of third parties, which includes, for example, intentionally causing damage to a person or entity.

1.3. How do I accept this Agreement? By registering for the Services or requesting them, Xmartclock® is making an offer to You. You have to accept these terms and conditions by activating the corresponding option before you can use the Services, and these terms and conditions constitute a valid Contract between You and Xmartclock®. By using the Services or accessing them, or by accepting these terms when the user interface presents you with the option to do so, you will be confirming your commitment to respect this Agreement without any modification on your part. If you do not accept them, you are not authorized to use the Services.

1.4. Can Xmartclock® change this Agreement after I have accepted it? Yes. When we change this Agreement, we will inform you. We may modify the terms of the Contract if: (i) it

is necessary due to applicable law, including, for example, a modification of the law; (ii) it is necessary due to advice and / or requirement based on the applicable legislation; (iii) the balance between service and benefits is altered; (iv) it is necessary from a technical point of view; (v) it is necessary to guarantee the operation of the Services; or (vi) the terms are modified for the benefit of the user. We will inform you of the expected change before it takes effect, either through the user interface, or in an e-mail or other reasonable means.

1.5. What types of changes can I expect in the Services? We continually work to improve the Services in order to improve or update their functions, introduce new features or adapt the Services, and in that regard we can change the Services or remove features at any time, among other reasons if our contracts with third parties no longer allow us to offer your certain materials, if it is no longer possible to provide it, technology advances or if customer comments indicate that a change is necessary.

We guarantee that the application for phones and tablets that have the latest versions of the Android operating system will not be discontinued.

Regarding the Premium version payment Services, we will notify you 30 days in advance for substantial changes to the Services. We may offer the Services or their features in beta, which may not work properly or in the same way as the final version. We will also notify you in advance if a change in the Services may cause you to lose your content (as defined below).

## 2. Content

2.1. Who owns the content that I place in the Services? You. Some Services allow you to store various types of files, such as databases, photographs, documents, reports. The contents of your files are of Yours (your "Content"), and Xmartclock® does not claim ownership of the content that you provide in the Services, except for the material that we license to You and that is incorporated into your Content (for example, predesigned images). Your content will remain being Your property and will be your responsibility. We strongly recommend that you back up your content regularly.

2.2. Who can have access to my content? You initially control who can access your content (the Administrators). You declare and warrant that, while this agreement is in effect, you have (and will have) all necessary rights with respect to the content that you upload or share in the Services, and that the use of that content, in accordance with the provisions of this section, does not infringe any law or any third party rights.

2.3. What does Xmartclock® do with my content? When you transmit or upload content to the Services, you are granting Xmartclock® the worldwide right, free of charge, to use the content as necessary: to offer the Services to You (which includes changing the size, shape, or size format of your content to store it or show it better), to protect you and to improve products and services. Xmartclock® uses and protects its content in the manner indicated in the privacy statement.

2.4. What type of advertising do the Services use? Some of the Services are supported by advertising. We do not use your documents, photographs or other personal files to direct you advertising. Our advertising policies are explained in detail in the privacy statements.

### 3. Interruptions of the Services and backups

We try to keep the Services running; however, all Online Services suffer occasional interruptions. It is convenient that you make regular backup copies of the content you store in the Services. Having a regular backup plan and following it can help you avoid content loss.

We strive to provide detailed information on the status of the service on the website.

Special XmartClock Service Commitment for PREMIUM PLUS version:

Xmartclock will make reasonable commercial efforts to make the Included Products and Services available with a Percentage of Monthly Activity Time of at least 99%. In the case of interruption, PREMIUM PLUS customers have an automatic backup system which allows information to be retrieved without the need for customer intervention.

### 4. Terms and conditions

4.1. What terms govern the Platform that is part of the Services? Unless accompanied by an independent License Agreement, the entire Platform that we provide as part of the Services is governed by the terms of this Agreement. The Platform is assigned under Standard and / or Pro version and is not

object of sale, and Xmartclock® reserves all rights to the Platform that Xmartclock® does not expressly grant under the license terms. If this Agreement governs the website that you are viewing, any code or script belonging to third parties, linked or referenced from this website, is licensed to You by the third-party owners of said code, and not by Xmartclock®.

4.2. How can I use the Platform provided as part of the Services? We grant you the right to use a copy of the Platform in its Standard version and in its Pro version for use by only one License at a time when you use the Services, but only if you comply with all other conditions of this Agreement.

4.3. Are there activities that I cannot do with the Platform or Services? Yes. In addition to the other restrictions of this Contract, you may not: bypass or omit the technical protection measures that the Platform or the Services contain or that are related to them, except exclusively to the extent that the current legislation on intellectual property expressly authorize it; separate the components of the Platform or Services for use in different devices; publish, copy, rent, lease or assign the Platform or the Services; or transfer the Platform, use licenses or rights to access or use the Services. You may not use the Services in any unauthorized manner that may interfere with your use by any other person, or with your

access to services, data, accounts or networks. You may not allow access to the Services by unauthorized third party applications.

4.4. How is the Platform updated? We may automatically download on your computer, free of charge for you, updates of the Platform to keep up to date, improve and continue developing the Services. You may be asked to accept these updates subject to these terms, unless the updates are accompanied by additional or different terms. If you accept them, those other terms will apply to the updated platform and, if you do not accept them, you will not be able to use or receive updates. If you are not asked to accept other terms to receive an update, this Agreement will cover the update. Xmartclock® is not obliged to make available any update, nor does it guarantee that we will support the version of the system for which you obtained a license to the Platform.

In the event of any change in our compatibility, the email address provided by the customer for this purpose will be communicated reliably.

To date, XmartClock is compatible with Android 4.4 and higher. Once our terms are accepted you can continue using the current version for life as long as your computers allow it, this depends on the manufacturer of the equipment and the provider of the Android operating system

## 5. Additional terms of Xmartclock® Services

5.1. Templates and multimedia elements of the Services. If you use the Xmartclock® Services, you may have access to multimedia images, clip art, animations, sounds, music, video clips, templates and other types of materials (“multimedia elements”) as part of the Services associated with the Platform Xmartclock®

## 6. If you use the Premium version of the Xmartclock® Platform, the following terms will apply

6.1. Charges. If there is a charge associated with part of the Services, you agree to pay that charge. The price indicated for the Services includes all applicable taxes and currency exchange rates, unless otherwise specified.

6.2. Your billing account. To pay for a service, you will be asked to provide a payment method at the time of subscribing to that service. You can access your billing account information and the payment method and modify them on the “My Account” website [www.xmartclock.com](http://www.xmartclock.com). You agree to keep your billing account information up to date at all times. Likewise, you agree to allow Xmartclock® to use your updated account information about your payment method provided by the issuing bank or by the applicable payment network. If you instruct us to stop using your payment method and do not provide us with another payment method after we notify you that you must do so within a reasonable period, we may suspend or cancel your payment service for just cause. The notification you send to

us will not affect the charges we make to your billing account before we have been able to reasonably take the necessary steps to modify your billing account information.

6.3. Billing. By providing Xmartclock® with a payment method, You (i) declare that you are authorized to use the payment method you have provided and that the payment information you have provided is true and accurate; (ii) authorizes Xmartclock® to charge you for the Services using the payment method indicated by You; and (iii) authorizes Xmartclock® to charge you for any payment feature of the Services to which you decide to subscribe or commission while this Agreement is in effect. The billing of the charges of the Services in your payment method may be carried out in accordance with what is agreed between us, which includes: (a) at the time of purchase; (b) shortly after purchase; or (c) periodically for Subscription Services. If you authorize it, billing can also be done in advance. In addition, we may charge you for the amount you have authorized and we will notify you in advance of the difference in Periodic Subscription Services. We may jointly bill you for more than one of your previous and current billing periods.

6.4. Automatic renewal. As long as automatic renewals are allowed in your country, province or state, we will inform you that automatic renewal will occur before automatically renewing. Once we have informed you that the Services are going to be renewed automatically, we can proceed to renew the subscription to the Services automatically and to make the charge corresponding to the renewal term relevant to the price that is in force at any time. We will also remind you that we will bill you according to the payment method chosen by you for the renewal of the Services. We will charge you the price agreed at that time for the renewal term, unless you have notified us of your desire to cancel the Contract with at least one month notice in advance regarding its termination or the termination of any renewal term, or in accordance with the instructions we have provided on how to effect such cancellation.

6.5. Online invoice and errors. We will send your invoice to the email provided to us. If there are errors in the invoice, we will correct them as soon as we have communicated it and examine the charge. You must notify us of the existence of errors in the invoice within 5 days after the initial appearance of an obvious error. If you do not notify us within that period, you exempt us from any liability and claim for losses arising from any error caused by slight negligence; In addition, in this case we will not be obliged to correct the error or provide any returns. In all other cases, if Xmartclock® identifies any billing error, we will inform you of this and take steps to correct it as soon as possible.

6.6. Offers of launch and test periods of the Platform in its Premium version. If you are taking part in any launch period offer with the Premium version, it is not necessary to cancel the Services once the period is over, the platform itself will change to its Pro version, unless we notify you otherwise. Once the trial period is over, we will ask you if you want to migrate to the PRO version or continue with the Premium version, in this case, the Services will become a paid subscription, you will be informed of the applicable charges and other terms that may be applicable in your case, then you will authorize us to charge in your payment method the price that is currently established for the Services.

6.7. Price modification. If your service offer has a specific price and duration, the price will remain in effect until the end of the offer period. You must accept a new offer and price if you

wish to continue the Services. If the Services are provided for fixed periods (for example, monthly) without specifying any duration and it is not an evaluation offer, we may change its price up to 5% annually, but we must inform you of this at least 30 days before the change takes effect. You will have the opportunity to cancel the Services before the price change occurs. When we notify you of the price change, we will also inform you that it will take effect if you do not cancel the Services. Once the period of validity ends, and as long as you have not canceled the Services after receiving our information, we will charge you for the use of the Services at the new price. If you do not agree with the price change, you must cancel and stop using the Services in its Premium version before the change takes effect.

6.8. Delays in payments. In case of late payments, you must pay the reasonable costs we incur to collect the overdue amounts owed to us, including reasonable attorneys' fees, as well as legal fees and costs, as allowed by current laws and regulations. We may suspend or cancel your Services if you do not pay in full and promptly after having sent you a reminder (with the threat of suspending or canceling the Services) to make the payment within an appropriate time frame. You can avoid suspension or cancellation by making the required payment within the appropriate timeframe set forth in the reminder. A different procedure will apply if the missing amount is marginal. If the missing amounts are less than two percent of the total invoice value, they will always be considered marginal. The suspension or cancellation of the Services for non-payment may result in the loss of access to your Xmartclock® account.

6.9. Internet access services and other charges. You are responsible for paying the fees of the Internet access provider or Wi-Fi network. These rates are additional to those corresponding to the Services. If you gain access to the Services through wireless devices (for example, phones or tablets), the wireless network operator may charge you fees for Alert, Internet browsing, messages, check-ups, geolocation and other services that require the use of wireless data services and transmission time. Consult your operator to see if these rates may apply. You are solely responsible for the expenses incurred to access the Services through any wireless or other communication service.

## 7. Xmartclock® DOES NOT GIVE ANY ADDITIONAL WARRANTIES

EXCEPT IN THE CASES IN WHICH WE HAVE HIDDEN DEFECTS OF BAD FAITH OR DEFECTS HAVE MADE THE USE OF THE SERVICES IMPOSSIBLE, WE PROVIDE THE SERVICES "AS IS", "IN THE STATE IN WHICH THEY ARE FOUND" AND "AS AVAILABLE". WE DO NOT GUARANTEE THE ACCURACY OR PUNCTUALITY OF THE INFORMATION AVAILABLE IN THE SERVICES. YOU ACKNOWLEDGE AND ACCEPT THAT TELECOMMUNICATIONS EQUIPMENT AND SYSTEMS ARE NOT FREE OF DEFECTS AND THAT OCCASIONAL PERIODS OF INACTIVITY MAY BE PRODUCED. WE CANNOT GUARANTEE THAT THE SERVICES ARE UNINTERRUPTED, PUNCTUAL, INSURANCE OR THAT THEY ARE FREE OF ERRORS. Xmartclock® AND OUR SUBSIDIARIES, TRADERS, DISTRIBUTORS AND SUPPLIERS DO NOT PROVIDE ANY

WARRANTIES OR EXPRESS CONDITION. YOU ARE ASSISTED BY ALL WARRANTIES PROVIDED FOR BY LAW, BUT WE DO NOT GRANT ANY OTHER. Xmartclock® EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A CERTAIN PURPOSE, PROFESSIONAL COMPETITION AND ABSENCE OF INFRINGEMENTS WHERE PERMITTED BY APPLICABLE LAW.

## 8. Limitation of liability

8.1. Xmartclock® will not be responsible for any content, including links to third-party websites and activities provided by users. Such content and activities are not attributable to Xmartclock® or represent its opinion.

8.2. Xmartclock® will only be liable for slight negligence of its agents, subsidiaries and / or its legal representatives in case of breach of any of the essential obligations of the Contract. Essential obligations mean all those that must be fulfilled to properly execute this Contract, which allow the objectives of this Contract to be achieved and, in general, the user may assume that they must be fulfilled in accordance with the substance and form of this Contract.

8.3. Neither Xmartclock®, its subsidiary agents nor its legal representatives will be liable for any unforeseeable or atypical damage or loss or any economic loss in relation to any indirect damage or loss, including loss of benefits, except that Xmartclock®, its subsidiary agents or their legal representatives have acted, as a minimum, with gross negligence.

8.4. The limitation of liability shall not in any way affect the objective liability of Xmartclock® under the laws, which includes, for example, that which corresponds to it under the laws on product liability and legal liability for breach of warranty. The same shall apply to the responsibility of Microsoft, its subsidiary agents and / or their legal representatives in case of damages due to negligence against the life, physical integrity or health of a person.

## 9. Third party websites

It is possible that, through the Services, you may have access to third-party websites or services that Xmartclock® does not control or publish. Xmartclock® is not responsible for third-party websites, services or content that are available through the Services. You are solely responsible for your transactions with third parties (including advertisers). Your use of third-party websites or services may be subject to the terms and conditions of those third parties.

## 10. Cession and transfer

We may make a cession, transfer or in any way dispose of our rights and obligations derived from this Contract, in whole or in part, as long as said assignment is not detrimental to You, at any time and without notice. In the event of any such event, the e-mail address provided by the client for this purpose will be communicated reliably.

## 11. Notices

This Contract is presented in electronic format. We may provide you, in electronic format, information about the Services, additional information and information that the law requires us to provide. We may request information by email at the address you specified when registering for the Services or by accessing an Xmartclock® website that we indicate. We recommend monitoring and maintaining the email address you specified. If you do not give your consent to receive notifications electronically, you must stop using the Services. You can send notifications to Xmartclock® as established in the Customer Service area of the Services.

## 12. Contract Interpretation

This is the entire Agreement between You and Xmartclock® regarding the use of the Services. It replaces all other prior agreements between You and Xmartclock® regarding the use of the Services. The titles of the Contract sections are provided for reference purposes only and lack legal effect. Different or additional terms may apply when you use or pay for other Xmartclock® services other than those governed by this Agreement.

## 13. Absence of third party beneficiaries

This Agreement exclusively regulates the relationship between You and Xmartclock® for mutual benefit. It is not intended for the benefit of a third party, except for authorized successors and assigns.

## 14. Support

The technical support service of the Xmartclock® Services is available through the website [www.xmartclock.com](http://www.xmartclock.com) Limited technical support for the Standard version will be available on support (@) xmartclock.com and the support chat, the phone with our agents for users of the Premium version will be provided through the same platform

## NOTIFICATIONS

Any modification to this Contract will be made directly on the platform and you will be notified by means of a notice on it that will require your acceptance to continue working on it.