

## **Xavus Solutions LLC PURCHASE and LICENSE TERMS**

The following are Xavus Solutions LLC's, terms and conditions of sale and license for hardware and software products. (Products):

**GOVERNING TERMS** The purchase is subject solely to these Terms and those on the Quote or Estimate that accompanies this contract. No other terms and conditions in addition to, or in conflict with these Terms not separately and specifically executed by both parties as an amendment to these terms shall apply.

**ORDERS** All orders must be in the form of a valid, unexpired Xavus Solutions LLC Purchase Agreement or Quote signed by Customer and must; a) state the Xavus Solutions LLC part numbers, descriptions and quantities of products purchased b) state the Xavus Solutions LLC quotation number, quotation date and expiration date and that the order is placed pursuant to the terms and conditions of the Xavus Solutions LLC Purchase Agreement, or words of similar effect. (Orders for software customization or Xavus Solutions LLC installation services, must also reference the Xavus Solutions LLC's Statement of Work or Quote for such services) c) be signed by an authorized representative of Customer d) include an initialed or signed Xavus Solutions LLC Purchase and License Terms (this document); Xavus Solutions LLC may reject any non-conforming Order. If Customer organization requires issuance of a Purchase Order in order to process an invoice for payment, then for an Order to be valid it must also include a completed Purchase Order signed by an authorized representative of Customer, stating the terms shown on the Xavus Solutions LLC Purchase Agreement, or words of similar effect.

**PRICES** All prices are in United States Dollars.

**TAXES, FEES, AND OTHER** Prices do not include any export fees, duties, OST, Sales, ISO, excise, ad valorem, property, withholding from source income or other taxes of any nature, or other taxes or fees applicable to the sale, use, license, or delivery of the equipment, software or services supplied, all of which are the responsibility of Customer. Incidental IT professional services incurred by the Customer in preparing for the installation of the MySeniorCenter system are outside the scope of this contract and are the responsibility of the Customer.

**DELIVERY** Equipment sold and software licensed are delivered from Xavus Solutions LLC's manufacturing facility. Shipping fees are listed as a separate line item on the estimate and invoice.

**ACCEPTANCE** of products delivered and services performed shall be upon delivery unless otherwise agreed. Customer shall provide Xavus Solutions LLC written notice of delivery and acceptance.

**MAINTENANCE AND SUPPORT** beyond the initial 12 month period shall be available at customer's option. Maintenance and Support fee is **\$1800** per year beginning 12 months from the initial purchase date and due annually on the anniversary of the purchase date. Maintenance and Support for the first 12 months is included unless otherwise specified. Changes to the configuration described on the accompanying estimate may increase the cost of the annual maintenance. Any increases will be clearly specified on future quotes.

Current Maintenance entitles Customer to: technical support (via telephone, email, and web); generally available product updates; database back-up services; and periodic web-based refresher training (open to customers only).

Hardware components are not covered as part of the Xavus Maintenance and Support. Hardware is covered by the manufacturer of the components for the duration of the manufacturer's warranty period. Xavus Solutions requires a 45 day notice of the customer's intent to cancel Maintenance and Support. Customers that cancel maintenance retain ownership of any hardware components but no longer have access to hosted software. All data will be returned at the conclusion of the final Maintenance period. Customers electing to renew after their expiration date may be subject to a reactivation fee.

**LICENSES, PERMITS AND EXPORT CONTROL** Customer will comply fully with the export control laws and regulations of the United States Government and will indemnify Xavus Solutions LLC for any claims or penalties incurred as a result of any violation of applicable United States laws or regulations.

**LIMITED WARRANTY AND DISCLAIMER OF WARRANTY** Xavus Solutions does not warranty third party hardware and software and such items are subject to their manufacturers' warranty. Xavus will coordinate its customer's claims for warranty service and support on Xavus Solutions LLC supplied third party products with the manufacturer. Manufacturers' warranty is 1 (ONE) year from date of purchase.

Xavus Solutions LLC Software is warranted to substantially conform to Xavus Solutions LLC's specifications in effect as of the date of shipment under normal use for a period of ninety (90) days from the date of shipment. Xavus Solutions LLC's sole obligation under this warranty, in the event of a non-conformance occurring and reported to Xavus Solutions LLC's service department within the warranty period., is to provide bug fixes, patches, or work-around by access to download or other appropriate method. Xavus Solutions LLC does not warrant that use of the software will be uninterrupted or error free.

Xavus Solutions LLC warrants that services, if any, will be performed with reasonable skill and care and will conform to any agreed to Statement of Work, (SOW). Xavus Solutions LLC's entire obligation for defects in services reported to Xavus Solutions LLC within ten (10) days from completion shall be to perform or re-perform the services.

The foregoing hardware, software and services warranties do not extend to defects or nonconformities from abuse, acts of God, improper use, installation, modifications, or unauthorized maintenance.

THE FOREGOING WARRANTIES REPRESENT XAVUS SOLUTIONS LLC'S SOLE OBLIGATION AND CUSTOMER'S SOLE REMEDY FOR NON-CONFORMANCES. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The terms and limitations of this warranty represent bargained for provisions agreed to in return for pricing and other terms.

**SOFTWARE LICENSE AGREEMENT** Xavus Solutions LLC retains all title and ownership of all software, including software customization and software developed for a particular Customer, as well as included firmware. Custom developments shall not be deemed works for hire. All Software is provided to Customer only under the following license terms: Upon payment of the applicable license fee Xavus Solutions LLC grants to the Customer an indivisible, nonexclusive and non-transferable license, without right to sublicense, in the software and firmware, including patches updates and upgrades for its own internal business purposes on the hardware with which the software and firmware is first supplied.

Licensee may only copy the software as reasonably necessary for operation and archival purposes and shall reproduce all proprietary and copyright notices of Xavus Solutions LLC or its licensor which appear. Licensee shall not cause or permit any merger of the software with other computer program material to form a derivative work or otherwise make changes to the software or alter the software in any manner whatsoever and will not attempt or allow any decompilation or reverse assembly of all or any portion of the software. Licensee agrees not to rent or lease the software and that the software is and shall remain the property of Xavus Solutions LLC or its licensors.

This License is terminable in the event of a breach by Customer that is not corrected within fifteen (15) days after notice. Xavus Solutions LLC' licensors shall be entitled to directly enforce the provisions of this software license to the extent a breach relates to such third party software.

Upon license termination the Licensee shall return the software and all copies to Xavus Solutions LLC or upon Xavus Solutions LLC's instructions, destroy the software and all copies and provide to Xavus Solutions LLC a certificate of destruction signed by an officer of Licensee.

**FORCE MAJEURE** Neither party shall be liable for any loss or damage due to failure or delay arising out of any cause beyond the control, in the exercise of due diligence or without the fault or negligence of such party.

**PAYMENT TERMS** A 50% deposit is required and the balance is due upon installation. Timely payment by Customer to Xavus Solutions LLC at its principal place of business of all sums due hereunder is a material element hereof: Xavus Solutions LLC may charge the Customer 1.5% interest per month or part on any past due amounts. Customer shall reimburse Xavus Solutions LLC for all reasonable expenses of collection including attorney's fees.

**ASSIGNMENT** Neither party may assign its rights or obligations hereunder without the other party's consent, which consent shall not be unreasonably withheld.

**APPLICABLE LAW** These terms shall be governed by the laws of the Commonwealth of Massachusetts. The United Nations Convention for the Sale of Goods shall not apply to any transactions hereunder.

**CANCELLATION SCHEDULE** Orders accepted by Xavus Solutions LLC are non-cancelable, non-returnable and nonrefundable. All advance payments for delivered products and services are non-refundable. Orders may be rescheduled a single time, no later than 30 days prior to scheduled ship date, for up to forty-five (45) days without charge.

**PATENT INFRINGEMENT** Xavus Solutions LLC, agrees at its expense, to defend Customer in any suit, claim or proceeding brought against Customer alleging that any equipment or software furnished hereunder directly infringed any U.S. Letters Patent or U.S. copyright, provided Xavus Solutions is promptly notified of any actual or threatened claim, is given all reasonable assistance required, and is given sole control over the defense or settlement of the claim, at Xavus Solutions LLC expense. Xavus Solutions LLC agrees to pay any final judgment rendered in such suit should the use of any equipment or software be enjoined, or in the event that Xavus Solutions LLC desires: to minimize its liability hereunder, Xavus Solutions LLC may fulfill its obligations hereunder by, either substituting fully equivalent non-infringing items, or modifying the infringing item so that it no longer infringes, or by obtaining for Customer, at the expense of Xavus Solutions LLC, the right to continue use of such item. The foregoing states the entire liability of Xavus Solutions for patent or copyright infringement or for any breach of warranty of non-infringing, express or implied. The foregoing indemnity shall not apply to any equipment or software made to the specification or design of Customer or to claims based upon the combination of any equipment or software purchased pursuant to this contract with products or software supplied by Customer or others.

**LIMITATION OF LIABILITY** XAVUS SOLUTIONS LLC SHALL NOT BE LIABLE FOR BUSINESS INTERRUPTION, LOSS OF DATA, PROFITS OR REVENUE, OR SPECIAL, IN-DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE AND FROM

ANY CAUSE WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER. LEGAL THEORY, EVEN IF XAVUS SOLUTIONS LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL XAVUS SOLUTIONS LLC BE LIABLE FOR DAMAGES OF ANY KIND IN EXCESS OF THE PRICE PAID FOR THE EQUIPMENT, SOFTWARE AND SERVICES PROVIDED HEREUNDER.

**DEFAULT** In the event Customer defaults or breaches under the Contract as formed, in addition to all other remedies available to Xavus Solutions LLC at law or equity, Xavus Solutions LLC shall be entitled to recover attorney's fees and costs.

**NONDISCLOSURE** Each Party shall treat as confidential all Confidential Information of the other Party, shall not use such Confidential Information except as set forth herein, and shall not disclose such Confidential Information to any third party. Examples of Xavus Solutions LLC's Confidential Information include, but are not limited to, product design, marketing plans and pricing. Examples of CUSTOMER's Confidential Information include, but are not limited to, client data that Xavus may encounter in the course of normal customer support operations. This obligation of confidentiality shall remain in effect for three (3) years after the disclosure. Each Party shall promptly notify the other Party of any actual or suspected misuse or unauthorized disclosure of the other Party's Confidential Information.

**U.S. GOVERNMENT RESTRICTED RIGHTS NOTICE** Distribution and use of products including computer programs and any related documentation and derivative works thereof, to and by the United States Government, are subject to the Restricted Rights provisions of FAR 52.227-19, paragraph (c)(2) as applicable, except for purchases by agencies of the Department of Defense (DOD). If the Software is acquired under the terms of a Department of Defense or civilian agency contract, the Software "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of-commercial computer software and "commercial computer software documentation" as such terms are used in 48 C.F.R 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R 227.7202-1 through 227.7202-4 (June 1995) of the DoD FAR Supplement and its successors. All U.S. Government end users acquire the Software with only those rights set forth in this Agreement. Manufacturer is Xavus Solutions LLC, Boston, MA.

**VALIDITY** Should any provision of these terms be found illegal or unenforceable in any respect, such illegality or unenforceability shall not affect the validity any other provision of this terms.

**ARBITRATION** Any dispute arising in respect of those terms shall be referred to arbitration conducted in Boston, MA under the rules of the American Arbitration Association. The award rendered in such arbitration will be final and binding and may be enforced in any court of competent jurisdiction. Each party shall bear its own costs incurred in the arbitration action. Notwithstanding the provisions of this section, any party may seek injunctive relief in any court of competent jurisdiction in order to protect its proprietary and confidential information and to enforce or obtain compliance with the scope of rights and licenses granted under these terms without first submitting, such claim to arbitration.

Quote #: s-090917-5615

West Allis Senior Center  
Denise Koenig  
7001 W. National Ave  
West Allis, WI 53214

Customer Signature: \_\_\_\_\_

Customer Title: \_\_\_\_\_

Date: \_\_\_\_\_

Sales Tax Exempt # \_\_\_\_\_

(required if applicable)

Please also attach or mail a copy of Sales Tax Exempt Certificate.