



Meeting Date:  
Agenda Item No:

<b><u>Kitsap County Board of Commissioners</u></b>			
<b>Office/Department:</b>		Facilities Maintenance	
<b>Staff Contact:</b>		Jeff Vrabel	
<b>Agenda Item Title:</b>		KC-598-22 - KC-598-22 Maxxess Systems Inc	
<b>Recommended Action:</b> Recommend approval of the Software Support Agreement with Maxxess Systems, Inc. for software support of the County door systems. KC-598-22 - KC-598-22 Maxxess Systems Inc			
<b>Summary:</b>	Kitsap County has entered into a Software Support Agreement with Maxxess Systems, Inc. for software support of the County door systems. This Agreement shall commence upon 1/1/2023 and terminate on 12/31/2027. The value of this Agreement shall not exceed \$16,892.00 (plus applicable tax) during the service period.		
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Contract Review Sheet</li> <li>2. Software Support Agreement</li> </ol>		
<b>Fiscal Impact for this Specific Action</b>			
<b>Expenditure required for this specific action:</b>	\$16,892.00 (plus applicable tax)		
<b>Related Revenue for this specific action:</b>	\$0.00		
<b>Cost Savings for this specific action:</b>	\$0.00		
<b>Net Fiscal Impact:</b>	\$16,892.00 (plus applicable tax)		
<b>Source of Funds:</b>	Facilities Maintenance		
<b>Fiscal Impact for Total Project</b>			
<b>Project Costs:</b>	\$16,892.00 (plus applicable tax)		
<b>Project Costs Savings:</b>	\$0.00		
<b>Project Related Revenue:</b>	\$0.00		
<b>Project Net Total:</b>	\$16,892.00 (plus applicable tax)		
<b>Office/Departmental Review &amp; Coordination</b>			
<b>Office/Department</b>	<b>Elected Official/Department Director</b>		
Facilities Maintenance	Karen Goon		
<b>Contract Information</b>			
<b>Contract Number</b>	<b>Date Original Contract or Amendment Approved</b>	<b>Amount of Original Contract Amendment</b>	<b>Total Amount of Amended Contract</b>
KC-598-22	Pending	\$16,892.00 (plus applicable tax)	\$16,892.00 (plus applicable tax)



# Kitsap County CONTRACT REVIEW SHEET (Chapter 3.56 KCC)

<b>A. CONTRACT INFORMATION</b> <i>(for Contract Signing Authority, see KCC 3.56.075)</i>			
1. Contractor	Maxxess Systems, Inc.		
2. Purpose	Software support of the County door systems		
3. Contract Amount	\$16,892.00 (plus applicable tax)	Disburse <input type="checkbox"/>	Receive <input checked="" type="checkbox"/>
4. Contract Term	January 1, 2023 through December 31, 2027		
5. Contract Administrator	Jeff Vrabel	Phone	(360) 337-7189
6. Contract Control No.	KC-598-22		
7. Fund Name	Facilities Maintenance		
8. Payment from-Revenue to Program/Revenue or Spend Category	9271.5481		
<b>Approved:</b>	_____		<b>Date</b> _____
	Department Director/Elected Official		
<b>B. AUDITOR – Funding Review</b>			
1.	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Not Approved	
<b>Reviewer</b>	Mia A. Alexander	<b>Date</b>	5/2/2023
2. Comments:	_____		
<b>C. ADMINISTRATIVE SERVICES DEPARTMENT – Risk Manager Review</b>			
1.	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Not Approved	
<b>Reviewer</b>	Timothy M. Perez	<b>Date</b>	5/5/2023
2. Comments:	_____		
<b>D. ADMINISTRATIVE SERVICES DEPARTMENT – Budget Manager Review</b>			
1.	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Not Approved	
<b>Reviewer</b>	Aimée Campbell	<b>Date</b>	05/02/2023
2. Comments:	_____		
<b>E. HUMAN RESOURCES – Human Resources Director Review</b> <i>Signature only required if union or employment contract</i>			
1.	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved	
<b>Reviewer</b>	_____	<b>Date</b>	_____
2. Comments:	_____		
<b>F. INFORMATION SERVICES – Information Services Director Review</b> <i>Signature only required if technology contract</i>			
1.	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Not Approved	
<b>Reviewer</b>	Craig Adams	<b>Date</b>	5/5/2023
2. Comments:	_____		
<b>G. PROSECUTING ATTORNEY</b>			
1.	<input checked="" type="checkbox"/> Approved as to Form	<input type="checkbox"/> Not Approved as to Form	
<b>Reviewer</b>	Kasi Walker	<b>Date</b>	5/1/2023
2. Comments:	_____		

**Date Approved by Authorized Contract Signer:** \_\_\_\_\_

**Date** \_\_\_\_\_

**RETURN SIGNED ORIGINALS TO:**

Wanda Lowrey @ MS-7

# MAXxESS

## **SOFTWARE SUPPORT AGREEMENT**

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**SOFTWARE SUPPORT AGREEMENT**

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<b>Section</b>	<b>Section Title</b>	<b>Page Number</b>
1)	SOFTWARE SUPPORT .....	3
2)	SOFTWARE SUPPORT LIMITATIONS AND EXCLUSIONS.....	4
3)	RESPONSIBILITIES OF CUSTOMER.....	4
4)	PURCHASE ORDERS.....	5
5)	PAYMENT.....	5
6)	INDEMNIFICATION.....	5
7)	CONFIDENTIAL INFORMATION.....	6
8)	LIMITATION OF LIABILITY.....	6
9)	DISCLAIMER OF WARRANTIES .....	6
10)	RELATIONSHIP OF PARTIES .....	7
11)	ASSIGNMENT.....	7
12)	TERM AND TERMINATION .....	7
13)	RIGHTS AND REMEDIES.....	7
14)	SURVIVABILITY.....	7
15)	GENERAL .....	7
	EXHIBIT A – DEFINITIONS .....	10
	EXHIBIT B – SOFTWARE SUPPORT CONTACT FORM .....	11
	EXHIBIT C – SUPPORT LEVEL AND PRICE .....	12

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**SOFTWARE SUPPORT AGREEMENT**

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**THIS SOFTWARE SUPPORT AGREEMENT AND EXHIBITS** (“Agreement”) is entered on the last date of execution by and between Maxxess Systems, Inc., a corporation organized under the laws of the State of California with its principal place of business at 135 South State College Blvd Suite 200, Brea CA 92821 (hereinafter known as "Maxxess") and (Kitsap County) a Washington State political subdivision with its principal place of business at (614 Division Street Port Orchard, WA 98366 United States) (herein after known as "Customer").

The following Exhibits are attached and incorporated into this Agreement:

- Exhibit A - Definitions, in which capitalized terms used in this Agreement are defined
- Exhibit B – Support Contact Form
- Exhibit C – Support Level and Price
- Exhibit D – End User License Agreement

**1) SOFTWARE SUPPORT**

- a) Reporting. Maxxess shall provide Customer with a telephone number and an email address that Customer shall use to report Faults in the Software or to seek advice or guidance with respect to the Software. Customer shall ensure that no employees or consultants of Customer other than contacts identified on the attached Support Contact Form, Exhibit B, communicate directly with Maxxess for Software Support. Maxxess will make commercially reasonable efforts to return Software Support emails or calls received during business hours promptly.
- b) Fault Classification: When reporting a Fault in the Software, the Customer must classify the Fault as one of the following five Categories:
  - 1) Category 1 - Critical Priority: a Software Fault in a major functional area such that the function is not working to the Customer’s requirements and no reasonable alternative function is available;
  - 2) Category 2 - High Priority: a Software Fault in a major functional area such that the function is not working to the Customer’s requirements however a reasonable alternative function is available;
  - 3) Category 3 - Medium Priority: a Software Fault in a non-major functional area such that the function is not working to the Customer’s requirements and no reasonable alternative function is available;
  - 4) Category 4 - Low Priority: a Software Fault in a non-major functional area such that the function is not working to the Customer’s requirements however a reasonable alternative function is available;
  - 5) Category 5 - Cosmetic Priority: a cosmetic Fault that does not significantly impact Software functionality.
- c) Problem Resolution. If Customer reports an error or defect in the Software, Maxxess may, endeavor to resolve or correct such Fault, including by traveling to Customer’s site if necessary. Maxxess is not obligated to attempt to correct or resolve all Category 5 Software Faults. Software Support shall be provided by Maxxess solely at the location(s) specified in Exhibit B.
- d) Levels of Software Support:
  - 1) Extended Software Support:
    - (1) Support Levels: Level 1, Level 2 & Level 3;
    - (2) Telephone/E-Mail Support: 8:00 a.m. to 5:00 PM local time, on Business Days;
    - (3) Response Time: See Table;
    - (4) Software Updates.
  - 2) Enhanced Software Support:
    - (1) Support Levels: Level 1, Level 2 & Level 3;
    - (2) Telephone/E-Mail Support: 24 hours per day 365 days per year;
    - (3) Response Time: See Table;
    - (4) Software Updates.
- e) Response time. Maxxess maximum response time is shown in the table below:

	Category 1	Category 2	Category 3	Category 4	Category 5	Advice/ Guidance
Enhanced Software Support	2 Hr	2 Hr	4 Hr	4 Hr	8 Hr	8 Hr
Extended Software Support	2 Hr	2 Hr	4 Hr	4 Hr	8 Hr	8 Hr

- f) Coverage. In the event that Software Support has lapsed whereby Customer was not covered by a Software Support Agreement, and in order to bring the Software Support current, Customer shall pay Maxxess for the period of time in which Customer was not covered under a Software Support Agreement.
- g) Software Updates
  - 1) Delivery of Updates. Maxxess will send Customer one copy of each Update, along with a copy of any associated user documentation. Maxxess does not represent or warrant that (i) there will be any particular number of Updates during the term of this Agreement or that there will necessarily be any at all, or (ii) that all (or any) errors in the Software will be addressed or resolved by any Update. Installation or other support Maxxess provides with respect to any Updates are covered by this Agreement. If customer requests any additional work such as specific integrations or additional product to be added at the time of the update, Maxxess will quote the additional support separately.
  - 2) License Terms. Any Update supplied under this Agreement will be deemed to be part of the Software for purposes of the End User License Agreement, provided that Customer must delete from its computer systems any portion of the Software replaced by an Update before commencing to use any Update and may not at any time have more than one version of the Software installed on any of its computers. Any Update may be subject to modified or additional license terms if Maxxess so notifies Customer in writing and Customer acknowledges and understands that it must accept such modified or additional terms before it may use any such Update. Maxxess reserves all rights not expressly granted to Customer.
  - 3) Limitation. Customer acknowledges that Updates supplied by Maxxess may not be designed to operate properly with any but the most recent version of the Software as of the time that such Update is made available by Maxxess. Customer shall be solely responsible for any modifications, additions, or replacements to Customer's computer hardware, operating systems, or other equipment, software, or facilities that may be required to use any Update. Maxxess expressly disclaims any obligation to make any Update backward compatible with the operating environment for any earlier version of the Software.

## 2) SOFTWARE SUPPORT LIMITATIONS AND EXCLUSIONS

- a) As of any time during the term of this Agreement or extension thereof, Software Support shall be available only for the two (2) then most recent Versions of the Software. For example, if the most current Version of the Software at any time is Version 7.2, then Software Support will be available only for Versions 7.1 through 6.2.0. Software Support shall become unavailable for any other Version of Software used by Customer and Customer will not be entitled to a refund of any amounts paid or forgiveness of any amounts owing hereunder.
- b) Customer acknowledges and agrees that Maxxess does not undertake pursuant to this Agreement to maintain or provide any Software Support with respect to any software other than what is specified in Exhibit E, and that any obligations of Maxxess to maintain or fix or aid in Software Support of any software and any warranties with respect to any such software are outside the scope of this Agreement.
- c) Maxxess shall have no liability for any:
  - 1) Defect caused in whole or part by customer's failure to maintain a suitable operating environment or otherwise to maintain the Software.
  - 2) Defect caused by accident, unusual physical or electrical stress, misuse or abuse, or by use of the Software in a manner other than for its reasonably intended purposes and as recommended in the applicable documentation.
  - 3) Failures due to a product for which Maxxess is not responsible.
  - 4) Modifications of the Software by Customer or any third party
  - 5) Damage arising from unauthorized moving, removal/reinstallation of the Software.
  - 6) Operator training other than the specific operation of the installed Software.
  - 7) Installation of Updates or new Revisions.

## 3) RESPONSIBILITIES OF CUSTOMER

- a) Contact. Customer will contact Maxxess support in a timely manner:

By Telephone: +714-772-1000 / +1 (800) 926-2609

or

By E-Mail: [support@maxxess-systems.com](mailto:support@maxxess-systems.com)

- b) **Customer Data.** Customer is solely responsible for protecting any of the User's software, data files and documentation. Maxxess shall have no liability of any kind for any damages resulting from Customer's failure to protect any such data or information nor for any costs or expenses of reconstructing any data or information in the event such data or information is destroyed or impaired during or as a result of Maxxess's performance of Software Support hereunder.
- c) **Access.** In the event that Maxxess deems it required to gain access to Customer's facility where the Software is located, Customer shall provide Maxxess full and free access to the Software for purposes of providing the Software Support specified hereunder and for purposes of inspecting Software to determine the cause of any malfunction. Customer shall not require Maxxess to execute any waivers as a condition to Maxxess's access Software for purposes of providing such Software Support or conducting such inspections. All visits to Customer's facility will be prearranged with Customer's facilities maintenance department. When accessing the Customer locations, Maxxess will comply with any security, occupational health, and safety and other policies and procedures specified by Customer from time to time.
- d) **Necessary Equipment.** Customer shall, at no charge to Maxxess, allow Maxxess reasonable full and free access to and use of any machines, attachments, communications facilities, software, features and other equipment, which Maxxess determines to be necessary to perform the Software Support specified hereunder.
- e) **Customer Personnel.** Customer shall ensure that an authorized representative of Customer is in the immediate location of the Software and is available for consultation during Maxxess's performance of any Software Support.

**4) PURCHASE ORDERS**

- a) Customer shall submit their Purchase Orders to their Maxxess certified integrator for the purchase of the direct Software Support. Each Purchase Order received by Maxxess integrator shall be issued pursuant to their respective price level which details the support services to be performed and the prices. No Purchase Order shall be binding unless acknowledged and accepted in writing by Maxxess.
- b) The terms and conditions of this Agreement, as set forth herein, shall prevail over any inconsistent or additional terms set forth in a Purchase Order.

**5) PAYMENT**

- a) Maxxess may suspend performance of Software Support under this Agreement at any time while Customer is in default of any payment obligation under this Agreement. Additionally, Maxxess may charge Customer, and Customer shall pay, at Maxxess's then current applicable standard rates, for time expended by Maxxess responding to support calls or problem reports that relate primarily to equipment or software not supplied and maintained by Maxxess.
- b) **Reimbursement of Expenses.** In addition to those fees specified in this Agreement, Customer shall pay Maxxess the actual expenses incurred by Maxxess in furtherance of its performance for those services that are not included in the Software Support; however, any expenses must be preapproved by Customer in writing. Maxxess agrees to provide Customer with access to such receipts and other records as may be reasonably appropriate for Customer or its accountants to verify the amount and nature of any such expenses. Upon mutual agreement, expenses may include airfare, mileage, other transportation costs, lodging, meals, costs of equipment and supplies, and any other expenses directly related to the Software Support. Any travel expenses must be preapproved by Customer in writing. Travel expenses incurred or paid by Maxxess shall be reimbursed at a rate not to exceed the current state rate and in accordance with the State of Washington Office of Financial Management Travel Regulations. Current travel rates may be accessed at: <https://www.ofm.wa.gov/sites/default/files/public/resources/travel/colormap.pdf>
- c) The fees and charges for any follow-on or additional work not described herein shall be performed at Maxxess's then-current rates for such work, or as otherwise agreed in writing by the Parties.
- d) Maxxess shall invoice Customer as stated in this Agreement for twelve (12) months Software Support in advance and thirty (30) days prior to the anniversary date for subsequent years Software Support.
- e) All payments under this Agreement shall be calculated and paid in U.S. dollars. Customer shall pay all taxes due in connection with this Agreement, except taxes on Maxxess's net income.

**6) MUTUAL INDEMNIFICATION**

- a) The indemnifying Party shall defend the indemnified Party against any action by a third party arising out of this Agreement that is based on, any grossly negligent act or omission or willful conduct of the indemnifying Party which results in: (a) any bodily injury, sickness, disease or death; (b) any injury or destruction to tangible or intangible property (including computer programs and data) or any loss of use resulting therefrom; or (c) any violation of any statute,

ordinance or regulation to the indemnified Party including payment for court costs and reasonable fees and expenses of attorneys, expert witnesses and other professionals.

**7) CONFIDENTIAL INFORMATION**

- a) Confidential Information means any information, including but not limited to all code, inventions, algorithms, know-how, ideas, customer lists and contact information, supplier lists and contact information, and all other business, technical, and financial information a Party obtains from the other Party that is marked as “Confidential” or some other label indicating its confidential nature. The Software will be considered the Confidential Information of Maxxess or its licensors regardless of whether they are marked “Confidential.” All other information disclosed orally will be deemed Confidential Information only if it is identified as such at the time of disclosure and is confirmed to be Confidential Information in writing no more than seven (7) days later.
- b) Notwithstanding the foregoing, Confidential Information will not include any information which (i) becomes publicly known through no wrongful act or omission of the receiving Party; or (ii) was previously disclosed by disclosing Party to receiving Party without obligation of confidentiality; or (iii) becomes known to the receiving Party, without confidentiality restriction, from a third party whom the receiving Party has no reason to believe is under any obligation of confidentiality with respect to such information; or (iv) is approved by the disclosing Party for disclosure without restriction in a written document which is signed by a duly authorized officer of the disclosing Party; or (v) is independently developed by the receiving Party without use of the disclosing Party’s Confidential Information; or is required to be disclosed in order to comply with an order of a court or other governmental body, or as otherwise necessary to comply with applicable law.
- c) Term of Confidentiality. The obligations of confidentiality imposed by this Agreement shall apply during the Term and for a period of three (3) years thereafter.
- d) Each Party agrees not to disclose the Confidential Information of the other Party to any third party without prior written assent from the other Party.

**8) LIMITATION OF LIABILITY**

- a) NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL DAMAGES OR LOSSES RESULTING FROM THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO CLAIMS FOR LOST BUSINESS, LOST PROFITS, LOSS OF GOOD WILL ANY PHYSICAL INJURIES TO CUSTOMER OR ITS EMPLOYEES AND AGENTS, DATA RECOVERY COSTS, REPROGRAMMING OR FORMATTING COSTS, REPLACEMENT OF ANY SOFTWARE APPLICATION PROGRAMS OR DATA USED IN CONJUNCTION THEREWITH, OR ANY OTHER TYPE OF DIRECT OR INDIRECT DAMAGES PURPORTEDLY SUFFERED BY CUSTOMER. IN NO EVENT SHALL MAXXESS'S AGGREGATE LIABILITY TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO MAXXESS HEREUNDER DURING THE ONE (1) YEAR PERIOD BEFORE SUCH LIABILITY ARISES.
- b) Except as expressly noted herein, this Section and all other remedies set forth herein are exclusive and in lieu of all other representations and warranties, oral or written, express or implied. No dealer, distributor, agent or employee of Maxxess is authorized to make any modification or addition to this Section.

**9) WARRANTIES**

- a) Maxxess warrants that its Personnel: i) are competent and have all necessary and appropriate skills, training, background, and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them; ii) will behave in a professional and responsible manner at all times and perform the support services with due care and skill and in accordance with best industry practice; iii) understand and agree to the requirements of this Agreement which are relevant to them; and iv) when accessing the Customer locations, will comply with any security, occupational health, and safety and other policies and procedures specified by Customer from time to time.

**10) DISCLAIMER OF WARRANTIES**

- a) ALL SOFTWARE SUPPORT IS PROVIDED AS IS. MAXXESS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE SUPPORT PERFORMED HEREUNDER.



**11) RELATIONSHIP OF PARTIES**

- a) Nothing contained in this Agreement shall be construed to constitute either Party as a partner, employee, or agent of the other Party, and neither Party shall hold itself out as such. Neither Party has any right or authority to incur, assume or create, in writing or otherwise, any warranty, liability or other obligation of any kind, express or implied, in the name of or on behalf of the other Party, it being intended by both Customer and Maxxess that each shall remain an independent contractor responsible for its own actions. Each Party agrees to indemnify and hold the other harmless from and against any damage or expenses, including reasonable attorney's fees, arising out of a breach of the provisions of this Section.

**12) ASSIGNMENT**

- a) Customer shall not assign, delegate, sublicense or otherwise transfer the Software or any of Customer's rights, remedies, obligations or duties of performance hereunder. Any purported assignment or other transaction in violation of this Section 11 shall be null and void and of no force or effect. Neither Party shall assign or transfer, including by merger (whether that Party is the surviving or disappearing entity), consolidation, dissolution, or operation of law, any right, duty, obligation, or remedy under the Agreement without the prior written consent of the other.

**13) TERM AND TERMINATION**

- a) The term of this Agreement shall commence on the date the Software is delivered from Maxxess to Customer and shall continue for the period of time defined in Exhibit C, unless terminated pursuant to Section 12 (c). This Agreement may be extended for additional successive terms as originally agreed to in Exhibit C, at the mutual agreement of the Parties.
- b) If Maxxess and Customer agree to license additional Software to the User, such additional Software shall become a part of this Agreement hereunder for the balance remaining of the then current one (1) year term of this Agreement, provided that Customer pays the pro-rated portion of Maxxess's then current applicable price for Software Support for such additional Software.
- c) This Agreement will automatically terminate, without notice or other action, upon any termination or expiration of any Software License Agreement. Additionally, either Party may immediately terminate this Agreement upon written notice if the other Party violates this Agreement and fails to cure such violation within thirty (30) days of written notice. In the event of termination due to a breach by Maxxess, Customer shall be entitled to a pro-rata refund for any software support fee prepaid by Customer for the term which such termination is effective. Maxxess shall not be obligated to return or forgive any amounts paid or owing hereunder in the event of termination of this Agreement due to a breach by Customer or termination of the Software License Agreement.
- d) Termination for Funding issues. If any funding for Support Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Agreement becomes effective, Customer may in its discretion with a 90-day notice: (1) accept a decreased price offered by Maxxess or (2) terminate the Agreement.
- e) This agreement can be extended for an additional one-year period if both the Customer and Maxxess fully execute a new Exhibit C covering this period. In that case all terms and conditions of this agreement will be extended over the new period of performance.

**14) RIGHTS AND REMEDIES**

- a) All rights and remedies conferred by this Agreement, by any other instrument, or by law are cumulative and may be exercised singly or concurrently. If any provision of this Agreement is held invalid by any law or regulation of any government or by any court, such invalidity shall not affect the enforceability of any other provisions hereof.

**15) SURVIVABILITY**

- a) The provisions of this Agreement including without limitation Payment, Indemnification, Confidential Information, Limitation of Liability, Disclaimer of Warranties, Assignment, and General shall survive the expiration or termination of this Agreement.

**16) GENERAL**

- a) Force Majeure. Neither Party shall be liable for failure to perform any of its obligations under this Agreement during any period in which such Party cannot perform due to fire, flood, earthquake, or other natural disaster, war, embargo, riot, labor dispute or the intervention of any government authority, provided that the Party so delayed immediately notifies the other Party of such delay.

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**SOFTWARE SUPPORT AGREEMENT**

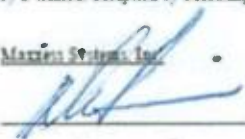

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- b) Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous negotiations, agreements and commitments with respect thereto, and shall not be released, discharged, changed or modified in any manner except by instruments signed by duly authorized officers or representatives of each of the Parties hereto.
- c) Applicable Law and Jurisdiction. This Agreement shall be deemed to have been made in, and shall be construed under, the internal laws of the State of Washington, without regard to the principles of conflicts of laws thereof and the United Nations Convention on Contracts for the International Sale of Goods. Any mediation shall be conducted at a mutually agreed upon location. In addition, Maxxess and Customer acknowledge and agree that the courts located in King County shall have exclusive jurisdiction in any action or proceedings with respect to this Agreement, including the federal district courts located in Washington State.
- d) Dispute Resolution
  - 1) The Parties shall attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between executives of the Parties.
  - 2) If a controversy or claim should arise one Party shall give written notice to the other Party of such controversy or claim (the "Invoking Party"). The Parties shall use their best efforts to arrange personal meetings or telephone conferences as needed, at mutually convenient times and places, between negotiators for the Parties to try and resolve the controversy or claim.
  - 3) If resolution is not achieved by negotiators at the final management level within thirty (30) days from the date of written notice, then the Parties agree any controversy or claim shall be subject to the exclusive jurisdiction of the federal and state courts within King County, Washington and the Parties further agree and submit to the personal and exclusive jurisdiction and venue of those courts.
- e) Partial Illegality. If any provision of this Agreement or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use their best efforts to replace the invalid or unenforceable provisions by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by either Party from the terms and provisions of this Agreement in order to comply with applicable laws, rules or regulations shall not be considered a breach of this Agreement.
- f) Waiver of Compliance. Any failure by any Party hereto to enforce at any time any term or condition under this Agreement shall not be considered a waiver of that Party's right thereafter to enforce each item and condition of this Agreement.
- g) Written Notice. All notices, requests, demands, instructions, documents and other communications to be given hereunder by either Party to the other shall be in writing, shall be sent to the address set forth below (provided that any Party may at any time change its address for notice or other such information by giving written notice thereof in accordance with this Section), and shall be deemed to be duly given upon the earliest of (a) hand delivery, (b) the first business day after sending by reputable overnight delivery service for next-day delivery or (c) the date actually received by the other Party:
  - If to Maxxess:  
  
135 South State College Blvd Suite 200  
Brea CA 92821  
Attention: COO
  - If to Customer:  
  
Dept. of Administrative Services  
614 Division Street  
Port Orchard, WA 98366  
United States
- h) Section Headings. The section headings in this Agreement are for convenience only and shall not be used in construing the Agreement.
- i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and any such counterparts may be deliver by facsimile or other electronic means.

*Signature Page to Follow*

SOFTWARE SUPPORT AGREEMENT

IN WITNESS WHEREOF, the authorized representatives of the Parties represent that they have read this Agreement, understand it and agree to be bound by it without exception by executing it below.

	<u>Maxxis Systems, Inc.</u>	<u>Customer</u>
Signature		
Name	<u>Nancy Islas</u>	<u>Karen R. Bean</u>
Title	<u>President</u>	<u>County Administrator</u>
Date	<u>May 30, 2023</u>	<u>06.02.2023</u>

**SOFTWARE SUPPORT AGREEMENT**

**EXHIBIT A – DEFINITIONS**

Term	Definition
Business Day	Monday through Friday, excluding Maxxess recognized holidays
Client	Customer’s computer.
Fault	Error or defect in the Software
Parties	Maxxess and Customer.
Party	Maxxess or Customer.
Purchase Order	Customer’s ordering document that commits Customer to purchase and pay for Software Support.
Server	The computer system upon which the Software runs.
Software	The object code version of the Maxxess computer software programs that are installed on the Server.
Software License Agreement	A right and license to install and use the Software subject to such restrictions as are otherwise set forth in the Maxxess End User License Agreement.
Software Support	Software services to be provided by Maxxess or Maxxess’s authorized Third Party Maintainer in accordance with this Agreement. Software Support is described in terms of three levels: <ul style="list-style-type: none"> <li>• Level 1 Support: means the support provided in response to the User’s initial e-mail or telephone call identifying an error.</li> <li>• Level 2 Support: means the support provided to reproduce and attempt to correct the error or to determine that the error cannot be reproduced; and</li> <li>• Level 3 Support: means the support provided to isolate the error at the component level of the Software, to distribute and error correction or circumvention or to give notice of the error if no error correction or circumvention can be found.</li> </ul>
Support	Software Support
Support Region	A region that Maxxess provides Software Support.
Third Party Maintainer	A third-party organization trained and authorized by Maxxess to perform Software Support.
User	The end user of the Maxxess system.
Update	Any minor, maintenance or patch update of the Software, which Maxxess may provide to Customers from time to time without additional charge to licensees of the Software who continue to receive Software Support with respect thereto. New Versions that Maxxess does not generally provide without charge shall not be deemed to be Updates for purposes of this Agreement.
Version	A major version of the Software which contains substantial and significant enhancements, or other substantial changes in functionality or performance as compared to the previous version (if any), and which is designated by Maxxess by a number on the left of the decimal point (e.g. Version X.0).

**SOFTWARE SUPPORT AGREEMENT**

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**EXHIBIT B – SOFTWARE SUPPORT CONTACT FORM**

General Information

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

Email Address: \_\_\_\_\_

Contract/Financial Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

City, State or Province: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Authorized Contacts must be Maxxess trained for your installed product configuration. Maxxess may require validation of training. Only the Trained Contacts listed below or as modified in writing by Maxxess will be eligible for telephone or web support. Maxxess permits up to six (6) named contacts for Maxxess Support. *YOUR COMPLETE EMAIL ADDRESS IS NECESSARY FOR THIS SUPPORT.*

1. Trained Contact Name: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

Location: \_\_\_\_\_

2. Trained Contact Name: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

Location: \_\_\_\_\_

3. Trained Contact Name: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

Location: \_\_\_\_\_

4. Trained Contact Name: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

Location: \_\_\_\_\_

5. Trained Contact Name: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

Location: \_\_\_\_\_

**SOFTWARE SUPPORT AGREEMENT**

**EXHIBIT C – SUPPORT LEVEL AND PRICE**

Qty	Description	Support Coverage dates	Part Number	Line Total
1	Extended Support- 5 Year Coverage	(1/1/2023– 12/31/2027)	5555-450	See Quote Below
			Subtotal	
			Total	See Quote Below



Kitsap County  
Maxxess Software Support

Jeff Vrabel

February 15, 2023

**SYSTEM PROPOSAL**

**SCOPE OF WORK:**

Provide Maxxess "extended software support" for 5 years. 1/1/2023-12/31/2027

Site ID-1485

**EXCLUDES:**

1. Programming Labor.

**SYSTEM COMPONENTS:**

Qty	Description
1	Extended Support Renewal 5 Year - Kitsap County (Site ID-1485) (1/1/2023-12/31/2027)

<b>SYSTEM TOTAL</b>	<b>\$16,892.00</b>	<small>initial to accept</small>
	<small>+ sales tax &amp; permit</small>	

**THESE ITEMS ARE EXCLUDED UNLESS CHECKED YES:**

Included in Scope:	Yes:	Included in Scope:	Yes:	Included in Scope:	Yes:
Shop Drawings		Fire Permit		Prevailing Wages	
As-Built Drawings		Electrical Permit		Performance Bond	
Data Submittals		Fire Stopping		Provide Lift(s)	
Wire Supply		Coring		Programming	
Wire Installation		Door Lock Hardware		POE Switches	
Conduit & Installation		Door Lock Hardware Installation		Testing	
Devices		120v ac Power Material & Install		Training - Remote 1 hr	
Devices Installation				Training - Remote 4 hr	

- Proposal is valid for 30 days from the date on this proposal
- All parts and labor are warranted for one year
- An authorized purchase order and/or contract will be required to commence work
- A system with monitoring or cloud hosting will require a contract to activate
- Additional work requested beyond the scope of this proposal will be billed at a time & material rate
- Additional parts needed to connect a cellular communicator with a weak cellular signal will be billed as an additional cost
- Customer to provide robust & reliable Wifi connection if needed
- Existing wiring or equipment to be integrated with this scope of work is assumed to be in working order and supported by the manufacturer, work and parts needed to upgrade or fix an existing system will be billed at a time and material rate
- All work to be performed during SSNW's business hours Monday - Friday 8:00 - 4:30 excluding holidays
- Work will be billed each month in increments proportionate to progress toward completion of the project
- Balance to be billed at the completion of installation, payments are due at net 30 days from invoice date

**Presented by:** \_\_\_\_\_  
Tom McKellar - 206.513.3405

**Acceptance:** \_\_\_\_\_ \_\_\_\_\_ Date  
(please sign here)  
1619 N State St. Bellingham WA, 98225 t 360.734.4940 f 360.647.9540 www.ssnw.co

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**SOFTWARE SUPPORT AGREEMENT**

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Note: Prices are subject to change upon renewal or when additional Software is added.

**Maxxess Systems, Inc.**

**Customer**

Signature:

\_\_\_\_\_

\_\_\_\_\_

Name:

\_\_\_\_\_

\_\_\_\_\_

Title:

\_\_\_\_\_

\_\_\_\_\_

Date:

\_\_\_\_\_

\_\_\_\_\_

**Exhibit D**

**End User License Agreement**

PLEASE READ THIS END USER LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE INSTALLING THE SOFTWARE PROVIDED BY MAXXESS SYSTEMS INC. ("Maxxess") AND USING THE PRODUCT. THIS IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR ENTITY) AND MAXXESS REGARDING YOUR USE OF THE PRODUCT, WHICH INCLUDES USER DOCUMENTATION PROVIDED IN ELECTRONIC FORM (TOGETHER, THE "SOFTWARE"). USING THIS SOFTWARE INDICATES YOUR ACKNOWLEDGEMENT THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND TO ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST REFRAIN FROM USING OR INSTALLING THIS SOFTWARE.

**1) OWNERSHIP**

- A. You are receiving a limited license to use the Software strictly in accordance with the terms and conditions of this Agreement and only in connection with the operation of the Product. You may only reproduce the Software in accordance with this Agreement and consistent with the notices contained therein. Except for the license rights granted below, Maxxess and its suppliers retain all right, title and interest in and to the Software, including all intellectual property rights therein such as, without limitation, know-how, trade secrets, architectures, and systems and methods for producing product functionality. This Agreement does not constitute a transfer or sale of the ownership rights held by Maxxess and its suppliers in or to the Software. The Software is protected by applicable intellectual property laws, including United States copyright laws and international treaties.

**2) GRANT OF LICENSE**

- A. Subject to Sections 1 and 3, Maxxess grants to You a non-exclusive, revocable, non-transferable, non-sublicenseable, limited license to install and use a copy of the specified version of the Software in object code format, on each platform that You intend to use up to the maximum number of users. For purposes of this Section 2, the Software will be deemed to be installed on any platform from which a user could access such Software over a network or otherwise, whether or not it is actually accessed or copied onto the disk or other data storage device of such computer.
- B. If the Software is an Update, as defined in Section 4, from an earlier version thereof, the License to the earlier version shall terminate automatically without further notice thirty (30) days after the Update is installed for use hereunder.
- C. The Software is licensed not sold. Any reference herein to any sale or purchase of the Software or any similar reference shall be deemed to mean a license of the Software.
- D. If the Product was provided to You pursuant to an Maxxess evaluation program, then in addition to the other provisions and limitations hereof, the Product may be used only for evaluation purposes for the period specified at the time of delivery and if no period has been specified, then You may use the Product for thirty (30) days. In addition, the Product may not be used for any production purposes. At the end of the evaluation period, if You wish to use the Product for production purposes You must purchase a Software license. In the event You determine not to enter into a licensing agreement with Maxxess at the end of the specified evaluation period, then Your rights under this Agreement shall terminate automatically and You shall return the Product to Maxxess.

**3) LICENSE RESTRICTIONS**

- A. You acknowledge that, except as expressly stated in the license granted above, You have no express or implied license to use, modify or improve the Software or any of Maxxess's patents, copyrights, trade secrets and/or trademarks (including the Software). Maxxess reserves all rights to the Software not expressly granted to You by this Agreement.
- B. YOU MAY NOT RENT, LEASE, SUBLICENSE, SELL, ASSIGN, LOAN OR OTHERWISE TRANSFER THE SOFTWARE OR ANY OF YOUR RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT. Any purported transaction in violation of this Section 3 shall be null and void and of no force or effect. You may not reverse engineer, decompile, or disassemble the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not remove or destroy any copyright notices or other proprietary markings. You may not modify or adapt the Software, merge the Software into another program or create derivative works based on the Software. You may not use, copy, or distribute the Software without Licensor's authorization, except that you may make one (1) copy of the Software for archival or back-up purposes only. You may not print copies of any user documentation provided in "online" or electronic form. You agree to make reasonable efforts to notify and inform Your employees or agents having access to the Software of Your limitations, duties and obligations regarding use of the Software.

**4) UPDATES**

- A. Maxxess may from time to time provide You with updates, patches, error corrections or new or modified versions of the Software (collectively referred to as "Updates"). Unless those Updates are supplied with a written license agreement,



they will be deemed part of the Software subject to this Agreement. The warranty provided in Section 10 will apply to an Update subject to this Agreement only if You obtain the Update during the Warranty Period (that is, within 30 days after the original ship date), and the warranty with respect to that Update will continue only until the end of the Warranty Period. Any Update subject to this Agreement obtained after the Warranty Period will be provided AS IS. Maxxess has no obligation under this Agreement to provide any Updates.

**5) DELIVERY**

- A. The Software is considered sold and shipped to You F.O.B. point of origin, upon transfer to a common carrier at a Maxxess designated location.

**6) SERVICE AND SUPPORT**

- A. Maxxess has no obligation to provide support, service, upgrades, modifications, or new releases under this Agreement. Maxxess may provide such services under a separate agreement.

**7) AUDIT**

- A. Maxxess may audit and inspect Your records and systems upon ten (10) business day's prior written notice to confirm Your compliance with Your obligations under this Agreement. Such audits and inspections shall be performed at Your facilities during Your regular business hours or via a remote connection. You shall reasonably cooperate with any such audit. Maxxess will not conduct more than one audit hereunder per year, except that, if an audit reveals a breach of this Agreement, Maxxess may conduct a subsequent audit at any time. Maxxess will initially pay the cost of any audit. You will reimburse Maxxess for such cost, however, if such audit reveals any material breach of this Agreement. Without limiting any of Maxxess's other rights or remedies, if any Audit reveals, or if Maxxess otherwise determines or discovers that Your use exceeds Your license, You shall immediately pay to Maxxess license fees sufficient at Maxxess's then current standard rates to obtain the right to use the Software by the number of users You then have using the Software.

**8) TERM AND TERMINATION**

- A. Maxxess may terminate this Agreement if You violate it. You must destroy all copies of the Software in Your possession or control promptly upon termination. Upon Maxxess's request, You must certify in writing that You have complied with Your obligations under this Section 8 and otherwise under this Agreement. Termination by Maxxess will not limit any of its other rights or remedies under this Agreement or at law or in equity. Any provision of this Agreement that by its sense and context is intended to survive termination of this Agreement will survive termination.

**9) EXPORT CONTROL REQUIREMENTS**

- A. You may not use or otherwise export or re-export the Software except as authorized by United States Law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported to (i) into (or to a national resident of) any U.S. embargoed country or (ii) to anyone on the U.S. Treasury Department's list of Specially Designed Nations or the U.S. Department of Commerce's Table of Denial Orders.

**10) LIMITED WARRANTY**

- A. LIMITED WARRANTY FOR SOFTWARE. Maxxess warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. If an implied warranty or condition is created by your state /jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you. Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.
  - a. LIMITATION ON REMEDIES; NO CONSEQUENTIAL OR OTHER DAMAGES. Your exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by Maxxess, YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES, if the Software does not meet Maxxess's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose. The terms of Section 10 (C) ("Exclusion of Incidental, Consequential and Certain Other Damages") are also incorporated into this Limited Warranty. Some states /jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above

- limitation or exclusion may not apply to you. This Limited Warranty gives you specific legal rights. You may have other rights which vary from state/jurisdiction to state/jurisdiction.
- b. **YOUR EXCLUSIVE REMEDY.** Maxxess's and its partners' entire liability and your exclusive remedy for any breach of this Limited Warranty or for any other breach of this EULA or for any other liability relating to the Software shall be, at Maxxess's option from time to time exercised subject to applicable law, (a) return of the amount paid (if any) for the Software, or (b) repair or replacement of the Software, that does not meet this Limited Warranty and that is returned to Maxxess. You will receive the remedy elected by Maxxess without charge, except that you are responsible for any expenses you may incur (e.g. cost of shipping the Software to Maxxess).
  - c. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use or a virus. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer, and Maxxess will use commercially reasonable efforts to provide your remedy within a commercially reasonable time of your compliance with Maxxess's warranty remedy procedures.
- B. DISCLAIMER OF WARRANTIES.** The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Maxxess and its suppliers provide the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Software, and the provision of or failure to provide support or other services, information, software, and related content through the Software or otherwise arising out of the use of the Software. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE SOFTWARE.
- C. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MAXXESS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF MAXXESS OR ANY SUPPLIER, AND EVEN IF MAXXESS OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- D. EXCEPT AS STATED IN SECTION 10A, MAXXESS AND ITS SUPPLIERS DO NOT MAKE ANY WARRANTIES.** IN PARTICULAR, THE SOFTWARE AND ANY SOFTWARE MEDIA ARE PROVIDED AS IS, WITHOUT ADDITIONAL WARRANTY OF ANY KIND, AND MAXXESS AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, OR ANY WARRANTIES OF NON-INFRINGEMENT OF ANY THIRD PARTY'S PATENT(S), TRADE SECRET(S), COPYRIGHT(S), OR OTHER INTELLECTUAL PROPERTY RIGHTS. MAXXESS AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE SOFTWARE OR SOFTWARE MEDIA WILL BE CORRECTED. FURTHERMORE, MAXXESS AND ITS SUPPLIERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MAXXESS OR MAXXESS'S AUTHORIZED REPRESENTATIVE SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.
- E. LIMITATION OF LIABILITY AND REMEDIES.** Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of Maxxess and any of its partners under any provision of this EULA and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by Maxxess with respect to any breach of the Limited Warranty) shall be limited to the greater of the actual damages you incur in reasonable reliance on the Software up to the amount actually paid by you for the Software or US\$5.00. The foregoing limitations, exclusions and disclaimers

(including Sections 1, 2 and 3) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

**11) EXCLUSIVE REMEDIES**

- A. If, during the Warranty Period, You report any breach of warranty to Maxxess and Maxxess is reasonably able to verify that breach, Maxxess will make commercially reasonable efforts to repair or replace the Software or provide You a reasonable way to work around the problem, as determined by Maxxess.
- B. During the Warranty Period, You may report breaches of warranty by email to support@Maxxess-systems.com. You must describe the breach in detail and include a phone number or address at which You can be reached during normal business hours. Maxxess will respond within a reasonable time to any reported breach. Any corrected or replaced Software that You obtain under this Section 11 will be considered part of the Software licensed under this Agreement and will be covered by warranty only for any time remaining in the original Warranty Period.
- C. The remedies stated in this Section 11 are Your only rights or remedies and will be Maxxess's only liability or obligation, for any breach by Maxxess of any warranty.

**12) LIMITATION OF LIABILITY**

- A. IN NO EVENT SHALL MAXXESS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE, LOST PROFITS, LOSS OF DATA OR INFORMATION OF ANY KIND, OR COST OF PROCUREMENT OF NEW SOFTWARE ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR ITS USE UNDER THIS AGREEMENT, EVEN IF MAXXESS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, YOU UNDERSTAND THAT YOU ARE RESPONSIBLE FOR PROTECTING ALL OF YOUR DATA AND FOR ANY LOSS OR DAMAGE THAT RESULTS FROM ANY LOSS OR CORRUPTION OR DAMAGE TO YOUR DATA FOR ANY REASON, INCLUDING ANY BREACH OF THIS AGREEMENT BY MAXXESS. IN NO EVENT WILL MAXXESS AND ITS SUPPLIERS' LIABILITY FOR ANY CLAIM RELATING TO THE SOFTWARE OR ITS USE UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID FOR THE SOFTWARE.

**13) CONTROLLING LAW**

- A. This Agreement shall be governed by and construed in accordance with laws of the State of California, without giving effect to that state's choice of law rules.

**14) GOVERNMENT LICENSEE**

- A. If this Product is supplied to the United States Government, the following provisions apply: (a) the Government acknowledges Maxxess's representation that the Software contained in the Product was developed at private expense and no part of it is in the public domain; (b) the Software is classified as "Restricted Computer Software" as is defined in Clause 52.227-19 of the Federal Acquisition Regulations ("FAR"). The Government's rights in the Software shall be as defined in Clause 52.227-19(c) (2) of the FAR.

**15) ENTIRE AGREEMENT**

- A. This Agreement is the entire agreement between You and Maxxess relating to the Product and supersedes any prior or contemporaneous oral or written communication relating to the Product. Nothing contained in any purchase order, acknowledgement, or invoice shall in any way modify the terms or add any additional terms or conditions to this Agreement. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect. This Agreement may not be amended or waived except by a writing signed by You and an authorized representative of Maxxess.

**16) QUESTIONS**

- A. Should you have any questions concerning this Agreement, or if you desire to contact Maxxess for any reason, please contact Maxxess at support@maxxess-systems.com.

Exhibit E

Maxxess Supported Software

Name	Description	Part number
eAxxess	eAxxess enables you to build a security management system or integrate with existing card readers and alarm monitoring. The solution provides the fastest possible processing times. This distributed processing also provides maximum flexibility and the ability to add or delete access points without affecting overall system performance. Access decisions can be made accurately and without hesitation. Connections are made via standard data buses including IP, using existing Ethernet backbone, fiber, or data bus communications including RS-485.	7300-100 or 7300-150
eFusion	Fusion is a highly robust, adaptable security management software platform, specifically developed with utilities that allow you to modify and tailor the configuration to meet each client's particular requirements. It's recognized for its best-in class access control solutions with the greatest number of integrations, and easily adapts to accommodate both legacy hardware and the newest technologies in video surveillance, intruder, fire, perimeter, building management systems and smartphone apps.	7300-200

**ATTACHMENT A  
SOLE SOURCE**



**KITSAP COUNTY  
REQUEST FOR SOLE SOURCE**

TO: DEPARTMENT OF ADMINISTRATIVE SERVICES PURCHASING DIVISION

FROM: Karen Goon, County Administrator  
FACILITIES MAINTENANCE

*Karen Goon*

SIGNATURE OF DIVISION HEAD

*02.22.2023*

DATE

SOLE SOURCE REQUEST FOR THE PURCHASE OF:  
Maxxess extended software support

**REQUESTED SUPPLIER**

COMPANY NAME:	Maxxess Systems, Inc.
MAILING ADDRESS:	135 South State College Blvd., Suite 200, Brea, CA 92821
REPRESENTATIVE NAME:	Zeshaan Ahmed, Regional Director of Business Development
PHONE NUMBER:	(714) 772-1000
EMAIL:	<a href="mailto:zahmed@maxxess-systems.com">zahmed@maxxess-systems.com</a>
COST ESTIMATE:	\$16,892.00

**STATEMENT OF NEED:**

- Kitsap Counties Facilities Maintenance is requesting a Sole Source justification for the purchase of Maxxess extended software support. The basis of this purchase is that Kitsap County currently uses this exact product in multiple locations throughout Kitsap County and it would not be cost effective to change software. Maintaining use of the current software is in the best interest of the County.

Recommendation for sole source purchase based upon an objective review of the product, equipment or service being required and appears to be in the best interest of the County. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favor or compromising action have taken place. Neither has my personal familiarity with brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

**PURCHASING COMMENTS:**

Approved for product parody.

*Ken McNeill*

PURCHASING SUPERVISOR

*2/21/2023*

DATE