

**POSSE**  
**One-Time Perpetual Software License Agreement**

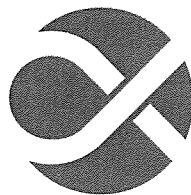
Made in duplicate on September 22, 2015

Between:

**City of Riverside ("CLIENT")**

and

**Computronix (U.S.A.), Inc. ("VENDOR")**



**COMPUTRONIX®**

# POSSE® One-Time Perpetual Software License Agreement

## 1. DEFINITIONS

- 1.1 Add-On Module – additional functionality that extends core POSSE features. Add-On Modules may be added to POSSE to permit additional functionality. Each Add-On Module is fully supported and has its own release cycle separate from the POSSE product release cycle. Examples of Add-On Modules include POSSE Dashboard, POSSE Archival Document Database and POSSE Mobile.
- 1.2 Agent – another party (e.g. a private inspection or enforcement agency) under contract to CLIENT and authorized by CLIENT to act on its behalf to use POSSE in delivering services within the legal jurisdictional boundaries of CLIENT. Agents authorized by CLIENT must agree in writing to CLIENT to adhere to all terms and conditions of this Agreement.
- 1.3 Agreement – this document and all schedules attached or incorporated by reference, and any subsequent addendums or amendments made in accordance with the provisions hereof.
- 1.4 Business Module - a pre-existing set of Configurations that extends POSSE by providing functionality specific to a business area. Examples of Business Modules include POSSE ABC – Licensing, POSSE ABC – Enforcement, POSSE LMS – Business & Professional Licensing, POSSE LMS – Permitting & Inspections, etc.
- 1.5 Configuration – all work required to configure data definitions and/or process definitions to reflect the business rules, workflow, security and data requirements of CLIENT, together with the resulting set of configured POSSE business processes. For greater certainty, Configuration includes both basic Configuration using the POSSE Stage point and click subsystem, as well as advanced Configuration using PL/SQL, .NET and/or Python code to enable advanced POSSE capabilities.
- 1.6 Defect - a program error that will cause POSSE to crash, or program algorithms or logic that produce incorrect results. Defects pertain to the intended operation of POSSE as delivered to CLIENT, but do not pertain to subsequent errors brought about by infrastructure changes made by CLIENT. Defects do not include changing user preferences, report or screen aesthetics, presentation standards, or validity of converted data. Defects do not pertain to problems arising from third-party software interfaced to POSSE, or to problems arising from POSSE Configurations not developed by VENDOR.
- 1.7 Enhancement - any work requested by CLIENT to alter existing POSSE features, or to add any new features or functions to POSSE software.
- 1.8 External User - an individual external to CLIENT and served by CLIENT who is provided access to the POSSE Production Database via the Internet. External Users are typically customers of CLIENT.
- 1.9 Intellectual Property – property that derives from the work of the mind or intellect, specifically, an idea, invention, trade secret, process, program, data, formula, patent, copyright, or trademark or application, right, or registration. Intellectual Property includes: a) POSSE pre-existing software, , or pre-existing software Configurations (including reports) of VENDOR; b) VENDOR methodologies, processes, tools, and general knowledge of the matters under consideration; and c) any pre-existing material provided by VENDOR under separate license.
- 1.10 Named User - an individual internal to CLIENT or representing CLIENT or an Agent who has access to the POSSE Production Database. A Named User can access the POSSE Production Database from any workstation on CLIENT's network or intranet, or via POSSE Mobile, or via the Internet.
- 1.11 POSSE® – refers to a modular, web-based regulatory workflow management system that combines configurable workflow, mapping, electronic documents, and mobile computing technologies into a single integrated database. POSSE® includes “toolbox” stored procedures and documentation that comes with the POSSE software.
- 1.12 POSSE Alcoholic Beverage Control System (may also be referred to as “POSSE ABC”) – A functioning, commercially available “out of the box” system that utilizes pre-existing Configurations, reports and/or other Add-On Modules operating within POSSE software. All POSSE ABC Configurations and reports are considered VENDOR Intellectual Property.
- 1.13 POSSE Land Management System (may also be referred to as “POSSE LMS”) – A functioning, commercially available “out of the box” system that utilizes pre-existing Configurations, reports and/or other Add-On Modules operating within POSSE software. All POSSE LMS Configurations and reports are considered VENDOR Intellectual Property.
- 1.14 Release – any version, point, maintenance or patch release to POSSE issued by VENDOR.
- 1.15 Site-Specific Configuration – any software deliverables, including but not limited to Configuration, reports, interfaces, data conversion scripts, and custom code, developed solely and specifically for CLIENT.

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- 1.16 Source Code – Any and all program code or database definitions developed by VENDOR using a formal programming language and used by POSSE software.

### **2. SCOPE OF AGREEMENT**

- 2.1 This Agreement provides CLIENT with a non-exclusive and non-revocable license for POSSE including the POSSE modules and the number of POSSE Named Users as identified in Exhibit A of this Agreement. The POSSE license includes an unlimited number of External Users.
- 2.2 CLIENT is permitted to establish any number of development, testing or training POSSE databases, plus one (1) POSSE production POSSE database at CLIENT site or at VENDOR approved hosting site. CLIENT is entitled to make back-up copies of POSSE for use in accordance with the provisions of this Agreement. CLIENT is entitled to have a warm standby copy of the POSSE database solely for disaster recovery purposes.
- 2.3 CLIENT is permitted to use POSSE only for processing transactions in relation to services provided by CLIENT within its legal jurisdictional boundaries. CLIENT may not use POSSE to process transactions for another jurisdiction.
- 2.4 The current Release of POSSE software will be provided to CLIENT. This Release will only be provided in compiled form and consists of executable code, database schemas, documentation and online help.

### **3. LICENSE FEES**

- 3.1 For the one-time perpetual license, CLIENT agrees to pay VENDOR a one-time license fee as identified in Exhibit A of this Agreement. All POSSE license fees are payable upon signing of this Agreement.
- 3.2 CLIENT agrees to remit payment to VENDOR within 30 calendar days of receipt of the invoice.

### **4. SOURCE CODE**

- 4.1 This license will provide CLIENT with run-time (compiled code) only capability for POSSE as described in Section 2 of this Agreement.
- 4.2 A copy of POSSE Source Code will be held in escrow for CLIENT by Lincoln-Parry SoftEscrow at no cost to CLIENT. The source code held in escrow will be refreshed at a minimum of two times per year.
- 4.3 Source code (metadata) to Site-Specific Configurations, PL/SQL, reports, and specialized code developed specifically for CLIENT will be installed at CLIENT site.

### **5. WARRANTIES**

- 5.1 VENDOR warrants that it has full power and authority to grant this POSSE license and that as of the effective date of this Agreement, the POSSE software does not infringe on any existing Intellectual Property rights of any third party. If a claim of infringement is made by any third party, VENDOR may, at its sole option either:
- a) secure for CLIENT the right to continue using the POSSE software; or
  - b) modify the POSSE software so that it does not infringe.
- 5.2 VENDOR has no obligation for any claim of infringement based on a modified version of the POSSE software, or based on the combination of the POSSE software with any third party product not provided by VENDOR. VENDOR provides no warranty whatsoever for any third party software or hardware products.
- 5.3 Except as expressly set forth herein, VENDOR disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

### **6. OWNERSHIP OF SOFTWARE AND DATA**

- 6.1 VENDOR has exclusive licensing and distribution rights for POSSE software (Copyright © 1997 – 2015, all rights reserved), including POSSE; POSSE LMS, POSSE ABC, POSSE Add-On Modules and POSSE Business Modules, within the United States of America. CLIENT will not remove any ownership or copyright notices from POSSE software or documentation. Reproduction, disassembly, decompilation, transfer, reverse engineering, or disclosure to others, in whole or in part, of POSSE is strictly prohibited.
- 6.2 VENDOR is, and will remain, the exclusive owner, or is the authorized agent of the owner of POSSE proprietary information, and all patent, copyright, trade secret, trademark, and other Intellectual Property rights remain solely with VENDOR. No license or conveyance of any such rights to CLIENT is granted or implied under this Agreement.

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- 6.3 VENDOR will retain ownership of the Intellectual Property associated with Enhancements, Business Modules, and Add-On Modules developed by VENDOR for CLIENT.
- 6.4 CLIENT is deemed to own any Site-Specific Configuration for their POSSE installation. CLIENT grants VENDOR a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, sublicense, modify, and sell the Site-Specific Configuration developed pursuant to this Agreement without compensation to CLIENT. Any use by VENDOR of CLIENT Site-Specific Configuration will be done in such a manner as to not identify any CLIENT-specific proprietary information or methodologies.
- 6.5 CLIENT may not sell, rent, lease, give, distribute, assign, pledge, sublicense, loan, timeshare, or otherwise transfer POSSE software to any other party. CLIENT will not copy, resell or give POSSE Configurations or documentation to any other party. CLIENT agrees not to distribute POSSE as part of any other software product, commercial or otherwise, without the prior written approval of VENDOR.
- 6.6 CLIENT will retain sole and complete ownership of its data at all times, regardless of the location of the data, and VENDOR may not make any use of CLIENT data other than for testing purposes, without the prior written consent of CLIENT.

## **7. CONFIDENTIAL AND PROPRIETARY INFORMATION**

- 7.1 Each party will hold in confidence, and will not disclose to any unauthorized personnel, any confidential or proprietary information of the other party. Each party will use such confidential or proprietary information only for the purpose for which it was disclosed.
- 7.2 As used in this Agreement, the term “confidential or proprietary information” means all trade secrets or proprietary information designated as such in writing by one party to the other. All software code in source or object format shall be deemed to be proprietary information whether it is marked as such or not. Information which is orally or visually disclosed by one party to the other, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, will constitute proprietary information of the releasing party if:
  - c) it would be apparent to a reasonable person, familiar with the business of the releasing party and the industry in which it operates, that such information is of a confidential or proprietary nature; or
  - d) The releasing party, within thirty (30) calendar days after such disclosure, delivers to the receiving party a written document describing such information and referencing the place and date of such oral, visual, or written disclosure, and the names of receiving party personnel to whom such disclosure was made.
- 7.3 Each party will only disclose confidential or proprietary information received by it under this Agreement to personnel who have a need to know such confidential or proprietary information for the performance of its duties and who are bound by an agreement to protect the confidentiality of such confidential or proprietary information.
- 7.4 Each party will adopt and maintain programs and procedures which are reasonably calculated to protect confidential or proprietary information, and will be responsible to the other party for any disclosure or misuse of confidential or proprietary information which results from a failure to comply with this provision. Each party will promptly report to the other party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the offended party to prevent, control, or remedy any such violation.
- 7.5 The obligations of each party specified above will not apply with respect to any confidential or proprietary information, if the receiving party can demonstrate, by reasonable evidence, that such confidential or proprietary information:
  - a) was generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the receiving party;
  - b) was already in the possession of the receiving party at the time of disclosure;
  - c) becomes known to the receiving party through disclosure by sources having the legal right to disclose such confidential information;
  - d) was independently developed by the receiving party without reference to, or reliance upon, the confidential information; or
  - e) was required to be disclosed by the receiving party to comply with applicable laws or governmental regulations, provided that the receiving party provides prompt written notice of such disclosure to the offended party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

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- 7.6 If CLIENT is subject to freedom of information legislation VENDOR agrees to adhere to the standards outlined in such legislation regarding protection of privacy and disclosure of records with respect to all work done for CLIENT pursuant to this Agreement.
- 7.7 Upon termination of this Agreement, each party will make all reasonable efforts to return to the other party all tangible manifestations, and all copies thereof, of confidential or proprietary information received by the other party under this Agreement, if requested to do so by the disclosing party.

### **8. LIMITATIONS OF LIABILITY AND INDEMNITY**

- 8.1 The liability of VENDOR to CLIENT for any losses or damages arising from the use of POSSE or from any other services covered under this Agreement will be limited to, at the discretion of VENDOR, either the return of the POSSE license fee paid, or the repair of POSSE so that it will perform without Defect.
- 8.2 CLIENT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THAT UNDER NO CIRCUMSTANCES WHATSOEVER WILL VENDOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR KIND, OR ANY LOSS RESULTING FROM BUSINESS DISRUPTION ARISING FROM THE USE OF POSSE, OR FROM ANY SERVICES COVERED UNDER THE TERMS OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IN THE EVENT THAT VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.3 Subject to the provisions of Section 8.1 and 8.2 above, VENDOR agrees to indemnify and save CLIENT harmless from any liability, damage, expense, or cost including, but not limited to, legal fees of a solicitor regarding any acts, duties, obligations, or omissions of the VENDOR.
- 8.4 Subject to the provisions of Section 8.1 and 8.2 above, VENDOR will, at the request of the CLIENT, assume the defense and the cost of any demand, claim, action, suit or proceeding of any nature brought against CLIENT by reason of the error, action, or omission of the VENDOR. Further, VENDOR will pay any damages, awards, judgments, costs, or other amounts assessed against, or otherwise payable by CLIENT as the result of the disposition of any such demand, claim, action, suit, or proceeding. Notwithstanding the foregoing, CLIENT is entitled to be represented in any such action, suit, or proceeding at its own expense and by counsel of its choice.

### **9. TERMINATION AND DEFAULT CONDITIONS**

- 9.1 VENDOR may terminate this Agreement if: CLIENT fails to make required payments, CLIENT materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, CLIENT becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of CLIENT. If any of the above conditions are encountered, VENDOR will provide written notice to CLIENT and provide 30 calendar days for CLIENT to remedy the default. If the default is not rectified within 30 calendar days, VENDOR will have cause to terminate this Agreement.
- 9.2 CLIENT may terminate this Agreement if: VENDOR materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, VENDOR becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of VENDOR. If any of the above conditions are encountered, CLIENT will provide written notice to VENDOR and provide 30 calendar days for VENDOR to remedy the default. If the default is not rectified within 30 calendar days, CLIENT will have cause to terminate this Agreement.
- 9.3 At the time that the obligations of each of the parties have otherwise concluded, it is understood and agreed that the provisions of Section 6 (OWNERSHIP OF SOFTWARE AND DATA) and Section 7 (CONFIDENTIAL AND PROPRIETARY INFORMATION) will continue in full force and effect.

### **10. RIGHTS AND OBLIGATIONS**

- 10.1 If either VENDOR or CLIENT terminates this Agreement, VENDOR will retain all fees for products delivered to CLIENT up to the date of termination.
- 10.2 Any termination by VENDOR as provided in this Agreement will not in any way operate to deny any right or remedy of VENDOR, either at law or in equity, or to relieve CLIENT of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.
- 10.3 Any termination by CLIENT as provided in this Agreement will not in any way operate to deny any right or remedy of CLIENT, either at law or in equity, or to relieve VENDOR of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination..

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10.4 POSSE is subject to the export control laws of the United States and other countries. CLIENT may not export or re-export POSSE software without the appropriate United States and foreign government licenses. CLIENT must comply with all applicable export control laws and will defend, indemnify and hold VENDOR harmless from any claims arising from CLIENT's violation of such export control laws.

### **11. DISPUTES**

- 11.1 VENDOR and CLIENT will both separately and jointly use diligent efforts to establish positive and ongoing communications both within and between their respective organizations. Key personnel within VENDOR and CLIENT will communicate regularly in order to review the status and priorities for the provision of services by VENDOR and CLIENT.
- 11.2 In the event of any dispute arising between VENDOR and CLIENT with respect to their rights and obligations under this Agreement, the party feeling itself aggrieved will notify the other party of the substance in writing of such grievance. Both parties agree to work in good faith and make all reasonable efforts to resolve the dispute, including, if necessary, escalating the dispute to:
- a) First level: the VP, Operations of VENDOR and the Chief Innovation Officer for CLIENT; and
  - b) Second level: the President/CEO of VENDOR and the City Manager for CLIENT.
- 11.3 Material changes to this Agreement or an increase in compensation to the VENDOR as a result of Section 11.2, will require the approval of the appropriate CLIENT governing body.
- 11.4 In the event the grievance cannot be resolved to the mutual satisfaction of the parties within 30 calendar days, the party feeling itself aggrieved may request mediation, based on the then-current commercial mediation rules of the American Arbitration Association. The award of the mediation body will be non-binding upon VENDOR and CLIENT.

### **12. WAIVER**

- 12.1 No failure or delay on the part of either party to exercise any right or remedy hereunder will operate as a waiver of such right or remedy.

### **13. SUCCESSION**

- 13.1 This Agreement will be binding on the legal successors or representatives of VENDOR and CLIENT. It will also be binding on any party that receives licensing and distribution rights to POSSE from VENDOR.
- 13.2 Any rights granted to either party under this Agreement may not be assigned by that party, or the successor to that party, without the prior written approval of the other party, which will not be unreasonably withheld.

### **14. SEVERENCE**

- 14.1 If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision can be severed from this Agreement and all other provisions will remain in full force and effect.

### **15. GOVERNING LAW**

- 15.1 This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of California. The parties irrevocably attorn to the jurisdiction of the courts of the State of California.

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**16. ACCEPTANCE OF AGREEMENT**

- 16.1 This Agreement comprises the entire and sole POSSE Software License Agreement between VENDOR and CLIENT. No other understandings or agreements, verbal or otherwise, exist for the licensing of POSSE. VENDOR and CLIENT agree not to change this Agreement except by written agreement.

CITY OF RIVERSIDE, a California  
charter city and municipal corporation  
a California corporation

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

COMPUTRONIX (U.S.A.), Inc., a  
Colorado corporation

By: \_\_\_\_\_

GLENN DAGG  
[Printed Name]

VICE PRESIDENT  
[Title]

By: \_\_\_\_\_

DALE JOHNSON  
[Printed Name]

SECRETARY/TREASURER  
[Title]

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
**CHIEF ASSISTANT CITY ATTORNEY**

## POSSE® One-Time Perpetual Software License Agreement

### Exhibit A – Licensed Software and Fees

License and all other fees quoted in this Agreement are in US dollars and exclude any applicable taxes.

| Module                                      | Quantity | Unit Price | Total Price |
|---|----------|------------|-------------|
| POSSE Enterprise License                    | 1        | \$125,000  | \$125,000   |
| POSSE Named User Licenses (first 100)       | 100      | \$950      | \$95,000    |
| POSSE Named User Licenses (100-500)         | 20       | \$750      | \$15,000    |
| POSSE LMS – Permitting & Inspections Module | 1        | \$15,000   | \$15,000    |
| POSSE LMS – Planning Module                 | 1        | \$20,000   | \$20,000    |
| POSSE LMS – Code Enforcement Module         | 1        | \$15,000   | \$15,000    |
| POSSE Ad-hoc Reporting                      | 1        | \$15,000   | \$15,000    |
|   |          |            |             |
| Subtotal                                    |          |            | \$300,000   |
| One-time discount                           |          |            | (\$32,880)  |
| Total Fees                                  |          |            | \$267,120   |

Additional POSSE Named User licenses are available based on the following rates per Named User:

| Number of Users | Rate per User |
|-----------------|---------------|
| 0 - 100         | \$950         |
| 101 – 500       | \$750         |
| 501+            | \$550         |

Named User licenses are cumulative (e.g. the pricing for 101-500 only applies to the incremental users above 100; the pricing is not retroactive to the first user). The number of licensed POSSE Named Users is subject to a semi-annual confirmation by VENDOR of the number of users with access to the POSSE Production Database(s). At the discretion of VENDOR, the rates for Named User licenses is subject to change annually, but will not be increased by more five (5) per cent compounded annually since the last increase.

VENDOR'S CITY ATTORNEY