

Annual Product Support Agreement for POSSE Clients

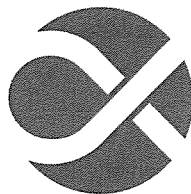
Made in duplicate on September 22, 2015

Between:

City of Riverside ("CLIENT")

and

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



COMPUTRONIX®

Annual Product Support Agreement for POSSE Clients

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 Agreement – this document and all schedules attached or incorporated by reference, and any subsequent addendums or amendments made in accordance with the provisions hereof.
- 1.3 Annual Support Services Fee – the annual fee payable by CLIENT to VENDOR for the support services provided by the VENDOR under Section 3 of this Agreement.
- 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(s) – 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 or any other Third-Party. 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 Infrastructure – the physical wiring, network, hardware and software necessary to deploy and operate POSSE. Infrastructure also includes any workstation/notebook/tablet hardware and software, web or applications servers, wireless service providers, and other peripheral hardware or software used by POSSE, including Third-Party Software.
- 1.8 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.
- 1.9 POSSE® – refers to a modular, web-based regulatory workflow management system that combines configurable workflow, mapping, electronic documents, and remote computing technologies into a single integrated database. POSSE includes “Toolbox” stored procedures and documentation that comes with the POSSE software.
- 1.10 Release – any version, point, or maintenance release to POSSE issued by VENDOR.
- 1.11 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.
- 1.12 Statement of Work (SOW) – a document that describes the implementation services, software products, and other deliverables to be provided by VENDOR (including its subcontractors if applicable) to CLIENT.
- 1.13 Third-Party – a person, corporation, organization or entity other than CLIENT or VENDOR.
- 1.14 Third-Party Software – any identifiable product embedded in and/or linked to POSSE software at CLIENT’s site, but to which the proprietary rights belong to a Third-Party.

2. TERM OF AGREEMENT

- 2.1 This Agreement is effective upon signing, and will remain in effect for an initial period of one (1) year. This Agreement will be renewed annually thereafter upon payment by CLIENT of the Annual Support Services Fee, unless otherwise revised or terminated under the provisions of this Agreement.
- 2.2 CLIENT may elect to terminate annual support services described in this Agreement at any time, at its sole discretion, by providing 180 calendar days advance written notice to VENDOR. In the event that CLIENT terminates annual support services and wishes to reactivate annual support services at a future date, all Annual Support Services Fees back to the

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date of termination will be payable before annual support services are reactivated. If CLIENT is able to demonstrate that the reason for termination of annual support services was due to transition to an alternate system, and CLIENT wishes to transition back to POSSE, a one-time concession of 50% of the support services fee back to the date of termination will be provided.

3. SERVICE AND SUPPORT FEES

3.1 The Annual Support Services Fee for the services specified in Section 4 of this Agreement is identified in Exhibit A. The Annual Support Services Fee for the initial term is due and payable upon signing of this Agreement. Support service fees are payable for each full or partial calendar month in which support services are provided to CLIENT. VENDOR will invoice CLIENT approximately one month prior to the expiration of this Agreement and CLIENT agrees to pay VENDOR in advance for the Annual Support Services Fee.

3.2 CLIENT agrees to remit payment to VENDOR within 30 calendar days of receipt of the invoice.

4. VENDOR SUPPORT SERVICES

4.1 VENDOR agrees, during the term of this Agreement, to provide POSSE support services in a timely and professional manner. VENDOR will provide unlimited technical support for CLIENT's POSSE support personnel described in Section 5.2 of this Agreement. Support pertains to POSSE, POSSE Business Modules and/or POSSE Add-On Modules (if licensed).

4.2 The POSSE Support Web site (<http://posse.computronix.com>) will be available 24 x 7 for submitting CLIENT support requests. The POSSE support desk will be staffed from 7:00 a.m. to 6:00 p.m. Mountain Time, Monday to Friday, excluding Alberta statutory holidays. Critical issues will be responded to outside of core support hours, at no additional cost to CLIENT. Extended hours of coverage or on-call coverage outside of these working hours can be provided at additional rates to be negotiated between the Parties.

4.3 When CLIENT submits a support request through the POSSE Support Web site (<http://posse.computronix.com>) during normal Computronix hours for support, as specified in Section 4.2 of this Agreement, VENDOR and CLIENT will categorize, and VENDOR will escalate as appropriate, the support request according to the following criteria:

Severity	Definition	Response Time	Response Process
Critical	CLIENT site is down. Major impact to operations of CLIENT site.	< 15 min	Immediate and ongoing effort, with continuous reporting to CLIENT until a work-around or fix has been provided.
High	Major impairment of at least one important function at CLIENT site. Operations at CLIENT site are impacted. All important CLIENT functions are working albeit with extra work.	< 1 hour	Proceed with fix as high priority work with reporting to CLIENT as necessary until a work-around or fix has been provided.
Medium	CLIENT Operations not significantly impacted. One or more minor CLIENT functions not working. Major usability irritations impacting many staff at CLIENT.	< 4 hours	Proceed with fix as medium priority work, according to schedule set by VENDOR.
Low	Minor usability irritations. Work-around exists.	< 2 working days	Proceed with fix as low priority work, according to schedule set by VENDOR.

4.4 The Annual Support Services Fee does NOT include technical support for Site-Specific Configurations and Third-Party Software not embedded within POSSE, such as operating system software and Microsoft Office products. Technical support for POSSE related Third-Party hardware that may be used by CLIENT, including field inspection notebook

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computers, tablets, smartphones, digital cameras, scanners, printers, digital signature pads, and other hardware peripherals is not included.

- 4.5 In the event that VENDOR has sold Third-Party licenses to the CLIENT, VENDOR will be responsible for researching and diagnosing the issue and, if proven to be a POSSE product issue, for fixing it, or if proven to be a Third-Party product issue, for submitting the issue to the Third-Party.
- 4.6 VENDOR will not begin charging CLIENT for resolution of a non-POSSE related problem until VENDOR demonstrates to CLIENT that the source of the problem is not related to a POSSE Defect and CLIENT has authorized work to resolve the issue. No time will be charged to CLIENT for POSSE Defects reported to VENDOR.
- 4.7 VENDOR will provide notice of all new POSSE software Releases or releases to an Add-on Module to CLIENT. A new Release may include POSSE executable code, Release notes, updated documentation and/or online help, and database conversion routines, as needed. VENDOR will retain full ownership rights to any POSSE software Release or Add-on Module release delivered to CLIENT. If requested by CLIENT, VENDOR may provide services to implement a new POSSE Release or Add-on Module release under the terms and conditions contained in Section 5 AVAILABLE VENDOR PROFESSIONAL SERVICES.
- 4.8 Unless otherwise specified, POSSE product warranty and support activities will be conducted at and deployed from VENDOR offices. Travel and living expenses to provide on-site services deemed by Computronix as required to repair a POSSE Defect will not be charged to CLIENT.

5. CLIENT OBLIGATIONS AND RESPONSIBILITIES

Unless otherwise stated in a separate agreement between the parties or in a Schedule of this Agreement, the following tasks will be the sole responsibility of CLIENT:

- 5.1 Infrastructure Support – CLIENT is responsible for installing, testing, and supporting its Infrastructure, and for ensuring a stable operating environment documented as compatible with POSSE software. CLIENT is responsible to ensure that maintenance and support is contracted with applicable Third-Party hardware and software vendors. Responsibilities include: maintaining current virus protection software and installing all “critical” operating system upgrades; managing Third-Party Software products on infrastructure not related to POSSE that may interfere with the operation of POSSE; managing the local Internet Service Provider (ISP) providing CLIENT its Internet connection and/or its wireless service; managing its own networks; and implementing its own security policies and procedures.
- 5.2 POSSE Support – CLIENT is responsible for providing first-line POSSE support to CLIENT staff. First-line POSSE support is responsible for researching issues and assessing if they are the result of a POSSE Defect. A single primary CLIENT representative will identify a limited number of CLIENT staff entitled to submit POSSE support requests. Only those CLIENT staff identified by the primary CLIENT representative will be provide access to the POSSE Support site for submitting issues.
- 5.3 Installation and Deployment – CLIENT is responsible for installing and testing new POSSE Releases at CLIENT’s site, , for communicating POSSE changes to CLIENT staff and external internet users, and for providing required training and support to CLIENT staff and external internet users.
- 5.4 Database Operations – CLIENT is responsible for on-site operational support of the POSSE database server(s) and for providing POSSE database administration. Tasks include performing POSSE system backups, system restarts, and providing on-site troubleshooting assistance for VENDOR staff.
- 5.5 Third-Party Software Licenses – CLIENT is responsible for acquiring software licenses and upgrades for any Third-Party Software required by VENDOR to complete its responsibilities under this Agreement. CLIENT will be responsible to ensure that software maintenance and support is contracted with the respective Third-Party vendors.
- 5.6 Future Releases – CLIENT acknowledges that future Releases of POSSE software may require different or additional equipment and/or software in order to function properly. VENDOR is required to provide CLIENT with sufficient notification of such requirements. CLIENT will be responsible to fund, acquire, install, and maintain such different or additional equipment and/or software.
- 5.7 Remote Access – CLIENT will provide VENDOR with the means to electronically connect to the CLIENT’s POSSE environment, including production, test and development databases, to enable software transfers and remote troubleshooting. At a minimum, remote access provided by the CLIENT shall support web conferences hosted by Computronix. Remote VPN access should be available to VENDOR at the time of the initial POSSE installation at CLIENT site.

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6. AVAILABLE VENDOR PROFESSIONAL SERVICES

- 6.1 At the request of CLIENT, VENDOR may provide any or all of the following professional services: installation of new POSSE Releases, development of Site-Specific Configuration, report development, infrastructure support, training, Site-Specific warranty, first line POSSE support, database monitoring and management, and any other consulting activity. VENDOR professional services may be purchased for an all-inclusive fixed-cost or on a time-and-materials basis. All terms, conditions and costs for VENDOR professional services will be specified in a separate agreement (SOW or work order) between the CLIENT and VENDOR.
- 6.2 At the request of CLIENT, VENDOR may assist CLIENT in its fulfillment of the obligations and responsibilities specified in Section 4 of this Agreement. All terms, conditions and costs for these services will be specified in a separate agreement (SOW or work order) between the CLIENT and VENDOR.
- 6.3 Reasonable travel and living expenses incurred by VENDOR in the delivery of on-site VENDOR professional services will be billed at cost to CLIENT or at a rate to be negotiated between VENDOR and CLIENT. When traveling to CLIENT, VENDOR one-way travel time will be charged to the CLIENT site.

7. WARRANTY

- 7.1 All POSSE Releases delivered to CLIENT have an 18 month warranty from the general availability date of the Release. CLIENT will have 18 months from the date of general availability of a Release to install an upgrade. If CLIENT elects not to upgrade to the newer Release within 18 months, support services described in Sections 4 of this Agreement may be provided at additional cost. In the case of POSSE version releases, CLIENT will receive at least six months notice prior to the general availability of a version release, in order to provide adequate time to prepare for an upgrade.
- 7.2 Unless otherwise specified in VENDOR's Statement of Work, the warranty on all VENDOR-developed Site-Specific Configuration is 60 calendar days from the date of implementation.
- 7.3 VENDOR will repair POSSE Defects reported by CLIENT while this Agreement is in effect at no additional cost to CLIENT. VENDOR will make all reasonable efforts to resolve Defects quickly, via a patch Release if necessary. CLIENT will have to upgrade to the current Release of POSSE, as corrections are only applied to the current production Release of POSSE.
- 7.4 VENDOR does not provide warranty for any Site-Specific Configuration, or custom code not developed by VENDOR, or developed by VENDOR and subsequently altered by CLIENT or any other Third-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 current-year Annual Support Services Fee, 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.

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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.

10. RIGHTS AND OBLIGATIONS

- 10.1 If either VENDOR or CLIENT terminates this Agreement, VENDOR will retain all fees for products or services delivered to CLIENT up to the date of termination. VENDOR will refund a pro-rated portion of the Annual Support Services Fee to CLIENT, based on the number of full or partial calendar months of service provided under the Agreement since the last annual renewal date.
- 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 sum due under this Agreement, or of any other obligation accrued prior to the effective date of termination.

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.

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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. FORCE MAJEURE

14.1 A delay in, or total or partial failure of, performance of either party in this Agreement will not constitute a default or termination or give rise to any claim for damages if such delay or failure is caused by any force majeure occurrence demonstrably beyond the reasonable control of the party.

14.2 Force majeure categories include acts of God; acts or inaction on the part of governmental authority; acts of war or the public enemy; or any other acts beyond the reasonable control of either party that result in either party being unable to carry on normal business operations for a period of one week or longer.

15. SEVERANCE

15.1 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.

16. GOVERNING LAW

16.1 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.

17. ACCEPTANCE OF AGREEMENT

17.1 This Agreement comprises the entire and sole POSSE Annual Support Agreement between VENDOR and CLIENT. No other understandings or agreements, verbal or otherwise, exist for the support 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 OGG

[Printed Name]

VICE PRESIDENT

[Title]

By: _____

DALE JOHNSON

[Printed Name]

SECRETARY/TREASURER

[Title]

APPROVED AS TO FORM:

BY: _____
CHIEF ASSISTANT CITY ATTORNEY

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Exhibit A – Annual Support Services Fees

All fees referred to in this Agreement are in US dollars, and exclude any applicable taxes.

Time Period	Fee
Year 1 (Initial term)	\$60,000
Year 2	\$60,000
Year 3	\$63,000
Year 4	\$63,000
Year 5	\$66,150

For subsequent years, increases in the Annual Support Services Fee are to be capped by the rate of increase in the US Consumer Price Index (CPI) + 1%, compounded annually

APPROVED AS TO FORM

CHIEF ASSISTANT CITY ATTORNEY