

END-USER LICENSE AGREEMENT

PURVIS FIRE STATION ALERTING SYSTEM (FSAS)

This End-User License Agreement ("Agreement") is effective as of the date of the latest signature below (hereinafter "Effective Date") between PURVIS Systems Incorporated, a New York Corporation, ("PURVIS" or "Licensor"), located at 88 Silva Lane, Middletown, RI 02842 and the City of Aurora, an Illinois home rule municipal corporation, ("Licensee"), located at 44 E. Downer Place, Aurora, IL 60507.

RECITALS

WHEREAS, Licensor has developed the PURVIS Fire Station Alerting System™ ("PURVIS FSAS" or "FSAS") and desires to grant Licensee a license to use the Software;

WHEREAS, Licensee wishes to use the Software under the terms and conditions set forth in this Agreement;

WHEREAS, Licensor and Licensee have executed one or more Contract(s) and/or Purchase Order(s) ("Contract") for the Licensee's procurement of the PURVIS FSAS;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Licensor and Licensee hereby agree as follows:

1. GRANT OF LICENSE

PURVIS grants Licensee a non-exclusive, perpetual license to use the Software only in connection with the PURVIS FSAS and solely for Licensee's internal business use. "*Software*" means all software, firmware, and databases created by PURVIS for the PURVIS FSAS. Refer to PURVIS' proposal and/or the Contract for the specific Software items licensed by Licensee under this Agreement.

2. RESTRICTIONS ON USE

Subject to Freedom of Information Act, No license or right is granted to license, sell, disclose, or otherwise transfer the Software to others. Licensee shall not manufacture, modify, reproduce, copy, reverse engineer, decompile, disassemble, or create derivative works of Software. Licensee acknowledges that any documentation delivered in connection with the software included in the FSAS is PURVIS' proprietary information, and Licensee may not disclose, assign, or sublicense such documentation and information to anyone without PURVIS' prior written consent and then only on terms acceptable to PURVIS, except as may be required by law. Licensee represents and warrants that it is acquiring the Software and the FSAS for its own business use and purpose, without any intention to re-sell or transfer the Software or the FSAS to any third party.

3. MAINTENANCE AND SUPPORT

Warranty and Maintenance services shall be provided in accordance with the PURVIS FSAS Service Agreement, for the periods and prices set forth in the Contract.

4. TERM OF AGREEMENT

This Agreement shall commence on the effective date and shall continue in effect until terminated by PURVIS or Licensee.

5. TERMINATION

Except as expressly stated to the contrary in the Contract, if either party fails to comply with any terms and conditions of this Agreement, the other party may terminate this Agreement upon 30 days written notice, specifying such breach, unless within the period of such notice, all breaches specified therein have been cured. Licensee's failure to pay PURVIS amounts due shall be considered a material breach of this Agreement.

Upon termination, PURVIS shall remove the Software from the Licensee's equipment. Licensee shall allow PURVIS reasonable access to the equipment so that PURVIS can remove the Software. Licensee agrees that it has no right to, and hereby expressly releases and holds PURVIS harmless from any liability for any damages, equitable relief, or indemnification of any kind, including but not limited to loss of profits, or any other cost, damage, liability, loss or expense incurred by Licensee due to any expiration or termination of this Agreement.

6. WARRANTY AND REMEDIES

PURVIS warrants that Software manufactured by PURVIS, under normal use and service as originally delivered to Licensee, will function substantially in accordance with the functional description in the PURVIS proposal or the Contract. PURVIS' sole liability and Licensee's sole remedy for breach of this Software warranty shall be, at PURVIS' election, PURVIS' good faith effort to rectify the nonconformity or replace the Software with Software that conforms. This warranty does not apply if Software failure is a result of accident, misuse, abuse, misapplication, or unauthorized modification by Licensee.

7. INTELLECTUAL PROPERTY

(a) *Ownership.* PURVIS alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the licensed Software contained in the FSAS. "Intellectual Property Rights" means all exclusionary, proprietary, or other rights existing from time to time under patent, copyright, trade secret, trademark, unfair competition, or other laws. The PURVIS name, the PURVIS logo, and the product names associated with the FSAS are trademarks of PURVIS or third parties, and no right or license is granted to use them. In the course of the performance of this Agreement, PURVIS may disclose to Licensee certain confidential information regarding the design, computer code, specifications and other matters regarding the Software and the FSAS. Licensee agrees to hold all such information disclosed to Licensee regarding the Software and the FSAS confidential for a period of five (5) years after the termination of this Agreement and Licensee shall not during such period disclose any confidential information regarding the Software or the FSAS to any third party, except as may be required by law or pursuant to a valid court order or subpoena. Licensee shall promptly notify PURVIS of the receipt of any court order, subpoena, or other legal request, and afford PURVIS the opportunity to contest or limit any such court order, subpoena, or request as the same may relate to the Software and the FSAS and any confidential information relating thereto.

(b) *PURVIS FSAS IP Indemnity.* Except as expressly provided in the Contract, PURVIS will defend and hold Licensee harmless against any claims, legal actions, and other expenses in connection with any claims that the FSAS or any Hardware or Software created by PURVIS within the FSAS infringes or violates intellectual property rights of any third party, on the condition that Licensee notifies PURVIS promptly of the claim and gives PURVIS sole control of the defense and negotiations for its settlement or compromise. If Licensee is, or may become, prohibited from use of the FSAS by reason of an actual or anticipated claim, PURVIS will use its reasonable efforts, at PURVIS' sole cost and expense, to either: (a) obtain for Licensee the right to use the

FSAS, (b) replace or modify the FSAS so that it is no longer subject to a claim but performs the same functions in an equivalent manner, or (c) refund to Licensee the amount paid in respect to the FSAS. PURVIS shall not have any liability to Licensee if the infringement or other violation of a third party right is based in any way upon (i) the use of the FSAS in combination with other components, equipment or software not furnished by PURVIS, (ii) third party or off-the-shelf Hardware or Software used in conjunction with or incorporated into the FSAS; or (iii) any component of the FSAS which has been modified or altered by Licensee without authorization. EXCEPT AS EXPRESSLY PROVIDED IN THE CONTRACT, THIS SECTION STATES THE ENTIRE RESPONSIBILITY OF PURVIS CONCERNING INTELLECTUAL PROPERTY CLAIMS REGARDING THE FSAS AND PURVIS' HARDWARE AND SOFTWARE AND WILL SURVIVE TERMINATION OF THE AGREEMENT.

(c) *Third Party Hardware and Software IP Indemnity Pass-through.* Except as expressly provided in the Contract, with respect to any third-party hardware or software contained in the FSAS, PURVIS agrees to pass on to Licensee, to the extent permissible under applicable agreements, any warranties, or indemnities with regard to patent or copyright infringement provided to PURVIS by such vendors. PURVIS is not authorized to act as agent for any vendor in patent or copyright matters. PURVIS will, upon notification from Licensee of any allegation of patent or copyright infringement involving third-party hardware or software, promptly notify the vendor(s), and assist (at Licensee's expense) in obtaining from vendor(s) such remedies as may be contained in PURVIS' agreement(s) with such vendor(s).

(d) *Improvements.* All rights, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs, derivatives and related documentation, other works of authorship fixed in any tangible medium of expression, or other forms of intellectual property, whether or not subject of statutory protection, which are made, created, developed, written, conceived or first reduced to practice by PURVIS solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under this Agreement shall belong to and be the sole and exclusive property of PURVIS.

8. PERSONAL DATA CONTAINED WITHIN THE FSAS OR ANY HOSTED SERVICES

PURVIS does not own any personal data, information or material that may be introduced into or contained within the FSAS in the course of Licensee's use of the FSAS, including, without limitation, cellular telephone numbers, names, email addresses or other information by which individuals are contacted or identified ("Personal Data"). Licensee, not PURVIS, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Personal Data. Licensee is responsible for the Personal Data and PURVIS shall not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store any Personal Data.

9. LIMITATION OF LIABILITY

EXCEPT FOR ANY EXPRESS HARDWARE OR SOFTWARE WARRANTIES PROVIDED IN THE AGREEMENT AND THE CONTRACT, PURVIS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE FSAS OR ANY HARDWARE, SOFTWARE or SERVICES THEREIN. PURVIS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE FSAS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE FSAS WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED

DATA WILL BE ACCURATE OR RELIABLE, (D) THE EFFECTIVENESS OF THE FSAS IN CONVEYING EMERGENCY MESSAGES OR WARNINGS, OR THE USE TO WHICH ANY RESPONDER OR OTHER PARTY MAY PUT SUCH MESSAGES OR WARNINGS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE FSAS OR THE SERVER(S) THAT MAKE THE FSAS AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE FSAS AND ALL CONTENT IS PROVIDED TO LICENSEE STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY PURVIS AND ITS LICENSORS.

EXCEPT AS EXPRESSLY PROVIDED IN ANY OTHER CONTRACT OR AGREEMENT BETWEEN THE PARTIES RELATING TO THE FSAS SYSTEM, IN NO EVENT SHALL PURVIS'S AGGREGATE LIABILITY UNDER THE AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM LICENSEE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. EXCEPT AS EXPRESSLY PROVIDED IN ANY OTHER CONTRACT OR AGREEMENT BETWEEN THE PARTIES RELATING TO THE FSAS SYSTEM, IN NO EVENT SHALL PURVIS AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE FSAS, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE FSAS, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF PURVIS HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. INTERNET DELAYS

THE FSAS OR ANY HOSTED SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PURVIS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. LICENSEE IS SOLELY RESPONSIBLE FOR ITS ACCESS TO THE INTERNET FOR PURPOSES OF USING THE FSAS AND ANY HOSTED SERVICES. PURVIS IS NOT AN INTERNET PROVIDER AND HAS NO RESPONSIBILITY WHATSOEVER IN ARRANGING FOR, OR MONITORING, THE LICENSEE'S ACCESS TO THE INTERNET IN ORDER TO USE THE FSAS OR ANY HOSTED SERVICES.

11. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform its obligations hereunder and shall have no liability whatsoever as a result of any cause beyond the reasonable control of such party, including without limitation: acts of the other party; acts of the Government; acts of God; acts of third persons; strikes, embargoes, delays in the mail, transportation and delivery; power failures and shortages; fires, floods, epidemics and unusually severe weather conditions; or other causes beyond the control of such party.

12. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in force and full effect. Notwithstanding the provisions of the

foregoing sentence, if such invalidity shall change the basic intent of the parties as set forth in this Agreement, the rights, duties, or obligations of either party hereunder shall be subject to good-faith renegotiations between the parties.

13. NON-WAIVER

The failure of either party to exercise any right provided in this Agreement shall not constitute a waiver of any right hereunder.

14. ASSIGNMENT

Neither party shall assign, sell, transfer, or in any way encumber its interest under this Agreement without first obtaining the written consent of the other party hereto.

15. NOTICES

All notices required hereunder shall be in writing and shall be delivered to the address indicated in the Agreement (or at such other address as shall be given pursuant to this provision by either of the parties to the other).

16. INDEPENDENT COMPANY

It is understood and agreed by and between the parties that PURVIS, in satisfying the conditions of this Agreement, is acting independently, and that Licensee assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by PURVIS pursuant to this Agreement shall be in the capacity of an independent company, and not as an agent or employee of Licensee. PURVIS shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of the Agreement.

17. COMPLIANCE WITH LAWS/LAWS GOVERNING

Each party shall comply with all applicable federal, state or local laws, regulations or ordinances in effect on the date of this Agreement or thereafter adopted. The parties shall conduct all of their activities associated with this Agreement consistent with these applicable regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

18. CERTAIN LAWS

The PURVIS FSAS uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. Licensee agrees to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Licensee acknowledges and agrees that the Software shall not be used by, transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Software, Licensee represents and warrants that Licensee is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

19. AGREEMENT

This Agreement sets forth the entire understanding between the parties as to the subject matter herein, and supersedes all prior agreements, discussions, and understandings, expressed or implied, between the parties. This Agreement may not be altered except by a written agreement signed by both parties.

20. COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be deemed to be an original and such counterparts together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives on the day and year first above written.

PURVIS Systems Incorporated (Licensor)

Licensee

Danielle Flynn

1/11/2024

Authorized Signature

Date

Authorized Signature

Date

Danielle Flynn, Contracts Manager

Printed Name and Title

Printed Name and Title

PURVIS FIRE STATION ALERTING SYSTEM (FSAS) SERVICE AGREEMENT

CUSTOMER: City of Aurora, IL

I. INTRODUCTION

This Service Agreement ("Agreement") is effective upon Customer's written acceptance of the PURVIS FSAS system (FSAS), or as otherwise specified in the Customer's Contract/Purchase Order(s) ("Contract"), and will continue for the time period specified in the Contract. This Agreement will remain in effect for any subsequent service periods purchased by the Customer via mutual written agreement of the parties at the prices set forth in the Contract, quote, or as otherwise mutually agreed.

The terms and conditions in the End-User License Agreement for the PURVIS Fire Station Alerting System, executed by PURVIS and Customer, are incorporated herein by reference.

The warranty, maintenance and support services provided under this Agreement cover all PURVIS-provided hardware and software identified in the PURVIS FSAS Contract(s) with Customer. Failures must be caused by PURVIS-provided FSAS hardware and/or software in order to be covered by this Agreement, except that Customer-provided hardware and/or software is covered only to the extent that it is explicitly identified in the Contract as being covered.

Services shall be performed by trained, experienced and qualified personnel and with due care, skill, and diligence in accordance with applicable industry standards and the terms of this Agreement.

This Agreement includes the following services:

Standard Services – Remote Support	Included
Optional Services	Select if Applicable
Option 1: On-Site Support	Included

II. DESCRIPTION OF SERVICES

STANDARD SERVICES – REMOTE SUPPORT

Standard Services include Help Desk, Emergency/Non-Emergency Hardware and Software Repairs, Software Version Updates, and Remote Access Support. Remote technical support is provided by phone or remote access. On-site support is not provided under standard services and is available as an Option.

TYPES OF SERVICE REQUESTS AND RESPONSE TIMES

Emergency Service Request is defined as a major failure of PURVIS-provided FSAS software or hardware that results in no service at one or more locations. Response to an Emergency

Service Request is provided within four hours following request. PURVIS will troubleshoot, diagnose, and repair emergency system failures 24/7/365, including holidays, until resolved.

Non-Emergency Service Request is defined as a failure or incident in which the service continues to operate, but a non-critical PURVIS-provided feature, such as a speaker or LED light, is not available or does not function as it should. Service for non-emergency failures is provided during normal business hours, Monday through Friday, between the hours of 8 AM and 5 PM Customer Local Time, excluding federal holidays. Response to a Non-Emergency Service Request is provided within the next business day and will typically be resolved within two business days.

A. HELP DESK

CUSTOMER MUST INITIATE A SERVICE REQUEST BY CONTACTING
THE PURVIS 24x7x365 HELP DESK:

FOR EMERGENCY SUPPORT:

PHONE: 866-841-2824

FOR NON-EMERGENCY SUPPORT:

ONLINE: [HTTPS://SUPPORT.PURVIS.COM](https://support.purvis.com) or

E-MAIL: FSAS-SUPPORT@PURVIS.COM

The PURVIS Help Desk receives and logs all customer support calls and creates trouble tickets for all calls received.

All Emergency Requests will be confirmed by return phone call: a PURVIS Support Engineer will acknowledge Customer's request within two (2) hours of receipt and will solicit specific details regarding the service request if needed. Following this initial response, PURVIS will confirm that it is an Emergency Service Request or will reclassify it as a Non-Emergency Service Request if applicable.

For Online or Email requests: a PURVIS Support Engineer shall acknowledge Customer's request within two (2) hours of receipt during normal business hours, Monday through Friday, between the hours of 8 AM and 5 PM Customer Local Time, excluding federal holidays. PURVIS will solicit specific details regarding the service request if needed.

B. HARDWARE AND SOFTWARE WARRANTY

Hardware Repair/Replacement

PURVIS warrants that the Hardware provided by PURVIS for the PURVIS FSAS will be free of defects in materials and workmanship and conform to specifications set forth in the Contract and any FSAS user manuals/documentation provided to Customer. PURVIS' sole liability and responsibility under this Agreement is to repair or replace, at PURVIS' option, any Hardware provided by PURVIS, which PURVIS determines does not conform to the warranty.

For hardware failures that result in a critical system operation failure, PURVIS will ship a replacement Hardware device or component to the Customer within one (1) business day of determination by PURVIS that the Hardware provided by PURVIS has failed and does not conform to the warranty. All shipments for critical system operation failure items will be scheduled for overnight delivery.

For hardware failures that result in a non-critical operation failure, PURVIS will ship a replacement Hardware device or component to the Customer within seven (7) business days of determination by PURVIS that the Hardware provided by PURVIS has failed and does not conform to the warranty.

For Customers that maintain an on-site FSAS Spares inventory, PURVIS will deliver the repaired or replacement Hardware device or component to the Customer within thirty (30) calendar days to replenish the Customer's Spares inventory.

The Customer is responsible for shipping the failed hardware device or component to PURVIS' RI office within 5 business days of reporting failure. The Customer is responsible for shipping costs.

NOTE: If Customer purchases Option 1, On-Site Services, shipping of hardware between Customer and PURVIS is not applicable, since PURVIS will provide delivery and/or pick-up of hardware while performing on-site services.

Software Repair/Replacement

"Software" means all software, firmware, and databases created by PURVIS for the PURVIS FSAS. Refer to PURVIS' proposal and/or the Contract for the specific Software items licensed by Licensee under this Agreement.

PURVIS warrants that Software manufactured by PURVIS, under normal use and service as originally delivered to Customer, will function substantially in accordance with the functional description in the PURVIS documentation. PURVIS' sole liability and Customer's sole remedy for breach of this Software warranty shall be, at PURVIS' election, PURVIS' good faith effort to rectify the nonconformity or replace the Software with Software that conforms.

Customer is expected to perform any configuration updates/changes to the system.

C. SOFTWARE VERSION UPGRADES

General availability software version upgrades for critical issue patches and scheduled major version upgrades are included as part of this Agreement. PURVIS typically operates on a bi-annual build/release cycle for normal FSAS maintenance builds. Major version upgrades are planned for rollout on a 36-month cycle. Any critical software issues that may arise will be addressed and patches will be released in General Availability as soon as they are completed and successfully pass a rigorous regression test cycle.

PURVIS will load new updates into the customer's system using the Software Update feature on the PURVIS FSAS DM Console. Newly installed updates can be automatically pushed to PURVIS FSAS Station Control Units and the Central Servers at any time. All software updates will be coordinated with the Customer.

D. REMOTE SOFTWARE SUPPORT

Remote Software Support is provided through VPN or other remote service tool; and it allows PURVIS to connect to each FSAS location to diagnose issues, update system software, and provide remote technical support.

OPTIONAL SERVICES

OPTION 1:

ON-SITE SUPPORT may be purchased as an Option, and includes all of the above standard services in addition to the following:

On-Site Technical Assistance is provided to support service requests that are not resolved remotely. On-site maintenance services are available 24x7x365 and will be provided in accordance with the response times for the type of service request. When on-site services are provided, shipping of hardware between Customer and PURVIS is not applicable, since PURVIS will provide delivery and/or pick-up of hardware while performing on-site services.

Preventive Maintenance is included with the on-site support option. One (1) preventive maintenance visit per station per year is scheduled during normal business hours of Monday – Friday between the hours of 8 AM and 5 PM Customer Local Time. Preventive maintenance is performed with the objectives of prolonging the life of equipment and preventing the need for corrective and emergency repairs. All major components of the system are cleaned and tested, and any unreported equipment failure is identified and repaired. Preventive Maintenance is not applicable during the first year of this Agreement.

III. LIMITATIONS/CUSTOMER RESPONSIBILITIES

1. This Agreement does not cover hardware and software that Customer purchased from a vendor other than PURVIS, including existing Customer-owned hardware that is connected to PURVIS FSAS, unless such items are explicitly identified in the Contract as being covered.
2. This Agreement does not cover Software failure resulting from accident, misuse, abuse, misapplication or unauthorized modification by Customer.
3. This Agreement does not cover Hardware that requires replacement/repair due to normal wear and tear (such as UPS battery), is damaged as a result of vandalism, misuse, force majeure or other act of God (such as fire, flood, lightning, etc.), is disassembled, modified or tampered with, or is otherwise negligently or improperly installed or maintained by Customer.
4. This Agreement does not cover replacement of hardware in the event that hardware becomes obsolete (technical refresh).
5. Customer is responsible for applying Windows and Antivirus updates. PURVIS shall provide Customer with document entitled “Microsoft Windows Patching” for reference when applying such updates.
6. Customer must provide PURVIS with remote access to the PURVIS FSAS to enable PURVIS to connect to the FSAS system at each location.
7. Customer must designate a single point of contact that will initiate service requests via the PURVIS help desk, and that PURVIS can contact to request Customer personnel support for troubleshooting or on-site repair services.
8. If the Optional on-site support is not applicable to this Agreement, Customer is responsible for on-site preventive maintenance and on-site technical support of the FSAS.
9. If Optional on-site support is applicable, Customer must provide PURVIS maintenance personnel with timely access to locations as needed to perform on-site services.

IV. OUT OF SCOPE SERVICES

In the event that PURVIS provides support under this Agreement in response to a Help Desk request, and PURVIS determines it to be an issue not covered under the applicable Software Warranty and/or Hardware Warranty or as a result of customer's non-compliance with the terms of this Agreement ("out-of-scope service"), PURVIS reserves the right to be reimbursed for such services. PURVIS shall invoice on a Time and Materials basis for such out of scope services at the then current hourly rate, and payment terms shall be Net 30. The current hourly rate of \$165 per hour for out-of-scope services is effective through calendar year 2023 and will be subject to 3% annual escalation thereafter.