



END USER LICENSE AGREEMENT

RECITALS:

WHEREAS, this LICENSE AGREEMENT (“Agreement”) is made between the end user entity having executed this document, either by way of ink signature, electronic signature or acceptance by way of executing an order (“Licensee”); and **Archive360, LLC**, having a corporate address at One Liberty Plaza, 165 Broadway, New York, NY 10006 (“Archive360” or “Licensor”);

WHEREAS, Archive360 is the owner of certain proprietary software known as *FastCollect*[™] (the “Software”) that Licensee will utilize in connection with a data migration project for Licensee”);

WHEREAS, Licensee or its partner has solicited a quotation (“Quote”) from Archive360 to license its Software;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS HEREIN AND THE FEES AND CHARGES SET FORTH IN THE QUOTE, THE PARTIES AGREE TO THE FOLLOWING:

1 **License to Use Software; No Ownership of Software.**

1.1 License. Licensor grants to Licensee a limited, non-transferable, non-sublicensable, non-exclusive and limited license to use the Software in object code format only for Licensee’s internal business purposes for the particular Software and services purchased as set forth in the Quote. Licensee shall not grant a sublicense for the use of the Software, disclose access codes or license keys to any third party, or otherwise permit any third party to use the Software without written consent from Licensor. Licensee shall not: (i) decompile, disassemble, or reverse engineer the Software; (ii) modify or create any derivative works (including, without limitation, translations, transformations, adaptations, or other recast or altered versions) based on the Software; (iii) merge the Software with any other software; (iv) copy, sell, publish, sublicense, lease, rent, loan, assign, convey, or otherwise transfer the Software or copies thereof; (v) distribute, disclose or allow use of the Software, in any format, through any timesharing service, service bureau, network or by any other means, to or by any third parties; or (vi) or permit or encourage any third party to do any of the foregoing.

1.2 Ownership. This license does not grant or transfer to Licensee any ownership rights in the Software or any and all enhancements, modifications, and updates. Licensee agrees to secure and protect the Software including copies thereof.

1.3 Acknowledgment of Software and Services Provided. Licensee acknowledges that (i) the licenses and services are limited to the Software and services specified in the Quote; (ii) payment obligations arise from the issuance of the production software license key and not the deployment, data ingestion, data validation or completion of any project (iii) payment of the full amount set in the Quote is a condition to the completion of services and continued activation of the software production license key, (iv) Licensor is not a data controller or data processor, (v) services provided by Licensor may be renewed after the initial period expires for additional ninety (90) day increments upon request at the same rate as set forth in the Quote, (vi) Licensee acknowledges that the amount charged by Archive360 is unaffected by any decision made by any

other Party to stop, delay, suspend or reduce the size of the migration project, (vii) Licensee acknowledges that neither Licensor nor any other party has made any representations that Licensee's entire environment will be migrated and/or that services shall be provided indefinitely, (viii) Licensee acknowledges that the Software and/or services may not validate or migrate data that is unable to be retrieved if it is structurally corrupt, missing, malformed or otherwise unavailable. Reasonable efforts will be made to recover the data and generate a report as to the probable reasons for any data that may not be recovered and/or validated. If it is possible to retrieve such unavailable data by way of writing new code, such services may be offered to Licensee at an additional cost for such services.

1.4 Licensee acknowledges that Archive360 makes no representations as to how fast any particular migration will be conducted given how many variables are involved and makes no representations as to a particular date when any migration will be completed. Accordingly, Archive360 does not project, estimate or report as to completion dates. Archive360 does provide current throughput reports as to velocity and empirical migration stats. The parties to this Agreement acknowledge that there are many factors that impact performance beyond Licensor's control. For instance, system access restrictions, throughput restrictions, batch limits, environment stability, other system operations, downtime, etc., are just a few examples of things that happen during the migration process that impact the completion date. Licensee agrees to maintain its existing server environment and maintenance contracts until it makes an independent determination that all required data has been migrated to the selected destination. Licensee acknowledges that Archive360 makes no representations that any project will be completed by any date so as to avoid any existing or continuing contractual obligations of Licensee to maintain its environment.

1.5 Licensee will have thirty (30) days from the date of termination to retrieve any of data that Licensee wishes to keep. Licensee acknowledges that in the event that virtual machines are provisioned for Licensee where any data is maintained on any such VMs and/or subscription owned by Licensor, Archive360 is under no obligation to pay for or maintain such data for any period of time thirty (30) days after the license herein expires. If Licensee suspends, abandons or does not complete the migration within the licensed period, Archive360 will not be responsible to maintain such data and may delete such accounts and data without further notification.

1.6 Licensee acknowledges that in the event that a databox or other type of drive shipping of data is utilized by Licensee, Archive360 is under no obligation to pay for, coordinate, insure, or be responsible for the transfer of such data that is dry shipped.

2 Limitation of Warranties; Limitations of Liability.

2.1 LIMITATIONS OF WARRANTIES. Archive360 does not make any warranty (express or implied), except as specifically stated herein. Archive360 does warrant the functionality of its FastCollect software and to use reasonable skill and care in providing services to perform the migration tasks identified in the accompanying Statement of Work (SOW). Archive further warrants its rightful possession, ownership, use and non-infringement of its software. Any further warranties of merchantability and fitness for a particular purpose are expressly excluded. Archive360 does not represent that the operation of the software will be uninterrupted or error free. Archive360 does not represent that all data in Licensee's environment is accessible or able to be migrated.

2.2 LIMITATION OF LIABILITY. Archive360 shall not have any liability to Customer for any indirect, incidental, consequential, or special damages, including, without limitation, business interruption, or loss of profit or goodwill, in connection with the FastCollect™ and Archive2Azure™ software, its use or misuse, or its performance or non-performance, even if Archive360 has been advised of the possibility of such damages. Archive360 shall not have any liability to Customer for any actions by the Company as specified within any Statement of Work to migrate and/or transfer Customer data from one jurisdiction to another that may violate any

applicable data privacy law, data localization or cross border data transfer law. To the extent any liability is found on the part of Archive360, the maximum liability for any claim arising under this agreement shall not exceed the amount of the purchase price and fees payable by Customer for the software and services giving rise to the claim. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

2.3 **Waiver.** Licensee waives any claim or damage arising out of or in connection with the following:-

(a) The data migration project is incomplete or data is unable to be migrated as a result of or contributed by problems arising from end user's environment or because data is corrupted, missing, malformed or otherwise unable to be migrated.

(b) Any data stored on any external drive and drive shipped to a third party that was not delivered or not able to be uploaded to any ISP platform;

3 **Termination of License.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Archive360 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

4 **Export Control.** Licensee agrees not to export or re-export the Software in any form in violation of the export control laws of the United States of America (including the Export Administration Regulations promulgated by the U.S. Commerce Department) and any other applicable country.

5 **Use of Trademarks.** Any reference to, or use of, the Archive360 trademarks must follow Archive360's trademark guidelines and contain appropriate trademark notices. Licensee shall not alter or modify the Archive360 trademarks in any way. Archive360 may identify Licensee as a customer of its Software and services on its marketing materials.

6 **Term of Agreement.** This Agreement commences on the date this Agreement is executed by all parties and the time for maintenance and support begins with issuance of software production license key and terminates as per the Quote.

7 **Refund or Payment upon Termination.** If the Archive360 License is terminated prior to the end of its term Licensee will receive a pro-rata refund for any prepaid fees covering the remainder of the term after the effective date of termination.

8 **Fees & Payment.** Payment is due as specified in the Quote. If any invoiced amount is not received by Archive360 by the due date, then without limiting Archive360's rights or remedies, fees and charges will accrue late fees at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

DPOR, PAL & CUA designation. The pricing of this Agreement is expressly conditioned on Archive360 being designated as the Digital Partner of Record (DPOR), Partner Admin Link (PAL) and Customer Usage Attribution (CUA) throughout the entire subscription term of the Archive2Azure Services under the program established by Microsoft to designate its partners as key

services/lifecycle support partner engaged in providing ongoing support. Archive360's designation as DPOR, PAL and CUA together with it having a dedicated subscription within Customer's Azure tenancy will enhance Archive360 ability to provide more immediate and effective service. The parties acknowledge that this designation also involves Archive360's receipt of certain credits and payments from Microsoft to drive consumption to Microsoft Azure and O365.

9 **Payment Disputes.** If Licensee disputes the applicable fees and charges reasonably and in good faith and are cooperating diligently to resolve the dispute, Archive360 will continue with the project. If the payment dispute is not resolved within two (2) weeks, Archive360 reserves the right to revoke the license production key issued and discontinue services until the dispute is resolved.

10 **Assignment.** None of the parties may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld).

11 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

12 **Third-Party Beneficiaries.** There are no third-party beneficiaries.

13 **No Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

15 **Governing Law/Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey, United States of America, without reference to choice-of-law or conflict-of-law principles. Venue for any controversy or proceeding, judicial or otherwise, instituted by either party to this Agreement, shall be laid in New Jersey, United States. This License Agreement shall control in the event of any conflict between any other agreement among the Parties. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

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