

# Terms of Service for eFileCabinet

Last Updated: September 28, 2018

These Terms of Service for a Software As A Service (SAAS) version of eFileCabinet™ software is a legal and binding contract (referred to as this "Agreement") between you, as the user (hereafter referred to as "**you**" and "**your**"), and eFileCabinet, Inc., a Utah corporation (hereafter referred to as "**eFileCabinet**", "**we**", "**us**", or "**our**"). You should accept this Agreement by clicking the appropriate button on our website before using our Service.

**30 Day Refund Policy:** Within thirty (30) days of the date you pay for the License under this Agreement, you may contact us at sales@efilecabinet.com and receive a full refund of your initial subscription purchase (does not apply to annual renewals) and unfulfilled professional services. Your right to use the Service and access or retrieve Your Data will immediately and permanently terminate with your refund request.

**eFileCabinet Scanner Return Policy:** Scanners returned to eFileCabinet unopened and "as new" in its original packaging within thirty (30) days from the initial invoice date can receive a refund minus a 15% restocking fee. Scanner refunds cannot be issued until the product has been received and determined that the packaging has not been tampered with. Scanners will be shipped back to eFileCabinet at the expense of the customer. All opened merchandise is considered "used equipment" and cannot be resold by eFileCabinet as new. Returns of opened merchandise will not receive a refund.

## 1. Description of the Service and Your License to It.

1.1 Definition of the Service. In this Agreement, the term "**Service**" (with an initial capital letter) means the eFileCabinet™ software (and any updates or revisions to it we make) accessed from us and used by you as a licensed service provided to you through the Internet.

1.2 Your License. We grant you a limited, nonexclusive, nontransferable, non-sublicensable right to access the Service from your computer (defined below) through the Internet (the "**License**") to store and retrieve Your Data (defined below) on eFileCabinet Servers (defined below), on the terms of this Agreement. You may not transfer or assign the License, or lend, share or permit anyone else to use the Service or your password to it. Rights not expressly granted to you are reserved to us. You may not sublicense or loan use of the Service, or any documentation on our website, to any other person. You may use the Service only for your own personal and business purposes. You may use our Service with services you provide to others, but you may not loan or time share the Service, or use it as storage service for another person.

1.3 Your Computer. You should only access the Service through your own computer. References to "**your computer**" means any computer or device functioning as an Internet client or workstation in your possession and control with Internet access, which you use to access the Service. Minimum specifications for your computer are found here and we may change these specifications without notice to you, so check them regularly. If you choose to access the Service through a third party application or equipment you don't own, you may be increasing your privacy and security risks (see Section 9.4(d), below).

1.4 Limited Access to the Service. We strive for 24-7 availability of the Service. However, there will be downtime of eFileCabinet Servers (defined below) and of the Service for maintenance, relocation and other purposes which will periodically be necessary. Unintended interruptions and unscheduled downtime may also occur and are not a breach of this Agreement.

2. Your Data. You may only use Your Data with the Service. "**Your Data**" means your electronic data, or data legitimately used by you personally or by your business, that is transmitted to eFileCabinet Servers (defined below) as part of the licensed use of the Service. Transmission of Your Data to us must

comply with our then-current specifications and guidelines. You are responsible for the accuracy and content of Your Data. You promise that Your Data, and the transmission and storage of it to and by us, will not violate rights or intellectual property of any third party (see also Section 7). Your Data will be kept secure and confidential by us as set forth in this Agreement (see especially Section 9.4).

3. About eFileCabinet Servers. Your Data will be stored on eFileCabinet Servers. "**eFileCabinet Servers**" means the servers and any storage media, hardware, software or system selected by us for data storage and operation of the Service. eFileCabinet Servers are not dedicated exclusively to you or the Service. eFileCabinet Servers may be located at our site(s) or at our contractor's sites. Additional information regarding eFileCabinet Servers is located here, and You agree we may change that information without notice to you, so check it regularly.

4. Subscriptions for the Services.

4.1 Free Trial Period. We may offer a limited time free trial of the Service. At the end of the trial period your License to the Service terminates and **your access to Your Data will be disabled**. If you do not establish an account with us and pay for a License to the Service (on the terms of this Agreement), then you will have no further access to Your Data, and **Your Data will be destroyed or erased by eFileCabinet as described below in Section 6** (see *Effect of License Termination on Access to Your Data*). All provisions of this Agreement apply to your use of the Service during any trial period, and thereafter.

4.2 Subscription Term. The initial Subscription Term will commence on the date specified in the start date field of your signed agreement and will end on the same calendar date in the final year of the subscription term. Upon the expiration of the Initial Term, this Agreement will automatically renew on an annual Subscription Term basis. Subscription Fees for any Renewal Term will be equal to the then-current number of total User subscriptions multiplied by the User subscription Fee in effect at the time of renewal, or as specified by eFileCabinet at the time of renewal. Renewal Fees for other services will be charged on an as-quoted basis. The Initial Term and any and all Renewal Term(s), if any, constitute the "Subscription Term."

4.3 Billing and Payment. All Fees relating to Services described herein, according to the rates indicated above (see quote #Q026031 above), are due annually in advance upon receipt of invoice unless specified otherwise in the payment term section of the invoice. All Fees are referred to and payable in United States Dollars. eFileCabinet products are sold exclusively on a subscription basis and you will be billed for your subscription renewal on the contract anniversary date utilizing the same payment method used on your previous billing, unless eFileCabinet is notified in advance of a change in billing source or procedure. Any payment not made by the due date shall be subject to a service charge at the rate of one and one-half percent (1 1/2%) per month, or if less, the highest rate permitted by law.

4.4 Late Payment. Past due invoices are subject to a late fee of \$25.00 and interest charges of 1.5% per month (compounded daily) on any balance more than 30 days past due, or the maximum permitted by law, whichever is less, plus all reasonable costs and expenses incurred (including reasonable attorney fees) in collecting past due amounts. Additionally, if your Payment Source is invalid on the payment due date, you will be charged a reprocessing fee of \$25.00.

4.5 Delinquent Accounts. Failure to make full payment for 45 (forty-five) days from your payment due date will suspend your account and place it in delinquent status. eFileCabinet will notify you via email if your account is placed on hold and you will then have another 15 (fifteen) days to fulfill your payment obligations. Failure to do so will result in the termination of your account. If your License to use the Service is restored (by your payment in full) within that time, you may again access Your Data, **otherwise you will have no access to Your Data, and Your Data will be erased and permanently destroyed, and we will have no liability to you for destruction of or access to Your Data**. If you request a refund (such as under our 30 day refund policy, above), your License to the Service and access to Your Data will terminate with the refund request. Your Data will be erased and permanently destroyed promptly, on our schedule.

4.6 Institutional Accounts. For certain institutional accounts, we may offer a choice of credit card payment or account invoicing. Invoices must be paid within thirty (30) days from the date of the invoice. Late payments bear interest at the lesser of one and one-half percent per month, compounded monthly, or the highest rate allowed by applicable law. Your use of the Service, or storage of Your Data on eFileCabinet Servers, makes the account holder obligated to pay us.

5. Termination. If you materially breach this Agreement, or fail to timely pay required fees when due, then the License will automatically terminate (and any multiple user license will terminate for any number of users for which fees have not been paid). The License may also be terminated by you with written notice at least 90 days prior to your subscription contract end date, or by eFileCabinet, or pursuant to the provisions of any underlying master service agreement affecting your use of the Service.

6. Effect of License Termination on Your Data. Termination of your License ends your right to use the Service and to access and retrieve Your Data. After termination of your free trial, or other License, eFileCabinet will continue to store Your Data for at least 60 days. 60 days after termination of your License for any of the above reasons, Your Data will be erased and permanently destroyed, and we will have no liability to you for destruction of or access to Your Data. In the case where your License is terminated by you, should you decide to reactive your License within the 60 day window following termination, your access to Your Data will be restored. If your License to use the Service is restored (by your opening or extending a subscription account for the Service) within that time, you may again access Your Data, **otherwise you will have no access to Your Data, and Your Data will be erased and permanently destroyed, and we will have no liability to you for destruction of or access to Your Data.**

7. Things You Must Not Do. We expect you to use the Service only for legitimate personal and business purposes, for legal and moral activities. Therefore, **you agree not to** directly or indirectly do or permit any of the following:

- Upload or transmit to us any file, data or content (hereafter, "**Content**") unless you have a lawful right to copy, transmit, distribute, publish, perform, and display the Content, and you must not violate your confidentiality or fiduciary obligations regarding that Content.
- Upload or transmit to us any Content unless you have a right, or the consent or permission of, each identifiable person in the Content to use the name, voice, signature, photograph, personal information, visage, likeness, or other recording of each such person (to the extent each such person is implicated by the Content).
- Upload or transmit to us any Content that (i) violates intellectual property or privacy rights of any person (including without limitation copyright, trademark, patent, trade secret, trade dress, or other intellectual property rights, moral rights under copyright law, and rights of publicity and privacy); (ii) that is obscene, immoral, pornographic, or offensive under the law or to eFileCabinet in its unfettered discretion; (iii) promotes bigotry, racism, hatred, discrimination, or harm against any individual, group, entity, or business; or (iv) violates or encourages any conduct that violates any applicable law or regulation, or would give rise to civil liability to you or us.
- Access, tamper with, copy, or use any non-public areas of the Service or of our computer systems, or of the technical delivery systems of eFileCabinet Servers.
- Attempt to probe, test, or tamper with the vulnerability of the Service or any related computer, system or network, or breach or circumvent any security or authentication measure used with the Service or its systems and networks.
- Attempt to decipher, decompile, disassemble, or reverse engineer any of the software code used to provide the Service.
- Harm or threaten to harm other users of the Service; or interfere with or attempt to interfere with, the access of any user, host or network, including without limitation through any virus, Trojan, malicious software, overloading, flooding, spamming, blocking, redirection, mail-bombing, or other interference with the Service or eFileCabinet Servers.
- Send unsolicited email, spam, chain letters, promotions, or advertisements to or through the Service provided under this Agreement.
- Misrepresent your License or affiliation with the Service.

## 8. Your Security Obligations.

8.1 Your Premises and Equipment. You are responsible for maintaining adequate physical, technological and procedural access controls and system security to ensure no unauthorized or improper access to your computer, or use of the Service or eFileCabinet Servers through your account, or violation of data privacy or confidentiality through your computer or your account. You are responsible for the security of your home or office facilities, and the area where you store and use your computer, and for your family, employees, contractors, customers, and affiliates, and anyone using your User ID and password with or without your permission.

8.2 Virus Protection. You must maintain virus and malicious software protections for your computers and networks used to access the Service.

8.3 Passwords and Access. You are responsible for all activity on eFileCabinet Servers through your account. You must keep secret your User ID and password, and the confidentiality of any other security-related information disclosed to you by us. You must promptly notify us of any known unauthorized use of your account, and of any other breach of security that might affect us, the Service, Your Data, or eFileCabinet Servers.

## 9. Our Privacy Policy and Data Security Obligations

9.1 Collecting Information. For purposes of your use of the Service, we may collect, or have access to and collect, non-public personal information about you and your affiliates or clients from you or your computer when you subscribe to the Service, use the Service, request help or information, or undertake a transaction with eFileCabinet (including through applications, sales orders, or worksheets). We may also have access to and collect non-public personal information about you from other documents and sources, including from our affiliates, or others, and from information eFileCabinet receives indirectly from you or through a consumer or credit reporting agency about you.

9.2 Retaining and Using Information; Opting Out. We may retain information we collect about you, and may use it to inform you about products of eFileCabinet and third parties. You may opt out of email advertising from eFileCabinet and from third parties.

9.3 Protecting Access to Your Information; Nondisclosure. We restrict access to non-public personal information we collect to eFileCabinet personnel who need to know that information. We maintain physical, electronic, and procedural safeguards that comply with U.S. federal regulations to guard your material non-public personal information. **We do not disclose non-public personal information about you (or any of our clients, former clients, or their respective affiliates and clients), to anyone except as disclosed to or permitted by you (or the person who is the subject of the information), or as required by law.**

### 9.4 Security of Your Data and Information.

(a) Commitment; Technology Protections. We are committed to protecting your information and Your Data securely. We use a variety of security technologies and procedures to help protect your information from unauthorized access, use, or disclosure. For example, we store Your Data and the information you provide on computers or computer servers with limited access that are located in controlled facilities (see Section 3, *About eFileCabinet Servers*). You understand that for purposes of technical support of the Service and the services we provide you, and our customers, some of our technical personnel with an eFileCabinet security clearance must have access to Your Data. However, eFileCabinet has confidentiality agreements that prohibit its employees with such security clearance from accessing Your Data except for technical purposes to fulfill our obligations to you and to support, update, and improve the Service and products of eFileCabinet, and for purposes of this Section 9.4.

(b) Data Encryption and Backup. The Service secures Your Data via SSL verification and TLS authentication and is encrypted with 256-bit AES encryption during transmission. Your Data is then stored on secure servers utilizing 256-bit AES encryption. Not all computer software or mobile media devices encrypt streaming files, so you should be careful what hardware and software you use to access the Service and transmit and retrieve Your Data. We maintain a redundant backup of Your Data on eFileCabinet Servers at two or more different locations to minimize the possibility of data loss.

(c) Investigation of Your Data. eFileCabinet (through its employees with our security clearance) have the unfettered right to fully investigate and prosecute allegations of violation by you of Section 7, including without limitation possible infringement of any intellectual property rights, security breaches, and interferences, and to involve, assist, and cooperate with law enforcement authorities and initiate criminal prosecution to the fullest extent of the law. This may include accessing and decrypting Your Data.

(d) Third Party Obligations. The parties agree that SUBSCRIBER has contractual obligations with THIRD PARTIES with respect to the data and objects being stored by eFileCabinet. Specifically, these THIRD PARTY contractual obligations set forth what data is the property of the SUBSCRIBER and the confidentiality restrictions pertaining to that data, both of which survive the termination of the SUBSCRIBER contractual agreement with the THIRD PARTY or with eFileCabinet. Accordingly, upon SUBSCRIBER's termination of their contract with THIRD PARTY, it will be the SUBSCRIBER's responsibility to fulfill any THIRD PARTY obligations for document transfer to THIRD PARTY. SUBSCRIBER agrees to comply with all THIRD PARTY contractual requirements with respect to the data and agrees that eFileCabinet may honor properly documented THIRD PARTY requests for such data. A request will be considered properly documented when a THIRD PARTY produces a signed contract from SUBSCRIBER allowing THIRD PARTY access to such data.

(e) Third Party Requirements. SUBSCRIBER agrees that if SUBSCRIBER is an agent of a THIRD PARTY and the THIRD PARTY has set up guidelines associated with the proper use of eFileCabinet Online to comply with industry regulatory requirements (such as, but not limited to i.e., SEC, FINRA or HIPAA Regulations), SUBSCRIBER will follow THIRD PARTY guidelines and will hold eFileCabinet harmless from and completely indemnify eFileCabinet with respect to SUBSCRIBER and THIRD PARTY disputes regarding SUBSCRIBER'S adherence to said guidelines.

(f) Compliance with Agreement and Law Enforcement. Although we have no obligation to monitor your access to or use of the Service, we have the right to do so for the purpose of managing, operating, and optimizing the Service for business optimization, and to ensure your compliance with this Agreement and applicable laws, including any order or requirement of a court, or governmental agency or authority. We reserve the right to disclose, in our sole discretion, any of Your Data as necessary to (a) satisfy any law, regulation, or legal and lawful governmental request or investigation, or (b) reduce or prevent what we consider to be, in our sole discretion, a serious or imminent threat to your health, safety, or property, or the health, safety, or property of another. For example, if law enforcement officials legally require access to Your Data, we will remove any eFileCabinet encryption from Your Data and provide it to them.

(1) This Section shall not restrict any disclosure pursuant to any law, including any securities law, or pursuant to a subpoena, court or other compulsory process, but in any such case where eFileCabinet is required to make such disclosure of data, eFileCabinet shall, to the extent lawfully permitted to do so, give prompt notice to the Customer of the disclosure requirement or order so that the Customer may seek appropriate protective orders or similar relief.

(g) Access through Third Party Apps. If you choose to access the Service through a third-party application, you should appreciate that such action has security risks that may or may not be disclosed in their privacy policies. For example, third-party applications and interfaces, or

insecure networks, may not encrypt Your Data when you transmit, retrieve or access it, and they might collect information from you, and might use that information in ways objectionable to you. You should be sure you are comfortable with the privacy and security measures of any third-party application, interface or network you use to access the Service.

(h) Use of Your Data for Statistical Purposes. We may extract your usage data stored on eFileCabinet Servers to compile or create general statistical information of our customers and users of the Service, or to optimize the Service or our business. Such general statistical information will not include any personally identifiable information (PII), protected health information (PHI), payment card information (PCI), or any other personal information in violation of any law, regulation or government order or the rights of any person. Except as required by law, we will not use, disclose, reveal, share, or sell any PII, PHI, or PCI in your usage data (including any individual including name, address, telephone number, or email address), nor will we disclose any statistical information specific to only your usage data without your prior approval.

## 10. Confidentiality.

10.1 Your Confidential Information (other than Your Data). eFileCabinet (and its contractors, if any) will keep Your Data confidential and not use it, except as provided in this Agreement. We, will also keep confidential and not use (except in the performance of our obligations under this Agreement), any other information (i.e., information other than Your Data) disclosed by you to us in connection with your use of the Service; provided that such other information when given to us is marked or identified in writing as "Confidential" or "Proprietary." If you disclose such other information orally to us, and if you want us to keep it confidential, then you must reduce such that information to writing, mark or conspicuously label it as "Confidential" or "Proprietary", and deliver the writing to us within two weeks of the first oral disclosure of such other information to us. This requirement does not apply to Your Data.

10.2 Confidentiality of eFileCabinet Information. You will keep confidential, and will not use for any purpose other than this Agreement, any of our proprietary information disclosed by us to you about, or that is learned or observed by you from, the technologies, methodologies, equipment, software and processes used by us with the Service. You will ensure that your employees, agents, representatives and contractors, if any, comply with these obligations. Any exceptions to the obligations of this paragraph may only be granted in a writing signed by the President of eFileCabinet. This paragraph will not prohibit you from making general comments regarding your user experiences with eFileCabinet and the Service.

10.3 Exceptions. Neither you nor we will have any obligation under Sections 10.1 or 10.2 above with respect to information that is publicly known at the time of first disclosure to the receiving Party or that is in the receiving Party's possession prior to first disclosure by the disclosing Party to the receiving Party. If through no fault of the receiving Party, any confidential information of the disclosing Party subsequently becomes publicly known, then the receiving Party will thereafter have no obligation under Section 10.1 or 10.2 with respect to such publicly known information. If any information is lawfully disclosed or licensed by a third party to a receiving Party, then Sections 10.1 and 10.2 will not restrict the receiving Party from making any use or disclosure thereof that is lawfully authorized by the third party. If any disclosure of confidential information is required by law, government regulation, or court order, the receiving Party may make such disclosure, but the receiving Party must first give notice thereof to the disclosing Party and cooperate with the reasonable request of the disclosing Party, at the disclosing Party's expense, in seeking and obtaining any protective orders or other protections that might be available. This paragraph does not apply to or excuse any infringement of copyrights or patents. Notwithstanding anything to the contrary, we have no obligation or restriction with respect to any Feedback from you (see below).

10.4 Feedback. You are invited to provide feedback to us. As used in this Agreement, "Feedback" means any feedback, recommendations, criticisms, enhancements, improvements, ideas, features, functionality, capabilities, methods, processes, and information relating to the Service, or any of our products or our business. eFileCabinet has the right, but not the obligation, to incorporate any Feedback into any products, software or services and to otherwise use, implement, make, practice, modify, enhance, and commercialize Feedback without any obligation to account to you. This right also applies to our affiliates, successors and designees.

11. Service Support Terms.

11.1 Scope. These Support Terms state the terms on which we provide support services to users of the Service. These Support Terms may be modified at any time within 30 days notice to you. Product Support includes software updates and general technical support for trouble shooting. Activation and Implementation line item on quote #Q026031 provided covers all Product installation, configuration, and training. Product Support is included free of charge for the term of this agreement.

11.2 Entitlement to Support Services. You, the end user of the Service, are entitled to user support services, as long as you are current in the payment of all required fees, and in full compliance with this Agreement.

11.3 Conditions of Support. We will make available to you such technical and training information relating to the Service as we makes available to our other customers generally. Our user support services, and means to obtain additional support, are located here. eFileCabinet offers different levels of support. Additional information and a full listing of Support levels and options are located here. As a condition to receiving support services, you agree to exercise your reasonable best efforts to cooperate with and assist us in documenting and understanding any problems and in performing appropriate tests. We are not responsible for problems relating to your computer hardware or software not provided by us, including(butnotlimitedto)anyincompatibilityoftheServicewithanyotherSAASServices. You should appreciate that we cannot guarantee that that support services will cause the Service to be error-free or to operate continuously, efficiently, optimally, or without interruption, for you, particularly on your computer and your chosen networks. (If our support services don't solve your concerns then you, or we, may terminate your License to the Service.)

11.4 Remote Access Technical Support. To facilitate installation, training, sign-up, maintenance, troubleshooting activities, or support, you may grant us temporary access to your computers and equipment, including servers, by giving your permission electronically to engage in remote connectivity with your computer and equipment. We may decline to accept such access or to provide remote support. You are responsible for maintaining a complete backup of all of your software and electronic data, and taking appropriate security measures, prior to granting remote access to us. You warrant to us that you have done so by requesting remote support. Unless you specifically notified us otherwise in writing, we may reasonably assume your personnel are duly authorized to grant us remote connectivity access as described in this paragraph.

11.5 Updates. Updates of the Service will be made as and when available generally to users of the Service in your country or jurisdiction. You may or may not be notified that an update to the Service has been or will be made.

12. Our Protections, Warranties, and Indemnification of You.

12.1 Disclaimers.

(a) General Disclaimers. **WE HAVE NO LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR ANY PERFORMANCE PROBLEM, CLAIM OF INFRINGEMENT, OR OTHER MATTER TO THE EXTENT IT IS ATTRIBUTABLE TO ANY:**

**(1) UNAUTHORIZED OR IMPROPER ACCESS TO OR USE OF THE SERVICE, YOUR COMPUTER, OR YOUR DATA WHEN SUCH ACCESS OR USE ORIGINATES OUTSIDE OF EFILECABINET SERVERS, OR THROUGH ANY EQUIPMENT, COMPUTERS, NETWORKS, COMMUNICATION LINKS OR DEVICES, FACILITIES, PEOPLE AFFILIATED WITH YOU OR AUTHORIZED BY YOU TO ACCESS YOUR DATA OR EFILECABINET SERVERS;**

**(2) THIRD PARTY DATA;**

**(3) BREACH OF THIS AGREEMENT BY YOU; OR**

**(4) ACT OR OMISSION BY YOU, YOUR AFFILIATES OR YOUR AUTHORIZED USERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, OR CUSTOMERS.**

**(5) USE OF ANY THIRD PARTY APPLICATION ASSOCIATED WITH THIS SERVICE.**

(b) Disclaimer Regarding What We Warrant. **WE MAKE NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, THE SERVICE AND OUR SUPPORT AND OTHER SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND "WHERE IS". THERE IS NO WARRANTY THAT THE SERVICE, DOCUMENTATION OR SUPPORT OR OTHER SERVICES AVAILABLE TO YOU ARE ERROR FREE OR THAT THEY WILL BE UNINTERRUPTED BY US OR OTHERS. WE DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WE MAKE NO WARRANTY REGARDING ANY HARDWARE, SOFTWARE OR PRODUCT NOT PROVIDED BY US UNDER THIS AGREEMENT.**

(c) Disclaimer Regarding Access to Service and Data Loss. **WE ARE NOT RESPONSIBLE FOR LOSS OF USE OF THE SERVICE OR ANY WEBSITE, INTERNET ACCESS, HARDWARE OR SOFTWARE, LOSS OF DATA (INCLUDING YOUR DATA) IN TRANSIT TO OR FROM US, COSTS OF RECREATING LOST DATA, COST OF ANY SUBSTITUTE PERFORMANCE, EQUIPMENT, SOFTWARE, OR SYSTEM, OR CLAIMS BY ANYONE OTHER THAN YOU.**

(d) Disclaimers Regarding Reliance on Retrieved Data. You acknowledge the Service is a complex operation involving potential data loss in transmitting it to us or back to you over the Internet. Therefore, you are expected to verify the accuracy of Your Data retrieved through the Service. **YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF YOUR DATA RETRIEVED THROUGH THE SERVICE, AND ANY RELIANCE THEREON.**

(e) Disclaimer Regarding Timing of Destruction of Your Data. **WE HAVE NO LIABILITY FOR DESTRUCTION OF YOUR DATA AS PROVIDED IN THIS AGREEMENT. WE ALSO HAVE NO LIABILITY FOR ANY DELAY ON OUR PART IN NOT DESTROYING YOUR DATA PROMPTLY WHEN OUR RIGHT AND OBLIGATION TO DESTROY IT ARISES.**

**12.2 Limitations of Liability.**

(a) Limitation on Our Damages. **FOR ANY BREACH OF THIS AGREEMENT OR OTHER LIABILITY BY EFILECABINET, WE WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY (INCLUDING OF GOOD FAITH OR OF REASONABLE CARE), NEGLIGENCE, AND ANY OTHER PECUNIARY OR OTHER LOSS), ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE ANY SERVICE UNDER THIS AGREEMENT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF.**

(b) Our Aggregate Liability. **OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR CLAIM - e.g. CONTRACT, WARRANTY, TORT, MALPRACTICE, AND/OR OTHERWISE) WILL NOT EXCEED A LIMIT EQUAL TO THE ANNUAL LICENSE FEE RECEIVED BY US FROM YOU. EFILECABINET ALSO CARRIES A \$3 MILLION DOLLAR POLICY LIMIT FOR EACH INCIDENT THAT EFILECABINET IS LIABLE FOR. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS OF THIS AGREEMENT SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.**

(c) Third Party Websites. The Service or its use may enable or invite links to third party websites or use third party content, data, services, or products. **WE MAKE NO EXPRESS OR IMPLIED WARRANTY CONCERNING—AND HAVE NO LIABILITY FOR—ANY THIRD PARTY WEBSITES OR CONTENT, DATA, SERVICES, OR PRODUCTS, OR THIRD PARTY**



**PRIVACY OR USE POLICIES OR PRACTICES, AND THEY ARE ACCESSED, USED AND RELIED UPON AT YOUR SOLE RISK.**

**(d) Time Limit to Bring Your Claims. YOU MUST BRING ALL YOUR CLAIMS AGAINST US WITHIN THE EARLIEST OF SIX YEARS FROM THE DATE THE CLAIM ARISES, OR THE TERMINATION DATE OF THIS AGREEMENT.**

**12.3 Allocation of Risk. THIS AGREEMENT DEFINES THE ALLOCATION OF RISK BETWEEN THE PARTIES, AND THE FEES ARE SET TO REFLECT THAT, AND ARE AN ESSENTIAL PART OF THE BARGAIN BETWEEN YOU AND US.**

**12.4 We Rely on Your Instructions.** We may rely on and act on instructions, requests or information provided to us by you or your employees, officers, agents, volunteers, affiliates or contractors, and we incur no liability in doing so.

**12.5 No Third Party Beneficiaries.** Our warranties and obligations under this Agreement run only to you. Under no circumstance shall you or any user of the Service through you, or any of your affiliates, agents, representatives, contractors, clients, customers or other persons, be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under and based only on this Agreement. You have no rights or remedies against eFileCabinet except as specifically permitted by this Agreement. We will not be deemed your official record keeper for regulatory, government or other purposes. Other than Your Data as currently stored, we have no obligation to retain any deleted records or data on your behalf during the term. After termination of this Agreement there is no further storage of Your Data, except as provided in this Agreement.

**12.6 Third Party Providers.** The disclaimers, limitations, allocation of risk, right to rely, and protections set forth above will be extended through us to third parties who provide us software, data, services, products, or intellectual property for our Service, documentation, services, or other products.

**12.7 Our Warranty to You.** We warrant to you that if the Service does not comply with its then-current documentation in any material respect and you notify us the non-compliance, we will at our option either correct the Service to render it fully functional to your reasonable satisfaction, perform support services, or refund the purchase price of the License to the Service for the most recent month and any future month(s) you paid for. However, if the documentation is in error or inappropriate, then we may correct the documentation. **THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, YOU MAY HAVE OTHERS WHICH VARY FROM STATE TO STATE.**

**12.8 Your Warranty to Us.** You warrant that you will not access or use the Service, or any right under this Agreement, for any unlawful, immoral, or illegitimate purpose, including use or activity prohibited by this Agreement, and you will not disparage eFileCabinet or our Service or products even after termination of this Agreement. If you breach this warranty we may terminate the License immediately upon notice to you and without any further access to Your Data, and we may seek other legal against you remedies, including involving law enforcement officials.

**12.9 Our Obligation to Indemnify You.** If your licensed use of the Service or the services under this Agreement infringes (or misappropriates) a U.S. patent, copyright, trademark, trade dress, or trade secret of a third party, we will indemnify you as follows:

**(a) Our Indemnification Obligation.** In any litigation or arbitration by a third party against you, at our discretion we will defend you against the third party claim, and pay the attorney fees and costs, and any amount we approve in settlement, and any monetary award or judgment, including damages, attorney fees and costs awarded by a court of competent jurisdiction (or valid arbitration tribunal). We may exercise appeal rights. We will not pay for any of your other damages or for any loss of profits or business, including any lost time or opportunity.

(b) Conditions. Our obligations are conditioned on the following: (1) you must promptly give written notice to us of any claim against you alleging infringement; (2) you must allow us at our discretion to control the defense and settlement of the claim including any litigation; and (3) you must fully cooperate with us in the defense, settlement, and litigation, including providing necessary information and materials. We have no obligation or liability to you if the infringement or claim relates to: (i) any modification or addition to the Service or its underlying software made by you; (ii) use of the Service with any software, equipment or system not provided by eFileCabinet to you; (iii) use of the Service other than as we intend and permit; (iv) any patent that issues after you register with us for the Service; or (v) the law of any foreign country or jurisdiction. You must mitigate your damages and cooperate with our reasonable requests for such mitigation. If we request, you must promptly cease access to and use of the Service. Our liability is only to you, so we have no obligation or liability to any third party even if they are affiliated with you.

(c) Injunction or Cessation of Use. If you are enjoined from use of the Service and we have an obligation to indemnify you, or if you cease use of all or part of the Service at our request, then at our expense and option we will either: (i) obtain the right for you to continue to use the Service; (ii) modify the Service to eliminate the infringement; or (iii) terminate this Agreement and the License and provide means for at least 14 days for you to obtain Your Data.

(d) Entire Obligation and Liability. **EFILECABINET SHALL HAVE NO OBLIGATION OR LIABILITY TO YOU OTHER THAN THE ABOVE INDEMNIFICATION OBLIGATION FOR, OR IN THE EVENT OF ANY INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY.**

### 13. General Provisions.

13.1 Assignment; Successors. This Agreement may not be assigned by you. We may assign this Agreement without notice to you at any time to any person who acquires substantially all of our business assets relative to the Service who will assume our rights and obligations under this Agreement.

13.2 Governing Law and Forum. Any litigation regarding this Agreement brought against eFileCabinet must be conducted exclusively in a state or federal court of competent jurisdiction within Salt Lake County, Utah and such court's appellate courts. You agree and submit to such exclusive jurisdiction and venue. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded from this Agreement and from any transaction relative to this Agreement.

13.3 Force Majeure. Except for obligations to make payment, neither you nor eFileCabinet will be deemed in breach of this Agreement or liable for any failure to perform an obligation where such failure is caused by an Act of God, fire, flood, earthquake, storm, terrorism, war, crime, change in law or regulation, any disruption, outage or malfunction of or interference in communications, network, equipment or software, act of any military, civil or regulatory authority, the Internet, any third party, any disruption or delay in supplies, power, or other utilities, any labor dispute or shortage, or circumstances beyond your, or our, control, as the case may be.

13.4 Waiver. The failure or delay of you or us at any time to enforce performance of this Agreement shall not be construed as a waiver of the right to enforce performance of this Agreement at any subsequent time. Any waiver of a breach or obligation under this Agreement must be in writing.

13.5 Interpretation. Headings in this Agreement are for convenience of reference only and shall not affect interpretation of this Agreement. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof.

13.6 English Language. This Agreement is written in and governed by the English language. If there is any conflict between the English language version of the Agreement and any translation of it, this English language version shall control.

13.7 Severability. If any provision of this Agreement is invalid under applicable law, such provision shall be limited, narrowed, or construed as necessary to the extent necessary to make it valid. If necessary, the invalid provision shall be eliminated from this Agreement with the remainder of this Agreement in full force and effect.

13.8 Relationship. You and eFileCabinet are independent contractors. You are not a partner, joint venturer, franchisee, or representative of eFileCabinet. Neither you nor us have authority to make any representation or incur any obligation or liability on behalf of the other party to this Agreement, or to make any representation inconsistent with this paragraph. You understand and agree that eFileCabinet is not a "Financial Institution" under the Gramm-Leach-Bliley Act.

13.9 Our Contractors. We may delegate our obligations to subcontractors but this will not excuse us from responsibility for such obligations.

13.10 Export Laws and Use Outside of the United States. You must comply with all export laws and regulations and government orders applicable to the Service, documentation, or this Agreement. Unless expressly otherwise agreed in writing by eFileCabinet, use by you of the Service is limited to use from and within the United States of America and its territories, and countries not subject to U.S. export controls applicable to the Service.

13.11 Injunctive and other Equitable Relief. You acknowledge that the restrictions on you and our protections in this Agreement are reasonable and necessary to protect our business and intellectual property interests. If you breach your restrictions, it will result in irreparable injury to us for which money damages could not adequately compensate us. If there is a breach of this Agreement by either you or us, then the injured party shall be entitled, in addition to all other rights and remedies, to preliminary and permanent injunctions issued by any court of competent jurisdiction, and an order requiring the breach to be cured. The existence of any claim or cause of action that you have against us, or we have against you, is not a defense to enforcement of this paragraph.

13.12 Entire Agreement. This Agreement represents the entire agreement between you and us relating to its subject matter, supersedes all prior agreements, understandings, representations and warranties; and may only be amended, canceled or rescinded as provided in this Agreement, or by a writing executed by you and us. Terms or conditions of any purchase order or other document submitted by you in connection with this Agreement, the License, or the Service, are not binding on us and are ineffective.

13.13 Notices. Notices to you under this Agreement will be sent by email or to the physical address you provide us when you register for the Service. Official notices from you to us must be provided by email to [legal@efilecabinet.com](mailto:legal@efilecabinet.com), or by appropriate official legal serviced on our head office to the address provided on our website. Any notices required by this Agreement must be in writing.

13.14 Execution and Authority. By clicking acceptance of this Agreement, you represent that your are authorized to enter into this Agreement for yourself and the party or entity for whom you are contracting.

**City of Santa Fe (City) and eFileCabinet (eFileCabinet)**

**ADDENDUM**

**TERM AND EFFECTIVE DATE**

This Agreement shall be effective when signed by the City and eFileCabinet, whichever occurs last, and shall continue for three years with the pricing locked in at the current rate for the Business Tier unless sooner pursuant to the Termination Article below. In no event will the term of the contract, including all amendments, exceed the term limits in NMSA 1978, sec. 13-1-150.

**TERMINATION**

This Agreement may be terminated by the City upon 30 days written notice to eFileCabinet.

**INDEMNIFICATION**

EFILECABINET shall indemnify, hold harmless and defend the CITY from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from eFileCabinet's performance under this Agreement as well as the performance of eFileCabinet's employees, agents, representatives and subcontractor.

**NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the CITY in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The CITY and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**APPLICABLE LAW; CHOICE OF LAW; VENUE**

eFileCabinet shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the CITY of Santa Fe. If any action, suit or legal dispute arising from this Agreement is brought against the CITY of Santa Fe by eFileCabinet, eFileCabinet agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement brought against the CITY of Santa Fe by eFileCabinet shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CITY for the performance of this Agreement. If sufficient appropriations and authorization are not made by the CITY, this Agreement shall terminate upon written notice being given by the CITY to eFileCabinet. The CITY's decision as to whether sufficient appropriations are available shall be accepted by eFileCabinet and shall be final.

#### RELEASE

eFileCabinet, upon acceptance of final payment of the amount due under this Agreement, releases the CITY, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. eFileCabinet agrees not to purport to bind the CITY to any obligation not assumed herein by the CITY unless eFileCabinet has express written authority to do so, and then only within the strict limits of that authority.

#### INSURANCE

eFileCabinet shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. eFileCabinet shall furnish the CITY with proof of insurance of EFILECABINET's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

#### THIRD PARTY BENEFICIARIES

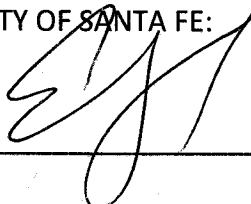
By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the CITY and the eFileCabinet. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

#### SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:



ERIK LITZENBERG, CITY MANAGER

DATE: 12/17/18

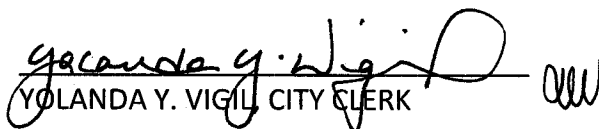
CONTRACTOR:



ERIC SELJAAS, COO

DATE: 11/28/18  
CRS# 03-422718-00-0

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

 12/6

ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

  
MARY MCCOY, FINANCE DIRECTOR

Business Unit/Line Item:  
12005.530710



eFileCabinet

**Your Requested Quote Is Ready.**

Quote for Santa Fe City Attorney's Office-12 EFCO Business Tier  
QUOTE # Q026031

**CONTACT:**

Jeff Nelson  
jnelson@efilecabinet.com  
(801) 753-7790

3300 N Ashton Blvd, Lehi, UT 84043  
(877)574-5505 | [www.efilecabinet.com](http://www.efilecabinet.com)



Julie Kenny  
Santa Fe City Attorney's Office  
Santa Fe, NM 87504  
(505) 955-6749

Dear Julie,

Thank you for the opportunity to earn your business.

After our discussion and analysis of your specific needs, I am happy to provide you with this detailed quote for improving your business with a paperless system. If you have questions that are not addressed in this quote, please let me know. When you are ready to move forward with your implementation and training, sign the digital consent form on the online quote.

I am here to help your transition to a paperless office be smooth and seamless. We look forward to the opportunity to partner with you.

Regards,

Jeff Nelson  
(801) 753-7790 | [jnelson@efilecabinet.com](mailto:jnelson@efilecabinet.com)  
3300 N Ashton Blvd, Lehi, UT 84043



eFileCabinet

*Going paperless... It's not if, but WHEN.*

"What we expect to see is document management will be just like email, where it's going to be an essential capability that your knowledge workers are going to require." – Gartner Research, 2014



**Quote Number:** Q026031**Name:** Quote for Santa Fe City  
Attorney's Office-12 EFCO Business**Tier****Valid Until:** 11/30/2018**eFileCabinet**

3300 N Ashton Blvd.

Suite 400

Lehi, UT 84043

**Tel:** (877) 574-5505

<b>Bill To</b> Santa Fe City Attorney's Office Julie Kenny Santa Fe, NM 87504	<b>Sold To</b> Santa Fe City Attorney's Office Julie Kenny Santa Fe, NM 87504
<b>Start Date:</b> 11/12/2018 <b>Contract Term:</b> 36 Months <b>Billing Term:</b> Annually	<b>Billing Method:</b> Email <b>Payment Method:</b> Check or ACH/PO <b>Payment Term:</b> Net 15 <b>Currency:</b> USD

PRODUCT DESCRIPTION	PRODUCT	QUANTITY	EFFECTIVE PRICE	TOTAL
Activation & Implementation	eFileCabinet Online	12	\$100.00	\$1,200.00
Business	eFileCabinet Online	12	\$600.00	\$7,200.00
OCR Unlimited	eFileCabinet Online	12	\$0.00	\$0.00
Workflow	eFileCabinet Online	12	\$0.00	\$0.00
Zonal OCR	eFileCabinet Online	12	\$0.00	\$0.00
HERO Program Package	eFileCabinet Online Add-ons	12	\$0.00	\$0.00
			Subtotal:	\$8,400.00
			Tax:	\$0.00
			<b>TOTAL:</b>	<b>\$8,400.00</b>

**Please note.** Your account will be setup using the email: "ikromero@ci.santa-fe.nm.us". If this is incorrect please call or email me.



## NOTES

Cancellation window is 30 days from contract start

Follow the link below to enter a payment method. Once the payment method is confirmed we will create your accounts.

[https://efilecabinet.secure.force.com/pay/Z\\_PaymentMethodCapture?Id=a3lf20000020raB](https://efilecabinet.secure.force.com/pay/Z_PaymentMethodCapture?Id=a3lf20000020raB)

**Account Executive:**

Jeff Nelson

[jnelson@efilecabinet.com](mailto:jnelson@efilecabinet.com)

(801) 753-7790

Your account will be setup using the email: "ikromero@ci.santa-fe.nm.us". If this is incorrect please call or email me.

Upon signature by Customer and submission to eFileCabinet, this Order Form shall become legally binding and governed by the Terms of Service for eFileCabinet Online, and the Software License Agreement for eFileCabinet On-Premise, between eFileCabinet Inc. and Customer unless otherwise agreed by eFileCabinet and Customer.

Customer: Santa Fe City Attorney's Office

Name

Business Title

City Manager, City of Santa Fe

Date

12-17-18