

Maintenance and Support Agreement

Licensors Name: 2FA, Inc.		Licensee Name: Williamson County	
Licensors Address: 10713 N FM 620 Suite 201 Austin, TX 78750		Licensee Address: 301 S.E. Inner Loop Suite 107 Georgetown, TX 78626	
Licensors Telephone: (512) 918-3200	Licensors Fax (512) 918-3206	Licensee Telephone: 512-943-1481	Licensee Fax:
Licensors Email: support@2fa.com	Licensors Contact Name Jeff Whitehair	Licensee Email: jaustin@wilco.org	Licensee Contact name: Jeff Austin
Effective Date: 11/30/2016	Initial Term: 12 months	Maintenance & Support Fee: 15,998.00	No. of Licenses: 950
THIS AGREEMENT IS GOVERNED BY THE ATTACHED TERMS AND CONDITIONS. LICENSEE AND LICENSOR ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO BE BOUND BY THE ATTACHED TERMS AND CONDITIONS. IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED BY THE PARTIES HERETO, AS OF THE EFFECTIVE DATE.			
Licensors Signature: X 		Licensee Signature: X	
Name: Chris Honeycutt Title: CFO		Name: Title:	
<u>12-9-16</u> , 20 <u>16</u> Date of Signature		 _____, 20____ Date of Signature	

ARTICLE 1 - DEFINITIONS

- 1.1 **Definitions.** The following terms shall have the meanings ascribed to them herein whenever they are used in this Agreement, unless otherwise clearly indicated by the context:
- (a) **"Base Agreement"** means the End User License Agreement between Licensee and 2FA Inc. for 2FA provided software.
 - (b) **"Corrections"** means changes made in the Software and/or Documentation by Licensor to correct errors or defects in the Software and/or Documentation.
 - (c) **"Documentation"** means those visually-readable materials, in English and other currently support languages, developed by or for Licensor for use in connection with the Software and delivered by Licensor to Licensee. Documentation includes operating instructions, input information and format specifications.
 - (d) **"Maintenance and Support"** means the maintenance and support services provided to Licensee by Licensor under this Agreement.
 - (e) **"Software"** means the software as licensed in the End User License Agreement.
 - (f) **"Upgrades"** shall mean enhancements and/or new functionalities which are added into the Software and which are incorporated in a new release of the Software. The change of version 3.X to version 4.X shall be considered an Upgrade. Licensee is entitled to Upgrades under this Agreement.
 - (g) **"Update"** means bug fixes and/or fixes of minor errors in the Software which are incorporated in a new release of the Software. The change of version X.01 to version X.02 or the change of version X.10 to X.20 shall be considered an Update.

ARTICLE 2 - MAINTENANCE AND SUPPORT

2.1 **Maintenance and Support Services.** The following maintenance and support services are available to Licensee and are provided on a 24 x 7 x 365 basis.

- (a) **Defect Support.** Licensor shall provide telephone consulting services and/or written support services through fax, email, or other manner to Licensee's designated personnel to provide such personnel with defect support relative to the Software and Documentation, being the provision of assistance regarding suspected defects or errors in the Software or Documentation. Licensor will analyze the claim of Licensee and inform Licensee of the result of its analysis. If a defect in the Software is confirmed by Licensor, acting reasonably, Licensor will exercise commercially reasonable efforts to provide Licensee with the corrected Software as soon as possible.
- (b) **Remote Application Support.** Licensor shall provide telephone consulting services and/or written support services through fax, email, or other manner to Licensee's designated personnel to provide such personnel with application support relative to the Software and Documentation, being the assistance, beyond defect support. Licensor will analyze the claim of Licensee and inform Licensee of the result of its analysis. If further investigation is needed, Licensor will inform Licensee as soon as possible of the results thereof.
- (c) **Updates.** Licensor shall provide Licensee with such Updates as Licensor creates in its discretion in the ordinary course of its business. Licensee is required to install updates within six months of publication.
- (d) **Upgrades.** Licensor shall provide Licensee with such Upgrades as Licensor creates in its discretion in the ordinary course of its business. Licensor is required to install upgrades within one year of publication. Licensee is only responsible for providing support and maintenance services for the then current and one prior Upgrade of the Software.
- (e) **Service Level Agreement.**

Severity Levels

- a. 1 – **Severe** - The system or major application is down or seriously impacted, or the Licensor's data is lost or destroyed, and there is no reasonable workaround currently available (system crashes or panics, corrupted data,).
- b. 2 – **High** – The system or application is moderately affected. There is no workaround currently available or the workaround is cumbersome to use.
- c. 3 – **Medium** - The system or application issue is not critical: no data has been lost, and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround; feature failure; convenient workaround exists.
- d. 4 – **Low** - Non-critical issues, general questions, enhancement requests, or the functionality does not match documented specifications.

Severity Response Times

- a. Severity Level 1 – Respond within 1 hour; mutually agreed upon resolution or resolution plan within seven calendar (7) days
- b. Severity Level 2 – Respond within 4 business hours; mutually agreed upon resolution or resolution plan within fourteen calendar (14) days
- c. Severity Level 3 – Respond within 8 business hours; mutually agreed upon resolution or resolution plan within twenty-one calendar (21) days
- d. Severity Level 4 - Respond within 24 business hours; mutually agreed upon resolution or resolution plan within twenty-eight calendar (28) days
- (f) **Scalability.** 2FA warrants that 2FA ONE Server is scalable to 10,000 simultaneous connections, so long as the customer's server hardware is configured and maintained correctly. Under normal conditions, only a handful of users will require connection to 2FA ONE Server.

2.2 **Exceptions to Maintenance and Support Obligations.** The following items are expressly excluded from the Maintenance and Support Services listed in Section 2.1 hereof and shall, as such, be invoiced at then-current engineering fees:

- (a) Maintenance and/or support of software not delivered by Licensor;
 - (b) Maintenance and/or support of Software or a version of the Software that has been retired by Licensor
 - (c) Repairs caused by other than normal use or repairs caused by force majeure (such as, but not limited to, fire, flood, failure of electric power or air conditioning);
 - (d) Repairs required by the fact that maintenance has been done by a third party, not authorized by Licensor.
- 2.3 **Additional Support.** Licensee may purchase additional support from Licensor by initialing such additional support as offered by Licensor. Such additional support may include training or on-site support at Licensees designated location.
- 2.4 **Scope of Maintenance and Support Services.**
- (a) In no event shall any Maintenance and Support services under this agreement be provided for any application or software other than the Software.
 - (b) It is a condition precedent to the delivery of any maintenance and support under this Agreement by Licensor that Licensee have personnel on site that possess the knowledge of a person of ordinary skill in computer science and that Licensor be able to interact with such personnel in providing maintenance and support services under this Agreement. If, in Licensor's reasonable opinion, no such person is employed by Licensee, Licensor may, at its option, terminate this Agreement and return any unused portion of the maintenance fees paid for the current term. Unused maintenance fees will be calculated according to the following formula: $(\text{Annual Maintenance fee} / 12) \times (\text{Number of full months remaining in the current term})$.
 - (c) The Maintenance and support services described in this Agreement shall be provided to Licensee only.

ARTICLE 3 - MAINTENANCE & SUPPORT FEES

- 3.1 **Maintenance & Support.** During the initial term of this Agreement, Licensee shall pay to Licensor a maintenance and support fee equal to the Maintenance and Support Fee set out on page 1 hereof for the initial term. Subsequent renewal terms will be charged in accordance with Licensor's current pricing in effect at time of renewal.
- 3.2 **Other fees.** Any Professional Services and/or training provided by Licensor will be invoiced upon completion upon which said services are provided. Any custom support package provided by Licensor beyond the normal scope of this Maintenance and Support Agreement will be invoiced at the time said support package has been provided. Unless otherwise provided in writing, all invoices for services provided are payable within thirty (30) days after invoice date.
- 3.3 **Payment Terms.** All payments for services as described in this Maintenance and Support Agreement are due within 30 days after receipt of invoice. No maintenance or support will be performed under this Agreement if any payments are past due under this Agreement or the Base Agreement. Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date The County receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by The County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of The County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.
- 3.4 Payment for all invoices are due and payable within thirty (30) days of the date of issuance. Thereafter, for each renewal of this Agreement, payment of Maintenance and Support Fees are due and payable on each anniversary of the Effective Date of this Agreement.

ARTICLE 4 - MAINTENANCE & SUPPORT RENEWALS

- 4.1 Upon the expiration of the Initial Term, this Maintenance and Support Agreement will automatically renew for two additional 12 month terms.
- 4.2 Merging of Maintenance & Support renewal dates shall be permitted if multiple license purchases are made inclusive of Maintenance & Support. Prior to merging of Maintenance & Support renewal dates, payment must be received for the initial one (1) year of Maintenance & Support made with the initial purchase.

- 4.3 Renewals made following Termination as defined in Article 5 may be made under the condition that outstanding maintenance and support be brought current for entirety of period following termination.
- 4.4 Partial renewal of Maintenance and Support is defined as renewal of Maintenance and Support for a number of licenses less than purchased will constitute non-renewal. The number of supported licenses may be reduced upon agreement of both parties. In such event, the Licensor shall issue a new replacement license equivalent to the number of licenses renewed under Maintenance and Support.

ARTICLE 5 - TERMINATION

- 5.1 **Term.** Both parties agree that this Agreement shall be effective for a period equal to the Initial Term of 12 months (1 year) hereof and two subsequent 12 month renewal terms for a total commitment of 36 months. This Agreement may be terminated or canceled as provided in Sections 5.1.
- 5.2 **Termination for Cause.** This Agreement may be terminated for cause, as follows:
- (a) by Licensor, if Licensee fails to make timely payment, and any such failure is not remedied within ten (30) days after receipt of written notice stating such breach;
 - (b) by Licensor, immediately upon written notice, if Licensee: (i) fails, either intentionally or unintentionally, to abide by the restricted use or confidentiality provisions of the Base Agreement; or (ii) exceeds the scope of the license granted by the Base Agreement;
 - (c) by either party, if a party (including its successors and assigns, if applicable) ceases doing business as a result of dissolution, liquidation, or other causes. In such event, the other party may immediately terminate this Agreement by providing written notice setting out the grounds for termination.
 - (d) by Licensor, pursuant to Section 2.4(b).
- 5.3 **Termination for Convenience.** This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving ninety (90) days written notice thereof.
- 5.4 **Obligations upon Termination.** Upon termination, Licensee shall immediately pay all outstanding amounts incurred prior to termination to Licensor.

ARTICLE 6 - LIABILITY

IN NO EVENT SHALL LICENSOR BE LIABLE, WHETHER BASED UPON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF LICENSOR HAS BEEN ADVISED OF OR COULD HAVE REASONABLY FORESEEN THE POSSIBILITY OF SUCH DAMAGES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFITS OR BUSINESS, COSTS OF DELAY, COSTS TO COMPANY OR OTHERS ARISING UNDER OR RELATED TO THIS AGREEMENT. LICENSOR'S AGGREGATE LIABILITY FOR ANY OTHER DAMAGES SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE LIABILITY. THE FOREGOING SHALL NOT LIMIT LICENSEE'S PAYMENT OBLIGATIONS UNDER ARTICLE 3.

ARTICLE 7 - MISCELLANEOUS

- 7.1 **Choice of Law.** This License Agreement will be governed by the laws of the State of Texas. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this License Agreement. You submit to personal jurisdiction in Texas and further agree that any legal action relating to this License Agreement will be brought exclusively in the County of Travis, State of Texas (if under State law) or the Western District of Texas (if under federal law). You hereby waive any claim that such venue is improper or inconvenient. IN ANY SUCH PROCEEDINGS, YOU HEREBY KNOWINGLY AND WILLINGLY WAIVE AND SURRENDER YOUR RIGHT TO TRIAL BY JURY.
- 7.2 **Effect of Illegality.** In the event that any provision of this License Agreement shall be determined to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that this License Agreement shall otherwise remain in full force and effect and enforceable.

- 7.3 **No Waiver.** The failure of either Party to enforce its rights under this License Agreement at any time for any period shall not be construed as a waiver of such rights.
- 7.4 **Survival of Certain Provisions.** It is hereby agreed that the rights and obligations of the parties hereto contained in Articles 3, 5 and 6 and any Addenda referenced therein shall survive and continue after any termination or cancellation of this Agreement and shall bind the parties, their successors, their assigns and their legal representatives.
- 7.5 **Entire Agreement.** This Agreement sets forth and shall constitute the entire agreement between Licensee and Licensors with respect to the subject matter thereof, and shall supersede any and all prior agreements, understandings, promises and representations made by one party to the other concerning the subject matter herein and the terms and conditions applicable thereto. This Agreement may not be released, discharged, supplemented, interpreted, amended or modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of each of the parties hereto as is specially provided elsewhere in this Agreement.
- 7.6 **Independent Contractors.** In making and performing this Agreement, the parties act and shall act at all times as independent contractors and nothing contained in this Agreement shall be construed or implied to create the relationship of partner or of employer and employees between the parties. At no time shall either party make commitments for or in the name of the other party.
- 7.7 **No Assignment by Licensee.** Licensee is not allowed to assign its rights or obligations under this Agreement without Licensors' prior written consent.
- 7.8 **Notices.** All notices under this Agreement shall be sent to the address here above mentioned. All such notices shall be deemed to be received by the other party on the earlier of (a) five (5) days after the postal date of a written notice, (b) three (3) days after the date of delivery of the courier mail company.

Customer Support Center

1. Licensor's contact information for technical support will be:
Telephone: (512) 931-3376
email address: support@2fa.com
2. Licensor's normal business hours are as follows:
Monday – Friday 9:00 a.m. to 6:00 p.m. Central Time
3. Licensee shall contact Licensor's personnel via the telephone and fax numbers or via the e-mail address listed above to request the technical support services described in this Agreement.