

## TSCHK2 SOURCE CODE LICENSE AGREEMENT

This TSCHK2 Source Code License Agreement (this "Agreement") is entered into by and between the Technology Association of America ("TechAmerica") with offices at 601 Pennsylvania Avenue, NW, Washington, DC 20004; ("Owner"), and \_\_\_\_\_, ("Licensee"), and is effective as of the date this Agreement is executed by Licensee.

1. **GRANT OF LICENSE:** Subject to the provisions contained herein and to the payment of a one-time license fee of \$1,000.00 USD, Owner grants Licensee a non-exclusive, non-transferable, non-sublicensable, (except as permitted in Section 1 g below) royalty free, irrevocable (in accordance with Sections 3 and 4 below), worldwide license under their copyrights to reproduce, perform, display, prepare derivative works of and distribute through multiple levels of distribution the TSCHK2 source code as identified in **Exhibit A** (the "Software"); *provided, however*, Software in its original form (i.e., uncompiled text files), in whole or in part, shall not be made available by Licensee to any third party not an employee or contractor of Licensee or its subsidiaries. Licensee's licensed rights to the Software are subject to the following:
  - a) Licensee shall not remove any proprietary notice or label appearing on the Software.
  - b) Licensee acknowledges and agrees that the Software is proprietary property of Owner and is protected under U.S. copyright law and international copyright treaties. Licensee further acknowledges and agrees that all right, title and interest in and to the Software, including all intellectual property rights, are and shall remain with the Owner.
  - c) Upon request by Owner, Licensee shall provide Owner or any of its designees with reasonable information necessary to assure compliance with the terms of this agreement.
  - d) Owner may at its sole discretion, provide Licensee, without requirement of payment of additional license fees, updates to the Software at intervals to be determined by Owner, and such updates shall be governed by the terms of this Agreement.
  - e) This Agreement pertains only to TSCHK2 and any version updates of TSCHK2 (i.e., TSCHK2.1, TSCHK2.2, TSCHK2.3, etc.) and does not convey any rights regarding future products related to the Touchstone Specification (i.e., TSCHK6, TSCHK7, etc.).
  - f) Licensee agrees that Licensee shall not subject the Software, in whole or in part, to any license obligations associated with Open Source Software, whether by including, combining, incorporating lines of Open Source Software code, or distributing, whether through modifications, maintenance, application of Open Source Software patches, or otherwise taking actions or failing to take actions which result, in any manner, in the Software being subjected to the terms of any Open Source Software license. "Open Source Software" means any software that requires as a condition of use, modification, and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (i) be disclosed or distributed in source code form; or (ii) be licensed by the user to third parties for the purpose of making and/or distributing derivative works; or (iii) be redistributable at no charge. Open Source Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL), (ii) the Artistic License (e.g., PERL), (iii) the Mozilla Public License, (iv) the Netscape Public License, (v) the Sun Community Source License (SCSL), (vi) the Sun Industry Source License (SISL), (vii) the Apache Software license, and the Common Public License (CPL) or (viii) the Berkeley Software Development (BSD).
  - g) Licensee is permitted to sublicense the Software so long as the Licensee includes in the contractor agreement all the terms and conditions in this License Agreement that afford Owner ownership of the Software, maintain Owner's Limited Warranty and Limitation of Liability, and prevent subcontractor's disclosure of the Software to another party. Licensee agrees to indemnify, defend, and hold harmless Owner for any breach of this Agreement made by its employees or contractors.
2. **LIMITED WARRANTY:**

- a) Owner warrants that it has sufficient rights to enter into this Agreement.
- b) THE EXPRESS WARRANTY SET FORTH IN THIS SECTION 2 CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE SOFTWARE, AND OWNER MAKES NO OTHER REPRESENTATION OR WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) WITH RESPECT TO ANY OF THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE SUFFICIENCY, ACCURACY OR UTILIZATION OF, OR ANY INFORMATION OR OPINION CONTAINED OR REFLECTED IN, ANY OF THE SOFTWARE. OWNER EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO OFFICER, DIRECTOR, EMPLOYEE, MEMBER, AGENT, REPRESENTATIVE OR PUBLISHER OF THE OWNER IS AUTHORIZED TO MAKE ANY MODIFICATION, EXTENSION, OR ADDITION TO THIS LIMITED WARRANTY.

**3. LIMITATION OF LIABILITY:**

- a) Licensee acknowledges that each of Owner's obligations and liabilities with respect to the Software are exhaustively defined in this Agreement. Licensee is responsible for the consequences of any use of the Software (whether or not such use was consistent with the license granted hereunder) created therefrom. No party shall be liable for any indirect, special, incidental or consequential damage of any kind, even if advised of the possibility of such damages.
- b) If at any time an allegation of infringement of any rights of any third party is made, or in Owner's opinion is likely to be made, with respect to the Software, Owner may, at its option and at its own expense (i) obtain for Licensee the right to continue using the Software, (ii) modify or replace the Software or any portion thereof so as if to avoid any such claim of infringements, or (iii) refund to Licensee the license fee in consideration for Licensee to stop using the Software. Owner shall have no liability to Licensee if any claim of infringement would have been avoided except for Licensee's refusal to use any modified or replacement Software supplied or offered to be supplied pursuant to this Section 3(b). Notwithstanding anything contained in this Agreement, and except as set forth in Section 3(b) hereof, Owner's liability to Licensee for damages pursuant to this Section 3(b), if any, shall not exceed the amounts of the license fee paid by Licensee for the Software subject to any such claim.
- c) Section 3(b) states the entire liability of Owner with respect to the infringement or alleged infringement of any third party rights of any kind whatsoever by any of the Software.

**4. TERMINATION:** This Agreement may be terminated immediately by Owner upon material breach of any provision of the Agreement by Licensee. Upon any termination of this Agreement, Licensee shall immediately discontinue the use of the Software and shall within thirty (30) days either return files on diskette(s), if any, to Owner or certify in writing to Owner that the Software has been deleted from Licensee's computer(s) and is eliminated from Licensee's premises, other than any archival copies pursuant to Licensee's standard backup and archival policies and procedures.

**5. GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Virginia without reference to its conflict of laws provisions and the Licensee further consents to jurisdiction by the state and federal courts sitting in the State of Virginia.

**6. MISCELLANEOUS:** This Agreement constitutes the complete and exclusive agreement between Owner and Licensee with respect to the subject matter hereof, and supercedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. This Agreement may not be modified except in writing duly signed by an authorized representative of Owner and Licensee. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability (i) of such provision under other circumstances, or (ii) of the remaining provisions hereof under all circumstances. Headings shall not be considered in interpreting this Agreement.

**7. EXPORT:** Licensee may not load or export or re-export any of the Software or any underlying information or technology except in full compliance with all laws of the United States and other applicable laws and regulations.

8. **RELATIONSHIP OF THE PARTIES:** Owner and Licensee are independent parties. Nothing in this Agreement shall be construed to make the independent parties partners or joint venturers or to make the independent parties liable for the obligations, acts, omissions or activities of any other party.
9. **WAIVER:** Failure by either party to enforce any term of this Agreement shall not be deemed a waiver of future enforcement of that or any other term in this Agreement or any other agreement that may be in place between the parties.

**BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT EACH HAS READ THE TERMS OF THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS**

---

**TechAmerica**

**Date**

---

**Licensee**

**Date**

---

**Licensee's Company Name**

---

**Licensee's Address**

**EXHIBIT A**

**TSCHK2 SOURCE CODE LICENSE AGREEMENT**

Description of Software: \_\_\_\_\_

\_\_\_\_\_

Licensee's person responsible for Software:

Name: \_\_\_\_\_

Title: \_\_\_\_\_