

TWAIN LICENSE AGREEMENT

This TWAIN License Agreement (“Agreement”) is entered into between **The TWAIN Working Group** (“Vendor”) and the person or company who downloads the TWAIN Software from <http://www.twain.org> web site (“Licensee”).

1. Software Definition

The term “Software” shall mean all computer programs and related documentation described in Exhibit A to this Agreement.

2. License

- a. *Grant of License.* Vendor grants Licensee a royalty-free, **nonexclusive, nontransferable** license to use, reproduce and distribute the Software described in Exhibit A hereto, subject to all terms and conditions of this Agreement.

3. Limitation of Liability

- a. *Damages Limitation.* In no event shall Vendor be liable for any damages, whether in contract or tort (including negligence), including but not limited to direct, consequential, special, exemplary, incidental and indirect damages, arising out of or in connection with this Agreement or the use, the result of use, or the inability to use the Software.
- b. *Data Protection.* Licensee agrees that it shall have the sole responsibility for protecting its data used in connection with the Software.

4. No Obligation to Support Software

Vendor shall have no obligation under this Agreement to correct any bugs, defects or errors in the Software or to otherwise support or maintain the Software.

5. Ownership of Software

Licensee agrees that Vendor owns all rights, title and interest, including but not limited to copyright, patent, trade secret, and all other intellectual property rights, in the Software and any changes, modifications or corrections to the Software. If Licensee is ever held or deemed to be the owner of any copyright rights in the software or any changes, modifications or corrections to the Software, then Licensee hereby irrevocably assigns to Vendor all such rights, title and interest and agrees to execute all documents necessary to implement and confirm the letter and intent of this Section.

6. Confidentiality

- a. *Acknowledgment of Trade Secrets.* Licensee acknowledges that the Software contains valuable trade secrets and confidential information owned by Vendor, including but not limited to the development status of the Software, the functionality of the Software, the appearance, content and flow of the Software’s screens, the method and pattern of user interaction with the Software, and the content of the Software’s documentation.
- b. *Restrictions.* Licensee agrees that Licensee and its employees shall not, directly or indirectly use except as authorized by this Agreement, or decompile, disassemble or otherwise analyze for reverse engineering purposes the Software, including all trade secrets and confidential information therein.

7. No Warranty

Licensee and Vendor agree that the Software is provided "AS IS" and that Vendor makes no warranty as to the Software. VENDOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATED TO THE SOFTWARE, ITS USE OR ANY INABILITY TO USE IT, THE RESULTS OF ITS USE AND THIS AGREEMENT.

8. No Assignment

Neither Licensee nor Vendor may assign or otherwise transfer in any way any of the rights and obligations arising out of this Agreement without the prior written consent of the other party.

9. Force Majeure

Neither party shall be responsible for any delay or failure to perform obligations specified in this Agreement due to causes beyond the party's reasonable control.

10. Other Provisions

- a. *Independent Parties.* Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationship between Vendor and Licensee.
- b. *Waiver.* The waiver or failure of either party to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.
- c. *Severability.* If any term or provision of this Agreement should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Agreement shall be unimpaired, and the invalid term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid term or provision.
- d. *Notices.* Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given three (3) days after mailing by first class certified mail, postage prepaid, to the following address:

To Vendor: **The TWAIN Working Group**

13090 Hwy 9, Suite 3

Boulder Creek, CA 95006

To Licensee: (As provided by Web site submission of information)

- e. *Integration.* This Agreement and its exhibits constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and agreements between the parties concerning the subject matter hereof.
- f. *Amendments.* No amendment or modification of any provision of this Agreement shall be effective unless the same shall be in writing and signed by both parties.

- g. *Applicable Law.* This Agreement shall be governed by the laws of the State of California.
- h. *Arbitration.* Any controversy or claim arising out of or relating to this Agreement, with the exception of injunctive relief sought by either party, shall be submitted to arbitration before an arbitrator agreed upon by the parties, or if the parties cannot agree upon an arbitrator within thirty (30) days, to an arbitrator selected by the American Arbitration Association. The arbitrators may award attorneys' fees and costs as part of the award. The award of the arbitrators shall be binding and may be entered as a judgment in any court of competent jurisdiction.
- i. *Effective Date.* This agreement shall take effect on the date that the licensee downloads the software from the TWAIN Working Group web site.

Exhibit A – Software Description

The “Software” described is a TWAIN Data Source Manager compliant with TWAIN Specification version 1.9 for the Macintosh OS X 10.1.3 or greater computing environment.

1. TWAIN Data Source Manager for Mac
2. Sample application source code
3. Sample “data source” source code
4. TWAIN Glue code
5. TWAIN header file
6. Release Notes and other specification additions