MSU ProFlex Commercial License Agreement

This License Agreement ("Agreement") is by and between Michigan State University, a non-profit educational institution having an address at 325 East Grand River Avenue, Suite 350, East Lansing, Michigan, 48823 ("MSU") and (insert name of Licensee) having an address at (insert Licensee address) ("Licensee") (individually "Party" and collectively, the "Parties").

1. Definitions.

"Product" means the full, integrated "MSU ProFlex" Software and any associated documentation, developed by MSU personnel and copyrighted by Michigan State University Board of Trustees;

"Derivative Works" means for material subject to copyright protection, any derivative work (the term "derivative work" being used with the same meaning as in the United States Copyright Act of 1976, as amended) which is based on one or more pre-existing works of the Product;

"Agents" means trustees, directors, officers, faculty, staff, students, employees, consultants and agents;

"Affiliate" means (a) an organization, which directly or indirectly controls a party to this Agreement; (b) an organization, which is directly or indirectly controlled by a party to this Agreement; (c) an organization which is controlled, directly or indirectly, by the ultimate parent company of a party; Control as per (a) to (c) is defined as owning fifty percent (50%) or more of the voting stock of a company or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organization.

2. License and Fees.

In consideration of Licensee's prior payment of Twenty Thousand Dollars (USD \$20,000) ("License Fee"), MSU grants to Licensee a non-exclusive, perpetual, non-transferable, non-sublicensable license to use the Product for its internal purposes on Licensee's business site at (insert Licensee address). Licensee may develop Derivative Works for its internal use, provided MSU copyright notices remain intact and that the contributions of MSU personnel as outlined in Section (3) are included. Licensee may make copies of the Product as needed for its internal purposes, provided MSU copyright notices remain intact and the contributions of MSU personnel outlined in Section (3) are included. The Product, Product copies, and Derivative Works may not be transferred, distributed, licensed, or sold by Licensee.

From time to time, MSU, in its sole discretion, may elect to make available updates of the Product. Such updates will also be covered under the terms of Agreement upon payment by Licensee of the update fee established by MSU when the availability of the update is announced.

MSU Agreement Number: (to be added) MSU Technology Number: TEC2002-0084

3. Acknowledgements.

Licensee agrees to acknowledge the use of Product in publications or presentations by citing the following references:

D. J. Jacobs, A. J. Rader, L. A. Kuhn, and M. F. Thorpe (2001)

"Protein Flexibility Predictions Using Graph Theory",

Proteins: Structure, Function, and Genetics 44, 150-165.

B. M. Hespenheide, A. J. Rader, M. F. Thorpe, and L. A. Kuhn (2002)

"Identifying protein folding cores from the evolution of flexible regions during unfolding",

J. Molec. Graphics and Modelling 21, 195-207.

4. Prohibited Uses of the Product.

Licensee may not make copies of the Product that do not contain the notifications of copyright exactly as provided in the Product supplied to Licensee by MSU.

Licensee may not transfer or assign its rights under this Agreement without the prior express written consent of MSU.

5. Prohibited Uses of the University Name and Marks.

Licensee agrees that it will not use the MSU name, logo or marks in publicity, advertising, fund-raising, or similar activities without the prior written approval of MSU.

6. Intellectual Property.

MSU retains title to Product and that portion of the Product contained in Derivative Works. Licensee agrees to use reasonable efforts to protect the Product and any Derivative Works from unauthorized use, distribution or reproduction. All rights not specifically granted in this Agreement are reserved by MSU. MSU represents that, to its knowledge, the Product does not infringe on the intellectual property rights of a third party. If the Product is, or in MSU's opinion may become, the subject of a claim for infringement of the intellectual property rights of a third party, MSU may at its option: (a) replace or modify the Product to make it non-infringing; or (b) repay the License Fee to the Licensee and terminate this Agreement.

- 7. No MSU Warranty; Licensee Indemnification.
- a) EXCEPT AS SPECIFIED IN SECTION (6) ABOVE, MSU MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO LICENSEE OR TO ANY OTHER PERSON OR ENTITY. THE PRODUCT IS BEING PROVIDED TO LICENSEE "AS IS." MSU, INCLUDING ITS AFFILIATES OR AGENTS, MAKE NO REPRESENTATIONS, EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE,

MSU Agreement Number: (to be added) MSU Technology Number: TEC2002-0084 AND ASSUME NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO DESIGN, DEVELOPMENT, REPRODUCTION, USE, DISTRIBUTION, DISPLAY, PERFORMANCE, IMPORTATION, LICENSE OR OTHER DISPOSITION BY LICENSEE, OR ANY OTHER PERSON OR ENTITY OF THE PRODUCT OR ANY DERIVATIVE WORKS. MSU WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR OTHER SIMILAR DAMAGES, EVEN IF MSU OR ITS EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE ASSUMES THE ENTIRE RISK AS TO PERFORMANCE OF THE PRODUCT AND ALL DERIVATIVE WORKS.

Additional statements by employees of MSU, such as correspondence or oral presentations, do not constitute warranties by MSU and should not be relied upon.

Should Licensee be dissatisfied with the performance of the Product within the first forty-five (45) days of receipt of Product, Licensee may notify MSU for a full refund provided Licensee ceases using the Product (including Derivative Works) and certifies that all copies of the Product (including Derivative Works) and other materials related to the Product stored on any equipment or in any other location or storage media have been destroyed. Notification and certification by Licensee within the forty-five day period, as described above, shall result in the termination of this Agreement.

b) Licensee shall indemnify, defend and hold harmless MSU for claims, suits, actions, or demands which result from or arise in connection with (a) any use of the Product; (b) any use of the Product in combination with other content, including Derivative Works developed by Licensee, to the extent such copyright and/or patent infringement would not have occurred but for such combination; or (c) use by Licensee of the Product or Derivative Works beyond the scope of the license granted herein.

8. Termination.

In the event that either Party hereto commits any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within ninety (90) days after receipt of written notice of such breach or default, the Party giving notice may at its option and in addition to any other remedies which it may have by law, terminate this Agreement by sending notice of termination in writing to the other Party. Such termination shall be effective as of the date of the receipt of such notice. Upon termination, Licensee shall cease using the Product and shall certify that all copies of the Product (including Derivative Works) and other materials related to the Product stored on any equipment or in any other location or storage media have been destroyed. Sections 3, 4, 5, 6, 7, 8 and 9 shall survive termination

9. Supplementary Provisions.

This Agreement represents the entire understanding between MSU and Licensee regarding the Product, and supersedes any prior purchase order, communications, advertising, or representations. This Agreement may be modified only in a written amendment signed by the

authorized officers of both Parties. If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of the remaining provision of this Agreement.

The validity and interpretation of this Agreement and the legal relation of the Parties to it shall be governed by the laws of the State of Michigan and the United States.

10. Export Control

Both Parties acknowledge that they are subject to United States laws and regulations controlling the export of technology, technical data, computer software, laboratory prototypes, and other items (including inter alia the Arms Export Control Act, as amended and the Export Administration Act of 1979, as amended). Each Party's performance under this Agreement must comply with all applicable United States export laws and regulations. The transfer of certain technology, technical data, and/or items may require a license from the cognizant agency of the United States government and/or written assurances by a Party that the Party shall not export to certain foreign countries without prior approval of such agency. The Parties neither represent nor warrant to the other that a license shall not be required nor that, if required, it will be issued. In any event, neither Party shall export or re-export any technology, technical data, or items in violation of any applicable USA laws or regulations.

11. Notices

(a) For MSU Technologies:

i) Address Licensing Notices: MSU Technologies

Attention: Agreement Coordinator 325 E. Grand River, Suite 350

City Center Building East Lansing, MI 48823

517-884-1605 msutagr@msu.edu

ii) Address Financial Notices: MSU Technologies

Attention: Finance Coordinator 325 E. Grand River, Suite 350

City Center Building East Lansing, MI 48823

517-884-1827 msutfin@msu.edu

(b) For Licensee:

Name:

Mailing address: Phone number: E-mail address:

MSU Agreement Number: (to be added)
MSU Technology Number: TEC2002-0084

12. Authorized Signatures.	
For and on behalf of	For and on behalf of
MICHIGAN STATE UNIVERSITY	[LICENSEE NAME]
By:	By:
Richard W. Chylla, Ph.D. Executive Director MSU Technologies	Name: