

FEBIO SOFTWARE LICENSE
Version 2.0

THIS AGREEMENT, between you the licensee, hereinafter referred to as "Recipient," and the University of Utah, having an address at the University of Utah, Technology Commercialization Office, 615 Arapleen Drive, Suite 310, Salt Lake City, Utah 84108, hereinafter referred to as "University," shall govern the conditions of disclosure by University to Recipient of certain software (SOFTWARE) named: **FEBio**, developed by Steve Maas and Jeff Weiss, of the University of Utah. SOFTWARE, as used herein, includes all such software actually provided to Recipient, including, as the case may be, source code or any binaries or executables thereof, plus any software derived directly therefrom.

1. LICENSE. University grants to you a non-exclusive, non-transferable right to use the SOFTWARE in a single installation on a single machine in a single geographic location for Non-Commercial Use. Recipient agrees not to use such SOFTWARE for any Commercial Purpose.

Use of the software for any Commercial Purpose means use of Software by you for direct or indirect financial, commercial or strategic gain or advantage. Examples of a Commercial Purpose include, but are not limited to:

- a) Integrating the SOFTWARE with other software for sale as a bundled product.
- b) Use of the SOFTWARE for a fee-based service or subscription.
- c) Use of the SOFTWARE in the creation of commercial products.
- d) Use of the SOFTWARE for research or educational purposes, for or on behalf of a commercial or for-profit entity or project, whether or not such use is a commercial use.
- e) Use of the software by an individual employed at an academic or non-profit research institution to perform contract work funded by a commercial entity.
- f) Use of the software by an individual in the course of consulting or contracting activities for which you are compensated.

Examples of Non-Commercial Use include, but are not limited to:

- a) Use of the SOFTWARE by an individual employed by an academic or non-profit research institution for non-commercial research.
- b) Use of the SOFTWARE by an individual employed by an academic or non-profit research institution for teaching or learning.
- c) Personal use of the SOFTWARE for non-commercial research, learning or entertainment, not leading to the creation of a commercial product.

It is further agreed that the furnishing of SOFTWARE to Recipient shall not constitute any grant of license to Recipient under any legal rights now or hereinafter held by University.

2. TERMINATION. The use of the SOFTWARE by Recipient is conditioned upon Recipient's compliance with the terms of this Agreement. When this Agreement terminates, Recipient is required to remove all copies of the SOFTWARE and discontinue all use. Recipient agrees that Recipient will only copy the SOFTWARE into any machine readable or printed form as necessary to use it in accordance with this Agreement or for backup purposes in support of Recipients use of the SOFTWARE. This Agreement is effective until terminated. Recipient may terminate it at any point by destroying the SOFTWARE together with all copies of the SOFTWARE. Also, University has the option to terminate if Recipient fails to comply with any term or condition of this Agreement or upon 30 days written notice. Recipient agrees upon such termination to destroy the SOFTWARE together with all copies of the SOFTWARE.

3. COPYRIGHT. The SOFTWARE is protected by United States copyright law and international treaty provisions. Recipient acknowledges that no title to the intellectual property in the SOFTWARE is transferred to Recipient. Recipient further acknowledge that title and full ownership rights to the SOFTWARE will remain the exclusive property of University or its suppliers, and Recipient will not acquire any rights to the SOFTWARE except as expressly set forth in this Agreement.

4. LIMITATIONS. Recipient may modify the SOFTWARE or create derivative works based upon the SOFTWARE for their own internal or personal use. Recipient may not rent, lease, distribute, transfer or

sublicense the SOFTWARE or any derivative works thereof to any third parties, without first negotiating in good faith with University a separate license agreement. Recipient may not export the SOFTWARE or any derivative works thereof into any country prohibited by the United States Export Administration Act and the regulations there under.

5. LIMITED WARRANTIES. University warrants that the media on which the SOFTWARE is furnished will be free from defects in materials and workmanship under normal use.

6. DISCLAIMER OF WARRANTY: EXCEPT AS SET FORTH HEREIN, SOFTWARE IS PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNIVERSITY FURTHER DISCLAIMS ALL EXPRESSED AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATIONS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

7. GOVERNING LAW. This Agreement will be governed by the internal laws of the State of Utah without regard to conflict of laws.

8. ENTIRE AGREEMENT. This is the entire agreement between Recipient and University, which supersedes any prior agreement or understanding, whether written, or oral, relating to the subject matter of this license.

9. NO LIABILITY FOR CONSEQUENTIAL DAMAGES: IN NO EVENT SHALL UNIVERSITY BE LIABLE TO RECIPIENT FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF THE SOFTWARE, EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. BASIS OF BARGAIN. The limited warranty, exclusive remedies, and limited liability set forth above are fundamental elements of the basis of the agreement between University and Recipient. University would not be able to provide the SOFTWARE on an economic basis without such limitations.