

Privacy Policy for Embodied Labs Application

This privacy policy governs your use of the software application Embodied Labs (“Application”) for desktop devices that was created by Embodied Labs. The Application is A Medical Education Virtual Reality Platform.

What information does the Application obtain and how is it used?

• User Provided Information

The user provided information we collect is designed to be anonymous. No personal information, including names, social security numbers, or any other information specific to an individual will be collected. We may collect personal opinions, as well as demographic information, such as age, race/ethnicity, and household composition.

• Automatically Collected Information

In addition, the Application may collect certain information automatically, including, but not limited to, the type of graphics processing unit you use, your head mounted display type, your school code, application version, your operating system, which lab you experienced, when you used the application, and other information about the way you use the Application.

Does the Application collect precise real time location information of the device?

This Application does not collect precise information about the location of your device.

Do third parties see and/or have access to information obtained by the Application?

This Application uses Google Forms to collect and visualize the user provided information.

What are my opt-out rights?

You can stop all collection of information by the Application easily by uninstalling the Application. You may use the standard uninstall processes as may be available as part of your device.

Children

We do not use the Application to knowingly solicit data from or market to children under the age of 13. If a parent or guardian becomes aware that his or her child has provided us with information without their consent, he or she should contact us at support@embodiedlabs.com. We will delete such information from our files within a reasonable time.

Security

We are concerned about safeguarding the confidentiality of your information. We provide physical, electronic, and procedural safeguards to protect information we process and maintain. For example, we limit access to this information to authorized employees and contractors who need to know that information in order to operate, develop or improve our Application. Please be aware that, although we endeavor provide reasonable security for information we process and maintain, no security system can prevent all potential security breaches.

Data retention policy, Managing your information

We will retain Automatically Collected information for up to 24 months and thereafter may store it in aggregate.

Changes

This Privacy Policy may be updated from time to time for any reason. We will notify you of any changes to our Privacy Policy by posting the new Privacy Policy on our website and notifying you in our Application. You are advised to consult this Privacy Policy regularly for any changes, as continued use is deemed approval of all changes.

Your consent

By using the Application, you are consenting to our processing of your information as set forth in this Privacy Policy now and as amended by us. “Processing,” means using cookies on a computer device or using or touching information in any way, including, but not limited to, collecting, storing, deleting, using, combining and disclosing information, all of which activities will take place in the United States. If you reside outside the United States your information will be transferred, processed and stored there under United States privacy standards.

Contact us

If you have any questions regarding privacy while using the Application, or have questions about our practices, please contact us at support@embodiedlabs.com.

End-User License Agreement (EULA)

Please read this end-user license agreement (“EULA”) carefully before downloading or using Embodied Labs (“Application”). By downloading or using the Application, you are agreeing to be bound by the terms and conditions of this EULA.

This EULA is a legal agreement between you (either an individual or a single entity) and Embodied Labs, Inc. and it governs your use of the Application made available to you by Embodied Labs, Inc.

If you do not agree to the terms of this EULA, do not download or use the application.

You certify that you are of the legal age of majority in the jurisdiction in which you reside or, if you are between the ages of 13 and the legal age of majority, that you are using the services with the supervision of your parent or legal guardian who agrees to be bound by this EULA. Make sure to review this EULA with your parent or guardian so that you both understand all of your rights and obligations.

1. Eligibility

You must be at least 13 years of age to access and use the Services. There is no exception to this requirement. Embodied Labs does not knowingly collect any personal information from children under the age of 13. By your use of the Services, you agree that you are either 18 years of age or older, or an emancipated minor, or possess legal parental or guardian consent, and that you are fully able and competent to understand and accept this EULA as a binding contract and to abide by all Terms.

2. Registration

Registering Your Account. In order to access certain features of Embodied Labs content, such as the ability to upload and publish Registered User Content to Embodied Labs content, you will be required to become a Registered User. For purposes of the Terms, a “Registered User” is a User who has registered an account on the Website (“Account”).

Registration Data. In registering for the Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by the Services’ registration form (the “Registration Data”); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (1) at least eighteen (18) years old; (2) of legal age to form a binding contract; and (3) not a person barred from using Embodied

Labs content under the laws of the United States, your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You agree that you shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of Embodied Labs content by minors. You may not share your Account or password with anyone, and you agree to (1) notify Embodied Labs immediately of any unauthorized use of your password or any other breach of security; and (2) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or Embodied Labs has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Embodied Labs has the right to suspend or terminate your Account and refuse any and all current or future use of Embodied Labs content (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one Account per platform or SNS at any given time. Embodied Labs reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party’s rights. You agree not to create an Account or use Embodied Labs content if you have been previously removed by Embodied Labs, or if you have been previously banned from any of Embodied Labs content.



3. Your Account

Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and shall forever be owned by and inure to the benefit of Embodied Labs.

4. Necessary Equipment

You must provide all equipment and software necessary to connect to Embodied Labs content. You are solely responsible for any fees, including Internet connection or mobile fees, that you incur when accessing Embodied Labs content.

5. Software Updates

Certain software may be required to access and use the Services. In addition, we may need to automatically update some of the software you obtain through the Services or provide you with new software to keep the Services functioning properly, which could include bug fixes, patches, enhanced features, missing plug-ins and new versions. By using the Services, you agree to such automatic updating.

We reserve the right, in our sole discretion and where technically feasible, to disable your access to or ability to use Services that we believe present a health and safety risk or violate our community standards, agreements, laws, regulations or policies. We will not incur any liability or responsibility if we choose to remove, disable, or delete such access or ability to use any or all portion(s) of the Services.

The Application is licensed, not sold, to you by Embodied Labs, Inc. for use strictly in accordance with the terms of this EULA.

6. Storage

Unless expressly agreed to by Embodied Labs in writing elsewhere, Embodied Labs has no obligation to store any Registered User content that is Made Available on Embodied Labs content. Embodied Labs has no responsibility or liability for the deletion or accuracy of any content, including Registered User content; the failure to store, transmit or receive transmission of content; or the security, privacy, storage, or transmission of other communications originating with or involving use of Embodied Labs content. You agree that Embodied

Labs retains the right to create reasonable limits on Embodied Labs's use and storage of the content, including Registered User content, such as limits on file size, storage space, processing capacity, and similar limits described in the web pages accompanying the Services and as otherwise determined by Embodied Labs in its sole discretion.

7. License

Embodied Labs, Inc. grants you a revocable, non-exclusive, non-transferable, limited license to download, install and use the Application strictly in accordance with the terms of this EULA.

8. Restrictions

You agree not to, and you will not permit others to You will not use, copy, adapt, modify, decompile, reverse engineer, disassemble, decrypt, attempt to derive the source code of, prepare derivative works based upon, distribute, license, sell, rent, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Software and content, except as expressly permitted by Embodied Labs or as permitted under applicable law. Any unauthorized use of the Services is strictly prohibited and will terminate the license granted in these Terms. No licenses or rights are granted to you by implication or otherwise, except for the licenses and rights expressly granted to you.

9. Intellectual Property

The Application, including without limitation all copyrights, patents, trademarks, trade secrets and other intellectual property rights are, and shall remain, the sole and exclusive property of Embodied Labs, Inc.

10. Modifications to Application

Embodied Labs, Inc. reserves the right to modify, suspend or discontinue, temporarily or permanently, the Application or any service to which it connects, with or without notice and without liability to you.

11. Updates to Application

Embodied Labs, Inc. may from time to time provide enhancements or improvements to the features/ functionality of the Application, which may include patches, bug fixes, updates, upgrades and other modifications ("Updates").



Updates may modify or delete certain features and/or functionalities of the Application. You agree that Embodied Labs, Inc. has no obligation to (i) provide any Updates, or (ii) continue to provide or enable any particular features and/or functionalities of the Application to you.

You further agree that all Updates will be (i) deemed to constitute an integral part of the Application, and (ii) subject to the terms and conditions of this EULA.

12. Third-Party Services

The Application may display, include or make available third-party content (including data, information, applications and other products services) or provide links to third-party websites or services (“Third-Party Services”).

You acknowledge and agree that Embodied Labs, Inc. shall not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Embodied Labs, Inc. does not assume and shall not have any liability or responsibility to you or any other person or entity for any Third-Party Services.

Third-Party Services and links thereto are provided solely as a convenience to you and you access and use them entirely at your own risk and subject to such third parties’ terms and conditions.

13. Privacy Policy

Embodied Labs, Inc. collects, stores, maintains, and shares information about you in accordance with its Privacy Policy, which is available at www.embodiedlabs.com. By accepting this EULA, you acknowledge that you hereby agree and consent to the terms and conditions of our Privacy Policy.

14. Term and Termination

This EULA shall remain in effect until terminated by you or Embodied Labs, Inc.

Embodied Labs, Inc. may, in its sole discretion, at any time and for any or no reason, suspend or terminate this EULA with or without prior notice.

This EULA will terminate immediately, without prior notice from Embodied Labs, Inc., in the event that you

fail to comply with any provision of this EULA. You may also terminate this EULA by deleting the Application and all copies thereof from your mobile device or from your computer.

Upon termination of this EULA, you shall cease all use of the Application and delete all copies of the Application from your mobile device or from your computer.

Termination of this EULA will not limit any of Embodied Labs, Inc.’s rights or remedies at law or in equity in case of breach by you (during the term of this EULA) of any of your obligations under the present EULA.

15. For U.S. Government End Users

The Application and related documentation are “Commercial Items”, as that term is defined under 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used under 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. In accordance with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

16. Seizure Warning

In rare instances, some users may experience seizures when exposed to certain light patterns or flashing lights. Exposure to certain light patterns or backgrounds on a virtual reality device may induce an epileptic seizure, even in persons who have no history of prior seizures or epilepsy. Players using virtual reality hardware shall carefully review all health and safety warnings from their respective manufacturers before use.

DISCLAIMER OF WARRANTY

You expressly acknowledge and agree that your access to and use of the services is at your sole risk. As between you and Embodied Labs, Inc. to the maximum extent permitted by applicable law, the services are provided on an “as is” and “as available” basis and Embodied Labs expressly disclaims all representations, warranties and conditions (express or implied, oral or written), including any implied warranties of merchantability, fitness for a particular purpose and non-infringement. In addition, Embodied Labs, Inc. does not represent or warrant that (a) the functions contained in the services will be accurate or meet your requirements; (b) the operation of the services will be secure, uninterrupted, error-free or virus-free, or (c) any defects in the services will be corrected. No oral or written information, guidelines or advice given by Embodied Labs, Inc. will create a warranty.

You further acknowledge and agree that Embodied Labs, Inc. is not responsible for the conduct, whether online or offline, of any user of the services. Under no circumstances will Embodied Labs, Inc. be responsible for any loss or damage, including personal injury or death, resulting from your use of the services, any user-generated content in the services or transmitted to another user, or any transactions between or among you and other users, whether online or offline.

The foregoing disclaimer of warranties will apply to the maximum extent permitted by applicable law. The laws of some states or jurisdictions do not allow the disclaimer of implied warranties, so some or all of the disclaimers in this section may not apply to you.

1. Indemnification

You agree to defend, indemnify and hold harmless Embodied Labs, Inc. and our affiliates, independent contractors and service providers, and each of our respective directors, officers, employees and agents (collectively, “Embodied Labs, Inc. Parties”) from and against all third-party claims, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys’ fees) caused by, arising out of or related to (a) your purchase or use of, or inability to use, the Services; (b) your violation of these Terms or any other applicable terms, policies, warnings or

instructions provided by Embodied Labs, Inc. or a third party in relation to the Services, (c) your violation of any applicable law or any rights of any third party; or (d) any User content or Feedback you provide.

2. Limitation of Liability

The Embodied Labs, Inc. parties shall have no liability for any lost profits or other consequential, special, punitive, indirect, or incidental damages, arising from or related to your use or inability to use the services, even if an Embodied Labs, Inc. party has been advised of the possibility of such damages. In no event shall the aggregate liability of the Embodied Labs, Inc. parties arising out of or relating to the use of or inability to use the services exceed the greater of one hundred dollars (\$100) or the amount you paid us to use our services. The foregoing disclaimer of certain damages and limitation of liability will apply to the maximum extent permitted by applicable law. The laws of some jurisdictions do not allow the exclusion or limitation of certain damages, so some or all of the exclusions and limitations set forth above may not apply to you.

3. Amendments to this EULA

Embodied Labs, Inc. reserves the right, at its sole discretion, to modify or replace this EULA at any time. If a revision is material we will provide at least 30 days’ notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

By continuing to access or use our Application after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Application.

4. Governing Law

The laws of Delaware, United States, excluding its conflicts of law rules, shall govern this EULA and your use of the Application. Your use of the Application may also be subject to other local, state, national, or international laws.

This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Good.



5. Contact Information

If you have any questions about this EULA, please contact us at support@embodiedlabs.com.

6. Entire Agreement

The EULA constitutes the entire agreement between you and Embodied Labs, Inc. regarding your use of the Application and supersedes all prior and contemporaneous written or oral agreements between you and Embodied Labs, Inc.

You may be subject to additional terms and conditions that apply when you use or purchase other Embodied Labs, Inc.'s services, which Embodied Labs, Inc. will provide to you at the time of such use or purchase.

Software Subscription License Terms and Conditions

These Software Subscription and License Terms and Conditions (“License Terms”) apply to use of a particular module of a virtual reality software and related educational materials (collectively referred to herein as the “Embodied Labs Application”), which was developed and is owned by Embodied Labs, Inc., an Illinois corporation with its principal place of business at 222 W. Merchandise Mart Plaza, Suite 1230, Chicago, IL 60654 (hereinafter referred to as “Embodied”).

1. Subscription.

Subject to the terms and conditions in these License Terms including that the customer (the “Licensee”) execute an Order Form for the Embodied Labs Application, that the Licensee has paid the initial license fee and, following the initial term, pays any applicable renewal license fees, Embodied grants to Licensee a non-exclusive, non-transferable, non-sublicensable license to access and use

- (a) the Embodied Labs Application as made available by Embodied via the internet, together with any modifications, enhancements, or corrections thereto that Embodied may make generally available to its customers from time to time; and
- (b) any educational and instructional materials for the Embodied Labs Application that Embodied may create and make available to Licensee from time to time, whether in print, or in digital form over the internet (“Documentation”), which license shall continue for the Term (as defined below).

Notwithstanding anything to the contrary herein, Licensee will not remove any trademark, service mark, logos or other intellectual property notices that appear on the Embodied Labs Application software or the Documentation.

2. License Exclusions.

Except as expressly authorized by these License Terms, Licensee will not itself, nor through any parent, subsidiary, affiliate, or third party:

- (a) copy, modify or create derivative works based on the Embodied Labs Application or Documentation;
- (b) decompile, disassemble, or reverse engineer the

Embodied Labs Application or Application content in whole or in part;

- (c) defeat, disable or circumvent any protection mechanism related to the Embodied Labs Application or the Documentation;
- (d) sell, license, sublicense, lease, rent, or distribute to any third party, or disclose, permit access to, or transfer to any third party, any portion of the Embodied Labs Application or the Documentation;
- (e) Use the Embodied Labs Application or the Documentation to operate a service bureau or to perform service department management services for any third party; or
- (f) export, access or use the Embodied Labs Application in violation of any U.S. Department of Commerce export administration regulations or other applicable laws or regulations.

3. Accessing the Embodied Labs Application.

- (a) To access and download the Embodied Labs Application, Licensee will login solely through a user identification and a password (together, a “Password”) that will be issued to the Licensee by the Embodied. **Licensee is responsible for keeping all authorized user passwords strictly confidential and taking other reasonable precautions to prevent their unauthorized use.** Embodied will be entitled to presume that all use of the Embodied Labs Application using a Password is authorized by Licensee, and Licensee will remain liable for any damages or losses that are caused by access to the Embodied Labs Application using any such Password.
- (b) Licensee will take reasonable steps to protect against



use of the Embodied Labs Application other than as authorized by these License Terms. **Licensee is responsible for insuring that each authorized user complies with the terms of these license terms.** Licensee will notify Embodied promptly of any unauthorized use of Embodied Labs Application or the Documentation of which it becomes aware.

4. Fees.

- (a) In consideration of the performance by Embodied of its obligations under these License Terms and commencement of access to the Embodied Labs Application, Licensee agrees to pay an initial license fee which will allow Licensee to use the Embodied Labs Application during the initial term. In order to continue Licensee's access to the Embodied Labs Application at the end of the initial term, Licensee shall be required to pay a renewal license fee as outlined in the Order Form. The Fees listed on the Order Form entitle Licensee to the number of authorized users listed on the Order Form. Additional users may become authorized, at Embodied's then applicable rates, as the same may be increased by Embodied from time to time as contemplated in the Order Form and these License Terms.
- (b) Embodied reserves the right to modify its fees for any subsequent "Renewal Term" (as defined in Section 7(a)).
- (c) Fees will be paid by Licensee within 30 days after receipt of the relevant invoice by Licensee.
- (d) All Fees are exclusive of any applicable sales tax and other applicable taxes, which Licensee will be responsible to pay (except that Embodied will pay income tax on its own income under these License Terms).

5. Embodied's Ownership of the Embodied Labs Application and Application Content.

- (a) Except for the rights expressly granted to Licensee in these License Terms, these License Terms do not transfer to Licensee any right, title, or interest (including any copyright, patent, trademark, trade secret or other intellectual property or proprietary right) in or to the Application or the Documentation.
- (b) Licensee acknowledges that Embodied retains sole and exclusive title to the Embodied Labs Application and all related content and intellectual property, and the Documentation and any copies thereof, and hereby assigns to Embodied all right, title, and

interest in and to any modifications made to the Embodied Labs Application, Application content, or the Documentation on behalf of Licensee.

6. Updates and Options.

Embodied will provide Licensee with standard generally available updates to the Embodied Labs Application during the initial Term in return for payment of the initial license fee. Embodied may also offer optional modules or enhanced functionality from time to time, which Licensee may elect to obtain from Embodied in return for the payment of additional fees.

7. Term and Termination.

- (a) The initial term of the licenses granted under these License Terms will be for one (1) year (the "Initial Term"). After the Initial Term, the licenses granted under these License Terms will automatically renew for successive one month terms (each, a "Renewal Term" and together with the Initial Term, the "Term") subject to Licensee's continued payment of the monthly subscription and maintenance fee.
- (b) Licensee may terminate the licenses under these License Terms at any time by giving Embodied at least 30 days prior written notice of its intent to terminate on the date set forth in such notice. Such termination shall not entitle Licensee to the return of any of its previously paid license fees.
- (c) Notwithstanding anything contained in this Section 7 to the contrary, Embodied may terminate the licenses granted under these License Terms immediately upon written notice if
 - (i) Licensee breaches any obligation under these License Terms, and fails to remedy such breach within 30 days of receiving written notice of such breach from Embodied,
 - (ii) Licensee ceases operation as a going concern, is the subject of any voluntary or involuntary filing in any bankruptcy or insolvency proceeding, makes an assignment for the benefit of creditors, is subject to the appointment of a receiver, or
 - (iii) Licensee fails to make prompt payment of amounts due to Embodied under these License Terms.
- (d) Within 30 days following the termination of the licenses under these License Terms for any reason, Licensee will return all copies of the Documentation or certify in writing that they have been destroyed.

- (e) All amounts accrued before the effective date of termination will become due immediately. Termination of the licenses under these License Terms shall not affect Licensee's payment obligations through the effective date of termination.

8. Warranty and Disclaimer of Warranty.

- (a) During the term of these License Terms, Embodied warrants that the Embodied Labs Application will function substantially in accordance with the Documentation and shall be reasonably free from material defects, provided that:
 - (1) Licensee's use of the application and services is in accordance with all Embodied guidelines and instructions;
 - (2) any performance issue, error or defect does not relate to third party technology provided or being used by Licensee; and
 - (3) Licensee provides Embodied with prompt written notice of any error or defect.

Upon receipt of any such proper notice, at Embodied's discretion, Embodied will either:

- (1) repair the defective portion(s) of the Embodied Labs Application;
 - (2) replace the defective portion(s) of the Embodied Labs Application; or
 - (3) return to Licensee its license fee for the applicable term, prorated with reference to the time remaining in such license term. The foregoing shall constitute Licensee's sole and exclusive remedy for the breach of warranty under these License Terms.
- (b) **Other than the foregoing, Embodied disclaims any and all warranties, express, implied or statutory, of any kind, regarding the application, and/or updates, enhancements, modifications or developments thereto, including, but not limited to, warranties of fitness for a particular purpose or use, merchantability, results, accuracy, completeness and compatibility.**
 - (c) Embodied warrants that it has the right to enter into these License Terms and grant Licensee the license to use the Embodied Labs Application and Application Content as set forth in these License Terms.
 - (d) **Except as otherwise provided in these license**

terms, the software, documentation and services are provided "as is" and "as available." Embodied does not warrant that the use of the Embodied Labs Application will be uninterrupted or error-free or that all errors will be corrected.

- (e) **Limitation of liability and exclusive remedy. In no event shall Embodied's liability for any and all claims related to these license terms (whether under the theories of breach of contract or warranty, negligence, strict liability or otherwise) exceed the fees paid under these license terms in the twelve (12) month period immediately preceding the claim. The provisions of these license terms contain the entire liability of each party, and the sole and exclusive remedy for the other party, for any and all claims arising out of or relating to the Embodied Labs Application, the documentation or these license terms.**
- (f) **Disclaimer of consequential damages. In no event will either party be liable to the other for incidental, indirect, special or consequential damages arising out of or in connection with these license terms, including without limitation, loss of use, income or profit, or loss of or damage to any property or data (including data handled or processed through the use of the Embodied Labs Application) or any punitive damages, provided that the foregoing limitations shall not limit a party's right to indemnify for third party claims that may arise from a breach of the terms of these license terms or from the negligence, misconduct, or breach of applicable law by a party.**
- (g) If the Application or Documentation becomes, or in Embodied's opinion are likely to become, the subject of a claim of infringement of a patent, trade secret or copyright, Embodied may, in its sole discretion and at its sole cost and expense,
 - (i) secure the right for Licensee to continue to use the Application and the Documentation,
 - (ii) replace or modify the Application or Documentation to make it non-infringing, or
 - (iii) terminate the licenses granted under these License Terms by giving Licensee written notice to such effect and refunding to Licensee a pro rata portion of all prepaid fees paid by Licensee based on the amount of such time period that the Embodied Labs Application is not available.

The remedies set forth in this section 8(g) state

the entire liability of Embodied with respect to infringement of patents, copyrights, trademarks, trade secrets, or other intellectual property or proprietary rights of any third party by the software, the documentation or any part thereof and Embodied will not have any additional liability with respect to any alleged or proven infringement.

9. Confidential Information.

- (a) Licensee agrees that it will hold the Embodied “Confidential Information” (as defined below) of Embodied in confidence to the same extent and the same manner as Licensee protects its own Confidential Information, but not less than reasonable care. “Confidential Information” means: the terms of these License Terms, the Embodied Labs Application, the Documentation, all information, specifications, or code which Embodied may have imparted and may from time to time impart to the Licensee relating to the Embodied Labs Application or Documentation, constitute Confidential Information.
- (b) Confidential Information shall not include information that:
 - (i) is or becomes generally known or available to the public at large through no act or omission of the recipient;
 - (ii) can be demonstrated to have been available lawfully to either party prior to the disclosure or had thereafter been furnished to either party without restrictions to disclosure or use; or
 - (iii) is required to be disclosed by a court order or other governmental action.

10. Miscellaneous Terms.

- (a) **Other agreements.** These License Terms, and the Order Form contain the complete agreement between the parties and supersedes all other agreements between the parties relating to the subject matter of these License Terms.
- (b) **Modification.** No modification, waiver or amendment of these License Terms will be valid unless in writing and signed by both parties.
- (c) **Waiver.** The waiver by either party of any default or breach of these License Terms in one instance will not constitute a waiver of any other default or breach or of the same default or breach in another instance.
- (d) **Injunctive Relief.** Licensee acknowledges and

agrees that a violation of the rights of the other party under these License Terms may cause immediate and irreparable harm to Embodied for which money damages cannot compensate. Accordingly, notwithstanding any other provision of these License Terms, Licensee agrees that in the event of any such occurrence, or threat of same, Embodied will be entitled to seek immediate injunctive relief from any court or tribunal of competent jurisdiction, without the requirement of posting bond.

- (e) **Governing law.** These License Terms will be governed and construed pursuant to the laws of the State of Illinois, without regard to its conflict of laws provisions.
- (f) **Jurisdiction.** Except as otherwise provided herein, any and all controversies or claims arising out of or relating to these License Terms and/or the relationship between the Parties shall be resolved by the federal and/or state courts of Cook County, Illinois. For the purposes hereof, Licensee and Embodied hereby submit to the jurisdiction of the federal and state courts of Cook County, Illinois and notice of demand, process and/or summons in connection with judicial proceedings, may be served upon Licensee or Embodied by registered or certified mail with the same effect as if personally served. Licensee and Embodied shall be entitled to recover from the other in any such court or other legal proceedings, in addition to such other relief as may be granted, reasonable attorneys’ fees and costs incurred in such proceedings and in enforcing the rights and obligations arising from or relating to these License Terms.
- (g) **No partnership.** Nothing in these License Terms is intended to, or will be deemed to, create an employment relationship, a partnership or a joint venture between the parties, or to derogate from any relationship between the parties that may exist by virtue of any other agreement between them.
- (h) **Identification of Licensee.** Embodied shall be entitled to identify Licensee as a customer of Embodied in its marketing materials, and in related marketing communications.
- (i) **Assignment.** Neither party may assign the rights or obligations under these License Terms in whole or in part through the operation of law or otherwise without the written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may assign these License Terms in



whole or in part to any third party who acquires all or substantially all of such party's business without having to first acquire the prior written consent of the other party.

- (j) **Force Majeure.** Neither party will be liable for any delay in performance or failure to perform, other than paying any Fees, resulting from circumstances beyond its reasonable control.
- (k) **Severability.** If any provision of these License Terms is held to be invalid or unenforceable, such provision will be construed to apply to the maximum extent permitted under applicable law, and the remaining provisions will remain in full force.
- (l) **Notices.** All notices required or contemplated pursuant to the terms of these License Terms will be sent to Embodied and Licensee at their respective e-mail addresses as shown on the Order Form (or to such other e-mail address as is hereafter furnished to the other party in an e-mail delivered in accordance with this section). For their convenience and in the interests of facilitating more rapid communication between them, such parties hereby agree that such e-mailed notice shall be as effective as is if such notice had been delivered by certified mail. Any such e-mailed notice will be effective on the next business day following the day of transmission.