

SOFTWARE RELEASE AGREEMENT – please read before installing the software

This agreement (the “Agreement”) is a legal agreement between your academic institution (the “Institution”) and EMBODY Biosignals (“EMbody”) which is run by Prof C.J.James at Rugby, for this Software which includes computer software, the data supplied with it, the associated media, printed materials and online or electronic documentation (“Documentation”).

BY CLICKING ON THE "SUBMIT" BUTTON ON THE DOWNLOAD SITE YOU CONFIRM THAT YOU HAVE AUTHORITY TO ACCEPT THESE TERMS ON BEHALF OF THE INSTITUTION. IF THE INSTITUTION DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, EMBODY IS UNWILLING TO GRANT THE RIGHT TO USE THE SOFTWARE TO THE INSTITUTION AND YOU MUST DISCONTINUE INSTALLATION OF THE SOFTWARE FORTHWITH.

IT IS HEREBY AGREED AS FOLLOWS:

1. GRANT

1.1 In consideration of the INSTITUTION agreeing to abide by the terms of this Agreement, EMBODY grants to the INSTITUTION a limited, non-exclusive, non-transferable right to install the Software at the INSTITUTION’s premises and to use the Software for the sole purpose of academic research.

2. USE OF THE SOFTWARE

2.1 The Software shall be used for non-commercial research purposes only. The INSTITUTION will not allow and will not itself reverse engineer, manufacture, sell or sublicense for manufacture and sale upon a commercial basis the Software, incorporate it into other software or products or use the Software other than herein expressly specified.

2.2 The INSTITUTION will ensure that access to the Software is restricted to those INSTITUTION employees who reasonably have need for such access for use as permitted hereunder and that such employees are aware of the undertakings set out in this Agreement.

2.3 The INSTITUTION agrees that it will not allow and will not itself translate, alter, decompile, disassemble, reverse engineer, reverse compile, attempt to derive, or reproduce source code from the Software. The INSTITUTION also agrees that it will not remove any copyright or other proprietary or product identification notices from Software.

2.4 The INSTITUTION confirms that if any underlying software is required to operate the Software then the INSTITUTION shall be solely responsible for obtaining such licences at its own expense.

2.5 To the extent that it is able EMBODY agrees to provide the INSTITUTION with any updates and patches to the Software and limited support however it does not guarantee that it will be able to do so.

2.6 EMBODY retains all right, title and interest in and to the Software, the related source code, and any and all associated patents, copyrights, and other intellectual property rights and nothing in this Agreement shall operate to transfer the same to the INSTITUTION or any other third party.

2.7 The INSTITUTION agree that no rights are provided under this Agreement to use the Software for the provision of a commercial service or to use the Software on behalf of any commercial entity or for use in consulting for a commercial entity under which that entity obtains rights to research results.

2.8 In the event that the INSTITUTION wish to exploit or use the Software on a commercial basis then they will make a formal written request to EMBODY seeking whether, at EMBODY's discretion, a licence may be granted and upon what terms such a licence may be granted.

2.9 Nothing contained herein shall be construed as granting any licence under any intellectual property rights vested in EMBODY or any right to use the Software or any EMBODY information other than herein expressly specified.

2.10 The INSTITUTION will not provide, or otherwise make available (including by loading the Software onto the Internet or any network or system), the Software in any form, in whole or in part (including but not limited to, program listings, object and source program listings, object code and source code) to any third party without EMBODY's prior written consent.

3. CONFIDENTIALITY

3.1 The INSTITUTION agree not to transfer, transmit or in any other way disclose the Software, documentation or any related information to any third party without the prior written consent of EMBODY.

3.2 EMBODY recognises the desire of the INSTITUTION to publish details of research in scientific journals and EMBODY agrees that the INSTITUTION will be free to publish results of research using the Software provided that EMBODY is provided with a copy of any such manuscript or abstract at least thirty (30) days prior to such publication. If EMBODY determines that the proposed publication contains patentable subject matter relating to the Software that requires protection the INSTITUTION will delay submission for an additional sixty (60) days from date of receipt of the pre-publication manuscript to allow EMBODY to file patent application(s). EMBODY agrees to maintain such results in confidence and not to engage in any written dissemination or in any dissemination by other methods of results obtained by the INSTITUTION from use of the Software. The INSTITUTION agrees to provide appropriate acknowledgement of the source of the Software in all publications.

3.3 Each party agrees not to use or refer to this Agreement in any promotional activity, or use the names or marks (including trade marks) of the other without express written permission. However, this paragraph shall not preclude either party's attribution of authorship in, and distribution of academic literature reporting the results of research conducted with the Software.

3.4 The obligations of confidence referred to in this Clause 3 shall not extend to any information which:

- (a) is or becomes generally available to the public otherwise than by reason of a breach by the recipient party of any provision of this Clause 3;
- (b) is known to the recipient party and is at its free disposal prior to its receipt from the other;
- (c) is subsequently disclosed to the recipient party without obligations of confidence by a third party owing no such obligations to the disclosing party in respect thereof.
- (d) is required to be disclosed by law.

3.5 The parties acknowledge that remedies at law may be inadequate to protect against a breach of the provisions of this Clause 3 and therefore, each party shall be entitled to seek injunctive relief to restrain such breach, in addition to any other remedies available to such party.

4. WARRANTIES/LIABILITIES

4.1 Nothing in this Agreement shall exclude or in any way limit EMBODY's liability to the INSTITUTION for fraud, or for death and personal injury caused by EMBODY's negligence, or any other liability to the extent that it cannot be excluded or limited as a matter of law.

4.2 Both parties understand and agree that the Software is provided "as is" without warranty of merchantability or fitness for a particular purpose or any other warranty, express or implied, and

without any representation or warranty that the use or supply of the Software will not infringe any patent, copyright, trademark or other right.

4.3 In no event shall EMBODY be liable for any use or the results of any use by the INSTITUTION of the Software transferred under this Agreement. The INSTITUTION agrees to indemnify and hold harmless EMBODY for any loss, claim, damage, or liability, of whatsoever kind or nature, which may arise from, or in connection with this Agreement or the use, handling or storage of the Software and documentation by the INSTITUTION.

5. TERM AND TERMINATION

5.1 This Agreement shall come into force as soon as the "Accept" button below is clicked and shall remain in force for as long as the INSTITUTION has possession of the Software pursuant to the terms herein.

5.2 Either the INSTITUTION or EMBODY may terminate this Agreement forthwith by notice in writing if the other party commits a substantial breach of this Agreement which in the case of a breach capable of remedy will not have been remedied within thirty (30) days of the receipt by the party in default of notice identifying the breach and requiring its remedy.

5.3 EMBODY may terminate this Agreement forthwith by notice in writing to the INSTITUTION if the INSTITUTION enters into liquidation whether compulsory or voluntarily or compounds with or convenes a meeting of its creditors or has a receiver appointed over all or part of its assets or takes or suffers any similar actions in consequences of a debt or ceases for any reason to carry on business.

5.4 EMBODY may terminate this Agreement at any time upon written notice if EMBODY is unable to supply the Software to the INSTITUTION.

5.5 Either party shall have the right to terminate this Agreement for any reason, with or without cause, such termination to be effective ten (10) days following the date notice is given.

5.6 Upon the termination of this Agreement for any reason, the INSTITUTION will cease using the Software and documentation and delete it from all storage media and destroy all copies made.

5.7 The termination of this Agreement for whatever reason will not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination. The obligations under Clause 2, 3 and 4 will survive any such termination.

6. ASSIGNMENT

6.1 The INSTITUTION will not assign or transfer this Agreement or the Software to any third party without the prior written consent of EMBODY.

7. GENERAL PROVISIONS

7.1 SEVERABILITY OF PROVISIONS

If any provision of this Agreement is declared void or unenforceable by any judicial or administrative authority this will not ipso facto nullify the remaining provisions of this Agreement and the provision of this Agreement so affected will be curtailed and limited only to the extent necessary to bring it within the legal requirements.

7.2 FORCE MAJEURE

No Failure or omission by either party to carry out or to observe any of the terms or conditions of this Agreement will give rise to any claim against the party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause beyond the reasonable control of that party.

7.3 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties hereto as to the subject matter hereof and merges all prior discussions and no provision of this Agreement may be changed except by the written mutual consent of the parties hereto.

7.4 PUBLICITY

Neither party shall utilise the name or service marks of the other party in any publication, promotional or advertising context, or press release regarding the subject matter of this Agreement without the prior written consent of the other party. This Clause shall not be interpreted to prevent or delay the INSTITUTION in the publication of research resulting from the authorised use of the Software.

7.6 GOVERNING LAW AND JURISDICTION

The validity, construction and performance of this Agreement will be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts in the event of any dispute.