

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): June 29, 2023

**EMBARK TECHNOLOGY, INC.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-39881  
(Commission  
File Number)

86-3343695  
(I.R.S. Employer  
Identification No.)

321 Alabama Street  
San Francisco, CA 94110  
(Address of principal executive offices, including zip code)

(415) 671-9628  
(Registrant's telephone number, including area code)

Not Applicable  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.0001 per share	EMBK	The Nasdaq Global Market
Warrants to purchase 1/20th share of Class A common stock, each at an exercise price of \$11.50 per share	EMBKW	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On June 29, 2023, Siddhartha Venkatesan and Embark Trucks Inc. (the “Company”), a wholly-owned subsidiary of Embark Technology, Inc. (the “Registrant”), reached an agreement regarding Mr. Venkatesan’s resignation from his position as the Company’s Chief Legal Officer effective June 30, 2023 (“Separation Date”). Mr. Venkatesan’s departure is not related to any disagreement with the Registrant or the Company or any matter relating to the Registrant’s or the Company’s operations, policies or practices.

In connection with his resignation, the Company has entered into a letter agreement with Mr. Venkatesan, dated as of June 30, 2023 with an effective date of July 2, 2023, which includes a general release of claims in favor of the Company (the “Separation Agreement”). Under the Separation Agreement, Mr. Venkatesan will receive (i) a cash amount equal to \$462,500 payable in a lump sum, (ii) an additional cash amount of \$73,000 (representing 50% of Mr. Venkatesan’s anticipated 2023 target bonus), payable in a lump sum, and (iii) reimbursement of insurance premiums to continue Mr. Venkatesan’s existing health benefits for six months following the Separation Date. Mr. Venkatesan will not vest in any additional restricted stock units following the Separation Date. The foregoing description of the Separation Agreement is not complete and is qualified in its entirety by reference to the full text thereof, a copy of which is filed as Exhibit 10.1 hereto.

In connection with Mr. Venkatesan’s departure, the Registrant and Mr. Venkatesan have entered into a post-employment contractor agreement, with an effective date of July 5, 2023 (the “Contractor Agreement”). The Contractor Agreement provides that Mr. Venkatesan will provide transitional advice and other assistance and in return will receive a monthly fee of \$10,000. The Contractor Agreement expires 4 months following the execution date of the Contractor Agreement unless terminated earlier in accordance with its terms, and provides for a \$500 lump sum payment following termination, subject to Mr. Venkatesan’s general release of claims in favor of the Registrant and in a form and manner satisfactory to the Registrant. The foregoing description of the Contractor Agreement is not complete and is qualified in its entirety by reference to the full text thereof, a copy of which is filed as Exhibit 10.2 hereto.

## Item 9.01 Exhibits

Exhibit Number	Description
<a href="#">10.1</a>	<a href="#">Separation Agreement, dated June 30, 2023, between Siddhartha Venkatesan and Embark Trucks Inc.</a>
<a href="#">10.2</a>	<a href="#">Contractor Agreement, effective as of July 5, 2023, between Siddhartha Venkatesan and Embark Technology, Inc.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Embark Technology, Inc.

Date: July 6, 2023

By: /s/ Alex Rodrigues  
Name: Alex Rodrigues  
Title: Chief Executive Officer

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## EMBARK TRUCKS INC.

June 30, 2023

Siddhartha Venkatesan

[\*\*\*]

Dear Sid:

This letter (the "Agreement") confirms the agreement between you and Embark Trucks, Inc. (the "Company") regarding the termination of your employment with the Company.

1. **Termination Date.** Your employment with the Company will terminate on June 30, 2023 (the "Termination Date").

2. **Effective Date.** You have forty five (45) days after you receive this Agreement to sign it. You are advised to consult an attorney of your own choosing (at your own expense) before signing this Agreement. This Agreement will become effective when it is executed by both parties (the "Effective Date"). You understand that this Agreement is not intended to be a waiver of claims arising after the date you execute this Agreement.

3. **Payment of All Compensation and Receipt of All Benefits.** On the Termination Date, the Company will pay your regular gross wages, less all applicable withholding taxes and other deductions. That amount represents all of your salary earned through the Termination Date. You acknowledge that, prior to the execution of this Agreement, you were not entitled to receive any additional money from the Company and that the only payments and benefits that you are entitled to receive from the Company in the future are those specified in this Agreement. You acknowledge and represent that, other than the consideration set forth in this Agreement, the Company and its agents have paid or provided all salary, wages, bonuses, accrued vacation/paid time off, notice periods, premiums, leaves, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, stock, stock options, vesting, and any and all other benefits and compensation due to you.

4. **Separation Compensation.**

a. **Severance Pay:** The Company will make a lump sum payment to you of \$462,500 less all applicable withholdings, on the first regularly scheduled payroll date that falls more than three calendar days after the Effective Date. This represents payments covering 6 months of base pay (\$182,500) and the following payments as provided in your May 24, 2023 Retention & Severance Benefits Letter ("Retention Letter"): filing the definitive proxy (\$250,000) and continued service through June 30, 2023 (\$30,000). If you have failed to complete your obligations set forth in Paragraph 4 above as of the Effective Date (which the Company will determine in its sole discretion), the Company has the right not to provide severance payment or it may delay such payment until such time that you have satisfied such obligations, which the Company may decide to do in its sole discretion.

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b. **Prorated Bonus:** Since you will not be employed on the payment date for the 2023 executive bonus, you are not eligible for and have not earned the Company's bonus policy. However, the Company agrees to pay you a lump sum payment in the gross amount of \$73,000, less applicable taxes, which represents 50% of your unearned 2023 bonus target. The bonus will be paid at the same time as your severance pay.

c. **COBRA:** The Company will reimburse you the insurance premiums to continue your existing health benefits for up to six (6) months following the Termination Date. In order to be reimbursed, you must submit an invoice to [\*\*\*].

5. **Equity.** On 6/28/2021 & 3/7/2023, the Company granted you an RSU award that has converted into grants totaling 184,226 RSUs that would vest according to the vesting schedules set forth in the RSU award document that accompanied each grant ("RSU Award"). As of the Termination Date, you would have vested zero shares pursuant to the RSU Awards that have not yet settled, and would not be entitled to any additional shares pursuant to the terms of the RSU Award. You will receive your remaining shares at the first time following the Effective Date that the Company processes vested shares for release pursuant to Company policy. In all other respects, the agreements for the RSU Awards between you and the Company will remain in full force and effect, and you agree to remain bound by that RSU Award Agreement and other documents incorporated therein. You acknowledge and agree that, other than the vested shares under the RSU Award which you have received or will receive at the Company's next scheduled vesting release, you do not have any right, title, claim or interest in or to any other Company securities, including, without limitation, any other shares of the Company's capital stock or any other options or other rights to purchase or receive shares of the Company's capital stock, as a result of your employment by or consulting for the Company.

## 6. Section 409A

a. All amounts payable under this Agreement are intended to comply with one or more of the exceptions to Section 409A of the Internal Revenue Code ("Section 409A"), including the "short term deferral" exception from specified in Treas. Reg. § 1.409A-1(b)(4) (or any successor provision) or the "separation pay plan" exception specified in Treas. Reg. § 1.409A-1(b)(9) (or any successor provision), if such compliance is necessary and shall to the maximum extent possible be interpreted and administered in a manner consistent with that intention.

b. All amounts payable pursuant to this Agreement are otherwise intended to comply with Section 409A and the related Treasury Regulations and shall be interpreted and administered in such a way as to comply with Section 409A to the maximum extent possible. Except as otherwise permitted under Section 409A, no payment hereunder shall be accelerated or deferred unless such acceleration or deferral would not result in additional tax or interest pursuant to Section 409A.

c. All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the period of time specified in this Agreement, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

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d. The right to receive any installment payments under this Plan shall be treated as a right to receive a series of separate payments and, accordingly, each such installment payment shall at all times be considered a separate and distinct payment as permitted under Section 409A.

e. Nothing in this Section shall be construed as a guarantee of any particular tax treatment to a plan Participant. Plan participants shall be solely responsible for the tax consequences with respect to all amounts payable under this Plan, and in no event shall the Employer have any responsibility or liability if this Plan does not meet any applicable requirements of Code section 409A.

**7. Release of All Claims.** In consideration for receiving the Severance Pay described above, to the fullest extent permitted by law, you waive, release and promise never to assert any claims or causes of action, whether or not now known, against the Company or its predecessors, successors or past or present subsidiaries, stockholders, directors, officers, employees, consultants, attorneys, agents, assigns and employee benefit plans with respect to any matter, including (without limitation) any matter related to your employment with the Company or the termination of that employment, including (without limitation) claims to attorneys' fees or costs, claims of wrongful discharge, constructive discharge, emotional distress, defamation, invasion of privacy, fraud, negligence, gross negligence, or negligence related claims, breach of contract or breach of the covenant of good faith and fair dealing and any claims of discrimination or harassment based on sex, age, race, national origin, disability or any other basis under Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act, the Equal Pay Act, the Americans with Disabilities Act of 1990, the Health Insurance Portability Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), The Uniform Services Employment and Re-employment Rights Act of 1994, The Rehabilitation Act of 1973, the Medicare, Medicaid and SCHIP Extension Act of 2007, Executive Orders 11246 and 11141, the Workers Adjustment and Retraining Notification ("WARN") Act, the Illinois WARN Act, the Illinois Religious Freedom Restoration Act, the Illinois Minimum Wage Law, the Illinois Whistleblower Act, the Illinois Access to Personnel File Anti-Retaliation Law, the Illinois Arrest History Discrimination Law, the Illinois Nursing Mothers in the Workplace Act, the Illinois Overtime Law, the Illinois Right to Privacy in the Workplace Act, the Illinois Health and Safety Act, the Illinois Union Employee Health and Benefits Protection Act, the Illinois Employment Contract Act, the Illinois Labor Dispute Act, the Illinois Law on Break and Meal Periods, and all other laws and regulations relating to employment. However, this release covers only those claims that arose prior to the execution of this Agreement and only those claims that may be waived by applicable law. Execution of this Agreement does not bar any claim that arises hereafter, including (without limitation) a claim for breach of this Agreement.

You understand that this Agreement does not limit your ability to file a charge or complaint with the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board or any other federal, state or local governmental agency or commission (each, a "Government Agency"). You further understand that this Agreement does not limit your ability to communicate with, or otherwise participate in any investigation or proceeding that may be conducted by, a Government Agency. However, to the fullest extent permitted by law, you agree that you are waiving the right to monetary damages or other equitable or monetary relief as a result of any such charge, complaint, investigation or proceeding.

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8. **Waiver.** With respect to the released matters described in Paragraph 8 above (the “Released Matters”), you understand that you are releasing claims that you may not know about, and that is your knowing and voluntary intent. Nevertheless, you agree that this Release shall remain effective in all respects in any such case, and you waive all rights you might have under any law intended to protect an employee from waiving unknown claims.

9. **No Admission.** Nothing contained in this Agreement will constitute or be treated as an admission by you or the Company of liability, any wrongdoing or any violation of law.

10. **Other Agreements.** At all times in the future, you will remain bound by the Confidential Information and Invention Assignment Agreement entered into by and between you and the Company with an effective date of [\*\*\*] (the “Confidentiality Agreement”), another copy of which is attached hereto as Attachment A. Except as expressly provided in this Agreement, this Agreement renders null and void all prior agreements between you and the Company, including your offer letter, and constitutes the entire agreement between you and the Company regarding the subject matter of this Agreement. This Agreement may be modified only in a written document signed by you and a duly authorized officer of the Company.

11. **Company Property.** You represent that you have returned to the Company all property that belongs to the Company, including (without limitation) copies of documents that belong to the Company and files stored on your computer(s) that contain information belonging to the Company.

12. **Confidentiality of Agreement.** You agree that you will not disclose to others the existence or terms of this Agreement, except that you may disclose such information to Government Agencies or to your spouse, attorney or tax adviser if such individuals agree that they will not disclose to others the existence or terms of this Agreement, to the extent allowed under the law. You desire this Agreement and that such confidentiality is to the mutual benefit of both parties.

13. **Comments to Others.** You agree that you will never make any knowingly, intentionally or maliciously false statements (orally or in writing) about the Company’s business reputation, products or services. However, nothing in this Agreement prevents you from discussing or disclosing information about the conditions of your employment, including the Company’s labor practices, the terms of your employment and any harassment, discrimination or any other workplace conduct that you have reason to believe is unlawful, including disclosure to any Government Agencies.

14. **No Admission of Liability.** You understand and acknowledge that with respect to all claims released herein, this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by you unless such claims were explicitly not released by the release in this Agreement. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to you or to any third party.

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15. **Breach.** In addition to the rights provided in the “Attorneys’ Fees” Paragraph above and elsewhere in this Agreement, you acknowledge and agree that any breach of this Agreement or of any provision of the Confidentiality Agreement shall entitle the Company immediately to recover and/or cease providing the consideration provided to you under this Agreement and to obtain damages, except as provided by law.

16. **Severability.** If any term of this Agreement is held to be invalid, void or unenforceable, the remainder of this Agreement will remain in full force and effect and will in no way be affected, and the parties will use their best efforts to find an alternate way to achieve the same result.

17. **Choice of Law.** This Agreement will be construed and interpreted in accordance with the laws of the State of New Jersey (other than its choice-of-law provisions).

18. **Execution.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute one agreement. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

*[Signature Page Follows]*

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To accept this Agreement, please sign and date this Agreement and return it to me. You have until August 14, 2023 to review and consider this Agreement and to provide me with a signed copy of it. Please indicate your agreement with the above terms by signing below.

Sincerely,

EMBARK TRUCKS INC.

By: /s/ Simina Simion \_\_\_\_\_

Simina Simion  
Chief People Officer

I agree to the terms of this Agreement, and I am voluntarily signing this release of all claims. I acknowledge that I have read and understand this Agreement, and I understand that I cannot pursue any of the claims and rights that I have waived in this Agreement at any time in the future.

Signature /s/ Siddhartha Venkatesan

Date

Siddhartha Venkatesan

7/2/2023

Attachment A: Confidential Information and Invention Assignment Agreement

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**EXHIBIT C**

**TERMINATION CERTIFICATION**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, flow charts, materials, equipment, other documents or property, or copies or reproductions of any aforementioned items belonging to Embark Trucks Inc., a Delaware corporation, its subsidiaries, affiliates, successors or assigns (collectively, the “Company”).

I further certify that I have complied with all the terms of the Company’s Confidential Information and Invention Assignment Agreement signed by me, including the reporting of any Inventions (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement, and I acknowledge my continuing obligations under that agreement.

I further agree that, in compliance with the Confidential Information and Invention Assignment Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, databases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

I further agree that for twelve (12) months immediately following the termination of my Relationship with the Company, I shall not either directly or indirectly solicit any of the Company’s employees or consultants to terminate their relationship with the Company, or attempt to solicit employees or consultants of the Company, either for myself or for any other person or entity.

Further, I agree that I shall not use any Confidential Information of the Company to negatively influence any of the Company’s clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

**EMPLOYEE:**

Signature: /s/ Siddhartha Venkatesan

Date: 7/2/2023

Siddhartha Venkatesan

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**CONTRACTOR AGREEMENT**

This Contractor Agreement (this “Agreement”) is entered into by and between Embark Technology, Inc., a Delaware corporation (“Company”) and Siddhartha Venkatesan (“Contractor”) effective as of date this Agreement is fully executed (the “Effective Date”).

**1. SERVICES; PAYMENT; NO VIOLATION OF RIGHTS OR OBLIGATIONS.** Contractor agrees to undertake and complete the Services (as defined in [Exhibit A](#) or the applicable Statement of Work) (“SOW”) in accordance with and on the schedule specified in [Exhibit A](#) or a SOW executed between the parties and governed by this Agreement. As the only consideration due Contractor regarding the subject matter of this Agreement, Company will pay Contractor in accordance with [Exhibit A](#) or the applicable SOW. Unless otherwise specifically agreed upon by Company in writing (and notwithstanding any other provision of this Agreement), all activity relating to Services will be performed by and only by Contractor or by employees of Contractor and only those such employees who have been approved in writing in advance by Company. Contractor agrees that it will not (and will not permit others to) violate any agreement with or rights of any third party or, except as expressly authorized by Company in writing hereafter, use or disclose at any time Contractor’s own or any third party’s confidential information or intellectual property in connection with the Services or otherwise for or on behalf of Company.

**2. OWNERSHIP.** Company shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights, *sui generis* database rights and all other intellectual property rights of any sort throughout the world) relating to any and all inventions (whether or not patentable), works of authorship, mask works, designations, designs, know-how, ideas and information (“IP Rights”) made or conceived or reduced to practice, in whole or in part, by or for or on behalf of Contractor during the term of this Agreement that arise out of or in connection with the Services or any Confidential Information (as defined below) (collectively, “Inventions”) and Contractor will promptly disclose and provide all Inventions to Company. Contractor hereby makes all assignments necessary to accomplish the foregoing ownership; provided that no assignment is made that extends beyond what would be allowed under California Labor Code Section 2870 (attached as [Exhibit B](#)) if Contractor was an employee of Company. Contractor shall assist Company, at Company’s expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights assigned. Contractor hereby irrevocably designates and appoints Company as its agents and attorneys-in-fact, coupled with an interest, to act for and on Contractor’s behalf to execute and file any document and to do all other lawfully permitted acts to further the foregoing with the same legal force and effect as if executed by Contractor and all other creators or owners of the applicable Invention. Contractor warrants that all individuals it retains as employees or consultants will have written agreements that contain ownership terms substantially similar as the above sufficient to perfect Company’s ownership rights in the Inventions. Company acknowledges that Contractor may be employed by or providing services to other third party companies operating in Company’s industry and that nothing hereunder shall operate to assign any IP Rights belonging to any such third party companies or created by Contractor in connection with his employment by or service for such third party companies provided that Contractor abides by the Confidentiality and other provisions of this Agreement.

**3. CONFIDENTIALITY.**

**3.1 Definition of Confidential Information.** As used in this Agreement, the term “Confidential Information” means information pertaining to any aspects of Company’s business, including but not limited to its research, technical data, products, services, plans for products or services, customers and potential customers, suppliers, customer lists and customers (including, but not limited to, customers of Company on whom Contractor called or with whom Contractor became acquainted during the period of its relationship with Company), prices and costs, markets and marketing, finances, budgets, financial projections, employees (including employee compensation), trade secrets, know-how, patents, patent applications, developments, software, inventions, licenses, processes, designs, drawings, engineering, formulae, scientific information, business plans, and agreements with third parties, or other business information disclosed to Contractor by Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment or created by Contractor during the period of its relationship with Company (whether commenced prior to or upon the date of this Agreement). Contractor further understands that Confidential Information does not include any of the foregoing items which has become publicly and widely known and made generally available through no wrongful act of the Contractor or of others who were under confidentiality obligations as to the item or items involved.

**3.2 Confidentiality Obligation.** Contractor agrees to hold in strictest confidence and not directly or indirectly to use or disclose to any third person or entity, either during or after termination of the its relationship with Company, any Confidential Information that Contractor obtains or creates during the period of its relationship with Company (whether commenced prior to or upon the date of this Agreement), whether or not during working hours, except to the extent authorized by Company. Contractor agrees not to make copies of such Confidential Information except as authorized by Company. Contractor understands that pursuant to the federal Defend Trade Secrets Act of 2016, Contractor shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Contractor further understands that nothing contained in this Agreement limits Contractor’s ability to communicate with any federal, state or local governmental agency or commission, including to provide documents or other information, without notice to the Company.

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**3.3 Prior Obligations.** Contractor represents that his performance of all terms of this Agreement as a contractor of Company has not breached and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Contractor prior or subsequent to the commencement of Contractor's relationship with Company, and Contractor will not disclose to Company, or use, any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or any other party. Contractor will not induce Company to use any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or any other party.

**3.4 Third Party Information.** Contractor recognizes that Company has received and in the future will receive confidential or proprietary information from third parties subject to a duty on Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Contractor agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out Contractor's work for Company consistent with Company's agreement with such third party.

**3.5 Company Property; Returning Company Documents.** Contractor acknowledges and agrees that Contractor has no expectation of privacy with respect to Company's telecommunications, networking or information processing systems (including, without limitation, stored Company files, e-mail messages and voice messages) and that Contractor's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Contractor further agrees that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. Contractor agrees that, at the time of termination of Contractor's relationship with Company, Contractor will deliver to Company (and will not keep in Contractor's possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any of the aforementioned items developed by Contractor pursuant to such relationship or otherwise belonging to Company, its successors or assigns.

**4. PUBLICITY.** To the extent allowed by law, Section 2 and any license granted Company hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral," or the like. To the extent any of the foregoing is ineffective under applicable law, Contractor hereby provides any and all ratifications and consents necessary to accomplish the purposes of the foregoing to the extent possible. Contractor will confirm any such ratifications and consents from time to time as requested by Company. If any other person is in any way involved in any Services, Contractor will obtain the foregoing ratifications, consents and authorizations from such person for Company's exclusive benefit.

**5. LICENSE.** If any part of the Services or Inventions or information provided hereunder is based on, incorporates, or is an improvement or derivative of, or cannot be reasonably and fully made, used, reproduced, distributed and otherwise exploited without using or violating technology or intellectual property rights owned by or licensed to Contractor (or any person involved in the Services) and not assigned hereunder, Contractor hereby grants Company and its successors a perpetual, irrevocable, worldwide royalty-free, non-exclusive, sublicensable right and license to exploit and exercise all such technology and intellectual property rights in support of Company's exercise or exploitation of the Services, Inventions, other work or information performed or provided hereunder, or any assigned rights (including any modifications, improvements and derivatives of any of them).

**6. WARRANTIES AND OTHER OBLIGATIONS.** Contractor represents, warrants and covenants that: (i) the Services will be performed in a professional and workmanlike manner and that none of such Services nor any part of this Agreement is or will be inconsistent with any obligation Contractor may have to others; (ii) all work under this Agreement shall be Contractor's original work and none of the Services or Inventions nor any development, use, production, distribution or exploitation thereof will infringe, misappropriate or violate any intellectual property or other right of any person or entity (including, without limitation, Contractor); (iii) Contractor has the full right to allow it to provide Company with the assignments and rights provided for herein (and has written enforceable agreements with all persons necessary to give it the rights to do the foregoing and otherwise fully perform this Agreement and, in addition, Contractor will have each person who may be involved in any way with, or have any access to, any Services or Confidential Information enter into (prior to any such involvement or access) a binding agreement for Company's benefit that contains provisions at least as protective as those contained herein); (iv) Contractor shall comply with all applicable laws and Company safety rules in the course of performing the Services; and (v) if Contractor's work requires a license, Contractor has obtained that license and the license is in full force and effect. Contractor shall notify Company, in writing, in advance of accepting any new employment, consulting or related engagement that is, or, as a result of such service activities, could create a conflict of interest with or interfere or limit Contractor's ability to perform his obligations to Company hereunder.

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**7. TERM; TERMINATION.** This Agreement, and Contractor's independent contractor relationship with Company, will be for the period beginning on the Effective Date and ending on the date that is four months after the Effective Date, unless sooner terminated pursuant to this Section 7. The Company may terminate this Agreement at any time, with or without cause, and Company shall upon such termination pay Contractor all unpaid, undisputed amounts due for the Services completed prior to notice of such termination, on a pro-rated basis. Upon the expiration of this Agreement or earlier termination by the Company other than for cause, the Company will also pay Contractor a lump sum payment of \$500, subject to the Contractor signing and delivering an effective separation and general release agreement in a form and manner satisfactory to the Company (the "Separation and General Release Agreement"), Sections 2 through 15 of this Agreement and any remedies for breach of this Agreement shall survive any termination or expiration. Company may communicate the obligations contained in this Agreement to any other (or potential) client or employer of Contractor.

**8. RELATIONSHIP OF THE PARTIES; INDEPENDENT CONTRACTOR; NO EMPLOYEE BENEFITS.** Notwithstanding any provision hereof, Contractor is an independent contractor and is not an employee, agent, partner or joint venturer of Company and shall not bind nor attempt to bind Company to any contract. Contractor shall accept any directions issued by Company pertaining to the goals to be attained and the results to be achieved by Contractor, but Contractor shall be solely responsible for the manner and hours in which the Services are performed under this Agreement. Contractor shall not be eligible to participate in any of Company's employee benefit plans, fringe benefit programs, group insurance arrangements or similar programs. Company shall not provide workers' compensation, disability insurance, Social Security or unemployment compensation coverage or any other statutory benefit to Contractor. Contractor shall comply at Contractor's expense with all applicable provisions of workers' compensation laws, unemployment compensation laws, federal Social Security law, the Fair Labor Standards Act, federal, state and local income tax laws, and all other applicable federal, state and local laws, regulations and codes relating to terms and conditions of employment required to be fulfilled by employers or independent contractors. Contractor shall bear sole responsibility for all taxes, insurance and benefits, if any, and shall indemnify and hold Company harmless from and against any liability with respect thereto. Company shall provide direction pertaining to the goals to be attained and the results to be achieved by Contractor, but Company shall not control or direct the manner or means by which Contractor performs the Services, including but not limited to the time and place Contractor performs the Services. Contractor shall furnish, at Contractor's own expense, the materials, equipment, supplies, and other resources necessary to perform the Services and shall be responsible for any travel or other costs or expenses incurred by Contractor in connection with the performance of the Services, except as otherwise expressly provided in Exhibit A. Contractor will ensure that its employees, contractors and others involved in the Services, if any, are bound in writing to the foregoing, and to all of Contractor's obligations under any provision of this Agreement, for Company's benefit and Contractor will be responsible for any noncompliance by them. Contractor agrees to indemnify Company from any and all claims, damages, liability, settlement, attorneys' fees and expenses, as incurred, on account of the foregoing or any breach of this Agreement or any other action or inaction by or for or on behalf of Contractor. Contractor agrees that neither this Agreement nor the Services will constitute a continuation of Contractor's Continuous Service Status under the Embark Trucks Inc. 2016 Plan and the Embark Technology, Inc. 2021 Incentive Award Plan (the "Equity Plans"). Contractor acknowledges that he has forfeited any and all awards granted to him under the Equity Plans effective as of June 30, 2023.

**9. EXPORT.** Contractor agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Contractor agrees to indemnify, to the fullest extent permitted by law, Company from and against any fines or penalties that may arise as a result of Contractor breach of this provision. This export control clause shall survive termination or cancellation of this Agreement.

**10. ANTICORRUPTION LAWS.** Contractor acknowledges that it is familiar with and understands the provisions of the U.S. Foreign Corrupt Practices Act ("the FCPA") and the U.K. Bribery Act of 2010 ("UKBA") and agrees to comply with its terms as well as any provisions of local law or Company's corporate policy and procedures related thereto. Contractor further understands the provisions relating to the FCPA and UKBA's prohibitions regarding the payment or giving of anything of value, including but not limited to payments, gifts, travel, entertainment and meals, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his or her official capacity or inducing the official to use his or her party's influence with that government, to obtain or retain business involving Company's products. Contractor agrees to not violate or knowingly let anyone violate the FCPA or UKBA while working on behalf of Company, and Contractor agrees that no payment made on behalf of Company will constitute a bribe, influence payment, kickback, rebate, or other payment that violates the FCPA, the UKBA, or any other applicable anticorruption or antibribery law. Upon Company's request, Contractor agrees to provide Company with written certifications of Contractor's FCPA and UKBA compliance and permit Company to inspect Contractor's books and records upon request.

**11. ASSIGNMENT.** This Agreement and the services contemplated hereunder are personal to Contractor and Contractor shall not have the right or ability to assign, transfer any rights or obligations under this Agreement without the written consent of Company. Any attempt to do so shall be void. Company may fully assign and transfer this Agreement in whole or part.

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**12. NOTICE.** All notices under this Agreement shall be in writing and shall be deemed given when personally delivered, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or to such other address as such party last provided to the other by written notice.

**13. EQUAL OPPORTUNITY.** Company is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

**15. ENTIRE AGREEMENT.** This Agreement (including any exhibits, accepted purchase orders and any amendments hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. Company does not accept, expressly or impliedly and Company hereby rejects and deems deleted any additional or different terms or conditions that Contractor presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgement, or other document, or established by trade usage or prior course of dealing.

**15. MISCELLANEOUS.** Any breach of Sections 2, 3, 4, 5 or 6 will cause irreparable harm to Company for which damages would not be an adequate remedy, and therefore, Company will be entitled to injunctive relief with respect thereto in addition to any other remedies. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws provisions thereof. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

**IN WITNESS WHEREOF, the undersigned have entered into this Contractor Agreement as of the Effective Date.**

**Embark Technology, Inc. Siddhartha Venkatesan**

\_\_\_\_\_/s/ Alex Rodrigues  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_/s/ Siddhartha Venkatesan  
Signature

\_\_\_\_\_  
Date

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## EXHIBIT A

### SERVICES, DUTIES AND JOB DESCRIPTION

1. Services:

Contractor will perform the following services (the "Services"): Assist Company with public company compliance, equity administration, intellectual property strategy, commercial negotiations, litigation management, billing and other issues related to its legal and administrative functions. Assist with recordkeeping. Serve as a source of institutional knowledge and advice for Company's employees and the employees of Applied Intuition, Inc. ("Applied") with respect to the Company's business and operations, including, but not limited to, its assets, technology, commercial relationships, litigation and liabilities. Assist with the integration of the Company and its subsidiaries into Applied and its subsidiaries.

2. Schedule:

- 10 hours per week in July 2023.
- 5 hours per week in August 2023.
- 10 hours per month in September 2023.
- 10 hours per month in October 2023.

3. Duration: 4 months

4. Compensation:

- \$10,000 per month
- Expense reimbursement is (1) limited to required and reasonable telephone expenses and long distance coach class (or equivalent) travel (transportation, lodging and meals) authorized in writing by Company in advance, and (2) payable 30 days after itemized invoice and delivery of receipts).

5. Payment Terms: Fifteen (15) days following the end of each month.

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**EXHIBIT B**

California Labor Code Section 2870. **Application of provision providing that employee shall assign or offer to assign rights in invention to employer.**

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for his employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

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