Test License

for

MOTIONTAG SDK

of

MotionTag GmbH
Rudolf-Breitscheid-Straße 162
14482 Potsdam
Germany
("**MOTIONTAG**")

- last updated on April 21st, 2021 -

MOTIONTAG and the Licensee will hereinafter each individually be referred to as the "**Party**" and jointly as the "**Parties**".

Preamble

MOTIONTAG is a technology startup and develops software for mobility tracking based on smartphone apps. The basis for this is the technology developed by MOTIONTAG for battery-saving recording of location-based data and the automated recognition of means of transport.

In this context, MOTIONTAG has developed the software development kit „MOTIONTAG SDK" which can be integrated into smartphone apps for iOS and Android devices (hereinafter „**SDK**").

Licensee intends to implement the SDK in its apps. This Test License shall govern the Licensee's trial use of the SDK. In this way, Licensee shall get a feeling for how easy and intuitive the implementation of the SDK is for developers.

Further, MOTIONTAG has developed a Backend (hereinafter „**Backend**") for use with the SDK and making it available to Licensee to facilitate data analyses. The use of the Backend and a corresponding data analysis is not possible under this Test License. For this, the conclusion of a paid license with MOTIONTAG is necessary. To ensure a smooth transition, the Test License can be seamlessly transferred to a paid license. The Licensee's implementation work based on the Test License can thus continue to be used.

By default, the SDK and Backend have not been custom programmed for Licensee. MOTIONTAG provides support services and individual consulting, installation, configuration and development services to the Licensee upon request.

In light of the foregoing, the Parties agree as follows:

1. Subject matter

1.1. The subject matter of this Agreement (hereinafter "**Agreement**") is the temporary provision of the SDK for test purposes and the granting of rights of use to the SDK to the Licensee.

1.2. The Licensee may upgrade to a commercial license at any time and may continue to use his configurations and other individualizations.

1.3. This Test License may only be obtained once per Licensee. A company is considered one Licensee within the meaning of this section 1.3.

2. Scope of services, Installation

2.1. The SDK is a software module available for Android and iOS that can be used to extend apps under the operating systems supported by the SDK by various functionalities. The supported operating systems and the functionalities are described on the websites operated by MOTIONTAG in more detail. "**Apps**" within the meaning of this Agreement means all smartphone apps for Android and iOS produced by Licensee for its Customers using the SDK. The SDK includes all documentation provided by MOTIONTAG in connection with the App development.

2.2. MOTIONTAG will provide the Licensee with a copy of the SDK in machine-readable form via remote data transmission for the exercise of the rights of use granted herein. Source code is not provided.

2.3. The Licensee receives the documentation for the SDK as an electronic document in English language.

2.4. The Parties agree that the place of performance for the handover of the SDK shall be MOTIONTAG's registered office. The Licensee shall bear all costs and risks associated with the handover.

3. Rights of use

3.1. Unless otherwise agreed in writing (in particular in Section 4 - Open Source Software), MOTIONTAG grants Licensee a limited, worldwide, non-exclusive, non-transferable and non-sublicensable revocable right of use to the SDK for testing the implementation of the SDK into the Apps for the duration of this Agreement.

3.2. The Licensee shall only be entitled to copy the SDK insofar as this is necessary for testing the implementation of the SDK into the Apps.

3.3.   Unless otherwise agreed expressly, Licensee is not entitled to distribute the SDK, to edit it, to make it publicly available or otherwise make it available to third parties for use. Further, Licensee is not entitled to assign his rights and obligations resulting from this Agreement to third Parties without the prior written consent of MOTIONTAG.

3.4.   The Licensee may not implement the SDK in Apps where the offer or use is illegal, which serve fraudulent purposes or which intend to harm the Licensee or the Licensee's Customer. The Licensee may further not implement the SDK in Apps if this results in the source code of the SDK having to be disclosed or third parties having to be granted the right to edit it.

3.5.   The granting of the rights of use is subject to the condition that the existing copyright notices, logos and trademarks are retained. Within each App in which the SDK is implemented, reference shall be made to the SDK as a component of the App and to MOTIONTAG as the manufacturer of the SDK.

3.6.   Unless the Licensee is expressly granted rights to use the SDK in this Agreement, MOTIONTAG reserves all rights to the SDK.

4.   Open Source Software

4.1.   The SDK relies on open source components that are licensed as Open Source Software as defined by the Open Source Initiative as of 2007 (see https://opensource.org/osd). Such components are licensed to Licensee not under this Agreement and from MOTIONTAG, but under the applicable open source licenses from the respective author, which are made available to the Licensee on MOTIONTAG's website or through an alternative communication channel. Use of the SDK is only permitted under the condition that the Licensee complies with the license conditions applicable to the open source software components contained therein.

4.2.   The regulations in Section 3 apply only to the components that are not licensed as open source software. The remaining provisions of this Agreement shall also apply to open source software in relation to MOTIONTAG if and to the extent that they do not contradict the terms of the applicable open source licenses.

5.   Obligations of the Licensee

5.1.   Licensee shall be solely responsible at its own expense for the acquisition and installation of any elements required to access, download, install, and use the SDK for the purposes set out herein.

5.2.   Licensee shall access and use the SDK, in compliance with the Agreement, the applicable Privacy Policy and terms of use and any applicable laws, regulations, and industry guidelines, in particular the Licensee shall be solely responsible for the correct implementation and use of the SDK as well as for the fulfilment of all information obligations in connection with any Apps and the use of the SDK (if any,

e.g. according to the GDPR or the German Telemedia Act; TMG). Licensee shall be liable for any breach of the foregoing by its employees, subcontractors, or agents.

5.3.   Licensee undertakes to strictly comply with all applicable regulations for the export or import of the SDK, including as integrated into the App, to other countries. Applying for and obtaining all licenses and/or authorizations required by any governmental or regulatory authority for such purposes shall be the sole responsibility of the Licensee.

5.4.   Licensee shall take all reasonable steps to prevent unauthorized access or use of the SDK by third parties. In the event of detecting an unauthorized access and or use, Licensee shall promptly notify MOTIONTAG.

5.5.   Licensee shall not engage, directly or indirectly, in web scraping or data scraping on or related to the SDK without MOTIONTAG's prior written consent.

6.   Maintenance of the SDK

MOTIONTAG is not obligated to keep the SDK in a functional state during the term of the Agreement, in particular to provide new versions or updates, as necessary to establish or maintain the functionality of the SDK. MOTIONTAG is not obligated to maintain compatibility with older operating system versions.

7.   Consequences of termination

Upon termination of this Agreement, the usage rights to the SDK granted to the Licensee shall expire automatically. The Licensee is obligated to remove the SDK from its Apps immediately, at the latest, however, within one week after termination of the Agreement. Upon request of MOTIONTAG, the Licensee will confirm that he has ceased to use the SDK in any way whatsoever in writing to MOTIONTAG.

8.   Term and termination

8.1.   The Agreement on the licensing and use of the SDK runs for an indefinite period. Both Parties are entitled to terminate the Agreement at any time.

8.2.   The right of the Parties to terminate the Agreement for cause remains unaffected.

8.3.   Any termination must be made in text form.

9.   Remuneration

The provision of the SDK for testing purposes is free of charge.

10. Subcontractors

MOTIONTAG shall be entitled, without the express consent of the Licensee, to use the services of competent third parties (e.g. subcontractors) to perform the agreed services.

11. Warranty (*Gewährleistung*) and Liability

11.1. MOTIONTAG does not assume any warranty. The SDK is provided "as is".

11.2. The liability of MOTIONTAG for intent, gross negligence and for injury to life, body or health as well as for a claim under the German Product Liability Act (*Produkthaftungsgesetz*) is governed by the applicable statutory provisions.

11.3. Otherwise, MOTIONTAG's liability is excluded.

11.4. MOTIONTAG is not liable for the loss of data or software.

11.5. The limitations of liability in this Section 11 shall apply to MOTIONTAG itself and its representatives, employees and bodies.

12. Indemnification

If a claim is brought against MOTIONTAG by a third party due to an alleged culpable breach by the Licensee of obligations arising from the contractual relationship with MOTIONTAG, the Licensee is obliged to indemnify MOTIONTAG against all costs incurred by MOTIONTAG due to or in connection with such a claim. The indemnification obligation includes, but is not limited to, appropriate costs of pursuing claims up to an amount equal to statutory fees, financial damages incurred, expenses and fines. MOTIONTAG will inform the Licensee immediately about such a claim and give him the opportunity to comment and to defend himself in an appropriate form. The Licensee is obliged to provide MOTIONTAG without delay with all information necessary for the defense against the claims asserted by third parties.

13. Cooperation obligations of the Licensee

13.1. Licensee is obligated to support MOTIONTAG in the performance of its contractual obligations to the extent required in each case. In particular, Licensee is obligated to create in its sphere of operation all conditions necessary for the proper performance of services.

13.2. Licensee will designate a direct contact person who is authorized and able to discuss and agree on all project-related matters with MOTIONTAG on its side.

14. Confidentiality

14.1. The Parties agree to maintain secrecy with regard to Confidential Information, which they become aware of in connection with this Agreement, and not to disclose such

information to third parties or otherwise use it outside the scope of this Agreement. This obligation shall survive the term of this Agreement. In the following, the Owner of a Confidential Information shall be deemed to be the party who has control over the respective Confidential Information; the Recipient shall be the respective other party to whom the Confidential Information is disclosed.

14.2. Confidential Information within the meaning of this Agreement shall mean all information (whether in writing, electronically, orally, digitally embodied or in any other form) that is provided from the Owner to the Recipient or to a person associated with the Recipient within the meaning of sections 15 et seq. German Stock Corporation Act (*Aktiengesetz*) in connection with the performance of this Agreement. Confidential information shall be deemed to include in particular

14.2.1. Trade Secrets, products, manufacturing processes, know-how, inventions, business relations, business strategies, business plans, financial planning, personnel matters, digitally embodied information (data);

14.2.2. any documents and information of the Owner which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential according to the nature of the information or the circumstances of the transmission;

14.2.3. the existence of this Agreement and its contents.

14.3. The Recipient is aware that the Confidential Information described above has not previously been generally known or readily accessible, either in its entirety or in its details, and is therefore of commercial value and is protected by the Owner through appropriate confidentiality measures. If a Confidential Information under this Section 5.8 does not meet the requirements of a Trade Secret within the meaning of the Trade Secret Act (*Geschäftsgeheimnisschutzgesetz*), such information shall nevertheless be subject to the obligations of this Section 5.8.

14.4. No Confidential Information shall be information,

14.4.1. that was known or generally accessible to the public prior to notification or transfer by the Owner or that becomes so at a later date without breach of any confidentiality obligation;

14.4.2. that was demonstrably already known to the Recipient before disclosure by the Owner and without any breach of confidentiality obligation;

14.4.3. that was obtained by the Recipient without use or reference to Confidential Information by the Owner itself; or

14.4.4. that has been provided or made accessible to the Recipient by an authorized third party without violation of a confidentiality obligation.

14.5. The respective Recipient undertakes

14.5.1. to keep the Confidential Information strictly confidential and to use it only in connection with the purpose of this Agreement;

14.5.2. to disclose the Confidential Information only to such third parties who rely on the knowledge of such information for the performance of this Agreement, provided that the Recipient ensures that such third parties comply with this Agreement as if they themselves were bound by this Agreement;

14.5.3. to also secure the Confidential Information against unauthorized access by third parties by taking appropriate confidentiality measures and to comply with legal and contractual provisions on data protection when processing the Confidential Information. This also includes technical and organizational security measures adapted to the current state of the art (Art. 32 GDPR) and the obligation of the employees to maintain confidentiality and observe data protection (Art. 28 para. 3 lit. b) GDPR);

14.5.4. if the Recipient is obliged to disclose some or all of the Confidential Information due to applicable legal provisions, court or official orders or due to relevant stock exchange regulations, to inform the Owner thereof (to the extent legally possible and practicable) immediately in writing and to make all reasonable efforts to keep the scope of disclosure to a minimum and, if necessary, to provide the Owner with all reasonable assistance seeking a protective order (*Schutzanordnung*) against the disclosure of all or part of the Confidential Information.

14.6. Without prejudice to any rights it may have under the Trade Secret Act (*Geschäftsgeheimnisschutzgesetz*), the Owner shall have all property rights, rights of use and exploitation rights with respect to the Confidential Information, unless otherwise provided in this Agreement. The Owner reserves the exclusive right to apply for (intellectual) property rights. The Recipient shall not acquire any ownership or – with the exception of use for the purpose described in this Agreement – any other rights of use to the Confidential Information (in particular know-how, patents applied for or granted thereon, copyrights or other property rights) on the basis of this Agreement or otherwise on account of implied conduct.

14.7. The Recipient shall refrain from exploiting or imitating Confidential Information outside the scope of its purpose in any manner whatsoever (in particular by means of reverse engineering) or having it exploited or imitated by third parties and, in particular, from applying for intellectual property rights – in particular trademarks, designs, patents or utility models (*Gebrauchsmuster*) – to the Confidential Information.

14.8. The confidentiality obligation shall continue beyond the term of this Agreement with respect to all Confidential Information, unless and until such Confidential Information is or becomes public knowledge.

15. Final provisions

15.1.   Amendments and supplements to this Agreement must be made in writing to be effective. Simple emails shall not suffice. The formal requirements can only be waived by a written agreement between the Parties.

15.2.   The Parties may only transfer their claims arising from this Agreement to third parties with the written consent of the respective other Party.

15.3.   This Agreement and its interpretation and enforcement shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the German and European provisions on Private International Law applicable to the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

15.4.   The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement shall be Potsdam (Germany) to the extent permitted by law. However, MOTIONTAG may also assert claims against the Licensee at the Licensee's ordinary place of jurisdiction.

15.5.   If any provision of this Agreement shall be entirely or partly invalid or unenforceable, this shall not affect the validity and enforceability of all other provisions of this Agreement. An invalid or unenforceable provision shall be regarded as replaced by such a valid and enforceable provision that as closely as possible reflects the economic purpose that the Parties hereto had pursued with the invalid or unenforceable provision.

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