



SDK LICENSE AND SERVICE AGREEMENT

[*], [*], 2020

Of the one part,

MotionTag GmbH, a company incorporated under the laws of Germany, with registered office at Rudolf-Breitscheid-Straße 162, 14482 Potsdam, Germany; and registered with the commercial register of the local court of Potsdam under number HRB 30689 P (“**MOTIONTAG**”);

And of the other part,

Corporate name (“Licensee”)	[*]
Corporate address	[*]
Tax ID number	[*]
Address for notifications	Attention: [*] Address: [*] Phone: [*] E-mail: [*]

MOTIONTAG and Licensee shall be jointly referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

- I. MOTIONTAG holds the proprietary rights to the MOTIONTAG SDK.
- II. The Licensee is aware of the basic capabilities of the MOTIONTAG SDK and, believing it to be suitable for its needs, is interested in obtaining a license to integrate the MOTIONTAG SDK into the Licensee App.
- III. The Parties have agreed to execute this SDK license agreement (“**License Agreement**” or “**Agreement**”), which will be governed by the following

TERMS AND CONDITIONS

1. Definitions

For the purposes of interpretation and compliance with the License Agreement:



“**Confidential Information**” means any data, documentation or information, of a technical, commercial, strategic or another kind of nature that is not in the public domain, including, but not limited to, IP Rights, discoveries, concepts, ideas, knowledge, techniques, drawings, drafts, diagrams, models, samples, databases, computer programs, market research panels, procedures or documents of any kind; furnished orally, in writing, using magnetic or digital media or any computer, graphic or any other kind of device relating to MOTIONTAG, its products and/or services, to which the Licensee may have access.

“**IP Rights**” means any and all patents, utility models, trade secrets, know-how, copyrights, trademarks, domain names, trade names, designs, and all other intellectual property rights, whether registered, applied for or unregistered. IP Rights shall in particular include (i) foreground IP which are IP Rights newly developed by MOTIONTAG in the course of this Agreement to which MOTIONTAG has title; and (ii) background IP which are IP Rights already existing to which MOTIONTAG has title.

“**Licensee App**” means the Licensee’s mobile application where Licensee wishes to integrate the MOTIONTAG SDK.

“**MOTIONTAG SDK**” means the MOTIONTAG Mobility & Location Analytics SDK and all associated application programming interfaces, media, libraries, printed or electronic documentation and updates.

“**MOTIONTAG Services**” means access and use of the MOTIONTAG backend platform and any other professional project management services provided by MOTIONTAG to Licensee under the Services Agreement, subject to the integration of the MOTIONTAG SDK in the Licensee App.

“**Services Agreement**” means the agreement entered into by and between the Parties for the provision of MOTIONTAG Services to Licensee.

2. Object

- 2.1 The object of the License Agreement is the licensing of the MOTIONTAG SDK by MOTIONTAG to Licensee, subject to the terms set out herein.
- 2.2 The License Agreement does not give Licensee any right to use the MOTIONTAG Services, which shall be subject to and governed by the terms of the Services Agreement.

3. Grant of rights

- 3.1 Upon Licensee’s compliance with this Agreement and all MOTIONTAG SDK and API requirements, specifications and documentation provided by MOTIONTAG to Licensee, MOTIONTAG grants Licensee for the duration of this Agreement a limited, worldwide, royalty-free, non-exclusive, non-transferable and non-



sublicensable revocable license to download, install and use the MOTIONTAG SDK, limited to object code, as provided by MOTIONTAG for the sole purpose of integrating the MOTIONTAG SDK into Licensee App and distributing such only to end-users. For the avoidance of doubt, the foregoing includes the right to make a reasonable number of copies of the MOTIONTAG SDK for testing, development, backup, and recovery purposes only. The source code of the MOTIONTAG SDK is not subject to the granting of rights of use. The source code is not disclosed and may not be edited.

- 3.2 The MOTIONTAG SDK relies on open source components. Such components are licensed to Licensee under the applicable open source licenses, which can be accessed at <https://api.motion-tag.de/developer/android#6-open-source-legal-notice>. Use of the MOTIONTAG SDK is only permitted under the condition that the Licensee complies with the license conditions applicable to the open source software components contained therein. The regulations in section 3.1 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.
- 3.3 MOTIONTAG will provide the Licensee with a copy of the MOTIONTAG SDK in machine-readable form via remote data transmission for the exercise of the rights of use and exploitation granted herein.
- 3.4 The Licensee receives the documentation for the MOTIONTAG SDK as an electronic document in English.

4. Restrictions

- 4.1 Licensee may not use the MOTIONTAG SDK for purposes different from the ones stated in clause 3 (Grant of Rights) and, in particular, for any activity that may interfere with, disrupt, damage, or accesses in an unauthorized manner the servers, networks or any other infrastructure or services of MOTIONTAG or a third party. Licensee may not implement the MOTIONTAG SDK in apps whose offer or use is illegal, which serve fraudulent purposes or which intend to harm the respective user. Furthermore, the Licensee may not implement the MOTIONTAG SDK in apps if this means that the source code of the MOTIONTAG SDK must be disclosed or third parties must be granted the right to edit the MOTIONTAG SDK or a right to use it free of charge.
- 4.2 Except for backup and recovery purposes, Licensee may not circumvent any technical measure, decompile, reverse engineer, disassemble, create derivative works or attempt to derive source code from the MOTIONTAG SDK or any part thereof. To the extent that the applicable open source licenses require MOTIONTAG to provide Licensee broader use, reproduction or distribution rights than those conferred in the License Agreement, such rights under the applicable



open source software license shall prevail over the terms of the License Agreement, but solely with regard to the open-source component(s) subject thereto.

- 4.3 MOTIONTAG shall be under no obligation to provide to Licensee any updates, new releases, or subsequent versions of the MOTIONTAG SDK unless expressly agreed in the Services Agreement. In such a case, the License Agreement shall be applicable to the updates, releases, and versions so provided, without prejudice to the terms of the applicable Services Agreement.
- 4.4 All rights not expressly granted herein to Licensee shall remain reserved to MOTIONTAG.

5. Licensee obligations and warranties

- 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 MOTIONTAG SDK for the purposes set out herein.
- 5.2 Licensee shall access and use the MOTIONTAG SDK, in compliance with the License 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 MOTIONTAG SDK as well as for the fulfilment of all information obligations in connection with any apps and the use of the MOTIONTAG SDK (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 MOTIONTAG SDK, including as integrated into the Licensee 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 MOTIONTAG 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 MOTIONTAG SDK without MOTIONTAG's prior written permission.
- 5.6 Licensee shall not use, permit or tolerate any use of the MOTIONTAG SDK to (i) menace or harass any person or cause damage or injury to any person or property; (ii) publish, distribute or make available any material that is false, defamatory, harassing or obscene, violates privacy rights or promotes bigotry, racism, hatred or harm; (iii) engage into unsolicited bulk e-mail, junk mail, spam or chain letters;



(iv) infringe intellectual property rights or other proprietary rights, including confidential information; and/or (v) violate the Law.

5.7 Licensee shall not remove, erase, obscure or otherwise modify any MOTIONTAG trademarks, logos, trade names or notices affixed to any part or component of the MOTIONTAG SDK.

5.8 Licensee will procure that all specifications and descriptive literature relating to the MOTIONTAG SDK will be marked with a notice in the following terms: “This app uses MOTIONTAG technology under license”, or similar in content as mutually deemed appropriate by the Company and the Licensee for the specific media.

6. IP Rights

6.1 The License Agreement does not convey upon Licensee any IP Rights other than those expressly set out in the License Agreement to the MOTIONTAG SDK or any trademarks, logos or other signs embedded therein. In particular, but not limited to, MOTIONTAG is and shall remain the sole owner of MOTIONTAG’S IP, MOTIONTAG’S Background IP and any foreground IP created by MOTIONTAG.

6.2 Licensee shall retain at all times all IP to the Licensee App and all other IP Rights owned by Licensee prior to the execution of the License Agreement.

7. Feedback

MOTIONTAG may use, profit from, disclose, publish or otherwise exploit worldwide, perpetually and irrevocably, any ideas or suggestions provided by Licensee with regard to its use of the MOTIONTAG SDK, its performance and potential improvement thereof, without being obliged to compensate or credit Licensee in any way whatsoever.

8. MOTIONTAG Service

8.1 MOTIONTAG provides the Licensee with a MOTIONTAG service for processing the data generated with the MOTIONTAG SDK. The functionalities of the MOTIONTAG Service are described in the offer as attached hereto in **Annex 1**. The Licensee receives an access key from MOTIONTAG to connect the MOTIONTAG Service with the MOTIONTAG SDK. If separately agreed in writing, the MOTIONTAG Service can also be optionally connected by MOTIONTAG to one of the Licensee’s back ends.

8.2 The Licensee is obliged to support MOTIONTAG in the performance of the contractual obligations to the extent required in each case. In particular, the Licensee shall be obliged to create all conditions necessary for the proper performance of the services in its sphere of operation and to make available in good



time all documents and information necessary or relevant for the performance of the services. The Licensee shall appoint a direct contact person who is authorized and able to discuss and agree all project-related matters with MOTIONTAG.

- 8.3 If the Licensee does not, not in time or not completely fulfil its obligations to cooperate and if this has an effect on the timely provision of the contractual services, the agreed performance period shall be extended accordingly.

9. Provision of Services

MOTIONTAG provides the services owed with the greatest professional care and always in relation to the individual situation and the needs of the Licensee. MOTIONTAG shall be entitled, even without the express consent of the Licensee, to make use of competent third parties (e.g. subcontractors) to provide the MOTIONTAG services.

10. Data Privacy

The Parties shall conclude the attached order data agreement (*Auftragsverarbeitungsvereinbarung*) for the data processing operations specified in **Annex 2**.

11. Support and Maintenance, Availability

- 11.1 The Parties are agreeing to a support and maintenance level as further specified in the service level agreement (“SLA”) as attached hereto in **Annex 3**. The Licensee is aware and acknowledges that an availability of 100 % of the MOTIONTAG Service and the MOTIONTAG SDK is not possible and is not guaranteed by MOTIONTAG. But MOTIONTAG makes every effort that the availability of the MOTIONTAG Service and the MOTIONTAG SDK is as high as possible. However, in particular maintenance works could lead to errors or may lead to temporary unavailability or downtimes. MOTIONTAG shall make best efforts to ensure continuous availability and error-free functionality of the MOTIONTAG Service. The Licensee acknowledges, however, that uninterrupted availability is not feasible for technical reasons and due to the dependence on external influences, e.g. within the framework of telecommunications networks.
- 11.2 MOTIONTAG occasionally carries out maintenance work on its own servers to ensure operation and for the purpose of expanding its own services, which may lead to a temporary impairment of the usability of the MOTIONTAG Service. If possible, MOTIONTAG will carry out the maintenance work during periods of low usage. The Licensee will be notified in advance by email of planned work that foreseeably requires an interruption to normal operations. At the same time MOTIONTAG shall inform the Licensee, as far as foreseeable, of the nature, extent and duration of the disruption.



- 11.3 The MOTIONTAG Service can only function properly if the respective existing system requirements are met. MOTIONTAG cannot guarantee error-free operation when using different system configurations.
- 11.4 MOTIONTAG is under no obligation to provide support or maintenance services to Licensee under the License Agreement, except as explicitly agreed otherwise in the SLA. The provision of such services as part of the MOTIONTAG Services, if any, shall be governed by this Agreement and subject to the SLA.

12. Term and termination

- 12.1 The License Agreement shall enter into force once executed by both Parties and remain in force until terminated by either of the Parties.
- 12.2 Both Parties may terminate the Agreement to the end of each calendar month by giving one month's notice, unless specified explicitly otherwise in the offer as attached hereto in Annex 1. Each termination requires the written form. The right to terminate the Agreement due to good cause remains unaffected.
- 12.3 Upon termination of the License Agreement, all rights granted to Licensee will terminate and Licensee shall discontinue the use and distribution of the MOTIONTAG SDK and destroy any copies thereof made by Licensee, its employees or its agents and Licensee shall be obliged within two weeks after termination of the Agreement at the latest, to remove the MOTIONTAG SDK from his apps and completely stop the distribution of his apps with integrated MOTIONTAG SDK.
- 12.4 The timely storage and backup of data before the end of the Agreement is the sole responsibility of the Licensee.

13. Assignment

The rights granted to Licensee hereunder are personal, indivisible and non-transferable. Accordingly, Licensee may not assign or transfer to third parties its contractual position in this License Agreement or transfer, in whole or in part, the MOTIONTAG SDK nor the rights and/or obligations hereunder.

14. Warranties

Statutory warranty provisions shall apply.

15. Limitation of liability

- 15.1 MOTIONTAG is unrestrictedly liable for damages that have been caused by deliberate intention or by gross negligence.



- 15.2 In cases of slight negligence, MOTIONTAG is only liable if it has infringed a fundamental duty and if the purpose of the contract is threatened thereby or if it has infringed duties that have to be fulfilled for the duly contract implementation and if the Licensee generally relies on the fulfilment of these duties. In the aforementioned cases MOTIONTAG is only liable for predictable damages that are typical for the contract.
- 15.3 The aforementioned restrictions of liability do not apply to cases of damages to life, body, or health, to cases of warranting for the condition of a product, and to cases of fraudulent concealment of defects.
- 15.4 MOTIONTAG bears no liability for significant restriction to the Service. Furthermore, MOTIONTAG bears no liability for service breakdowns that it is not responsible for e.g. as a result of force majeure or technical internet failures.
- 15.5 Otherwise, MOTIONTAG's liability is excluded regardless of the legal grounds.
- 15.6 If the liability of MOTIONTAG is excluded or restricted, this also applies to the personal liability of his officers, employees, representatives, and agents.
- 15.7 If, in consideration of the above provisions, MOTIONTAG is liable for the loss of the Licensee's data, its liability shall be limited to the typical restoration costs that would have been incurred if the Licensee had made regular backup copies in accordance with the risk.

16. Indemnity

To the maximum extent permitted by law, Licensee shall defend, indemnify and hold MOTIONTAG harmless from any claims, damages, losses or any other liability (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis)) incurred as a result of Licensee's non-compliance with the License Agreement or otherwise resulting from Licensee's use of the MOTIONTAG SDK, in particular any claim made against MOTIONTAG for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Licensee's use of MOTIONTAG SDK or distribution of the Licensee App.

17. Confidentiality

- 17.1 Licensee acknowledges that access to any Confidential Information under the License Agreement does not imply the acquisition or any right or license over such Confidential Information.
- 17.2 Licensee assumes for an unlimited duration the following obligations towards MOTIONTAG: (i) use the Confidential Information solely and exclusively for the



purposes expressly set out in the License Agreement; (ii) safeguard the Confidential Information strictly, avoiding its disclosure or supply, in whole or in part, to any third party without the express prior consent from MOTIONTAG; (iii) not to reverse engineer any Confidential Information and (iv) treat the Confidential Information with the strictest discretion.

- 17.3 Licensee may disclose Confidential Information to its employees and subcontractors only if the following conditions are met: (i) such persons need to know such Confidential Information for compliance with the License Agreement; (ii) such persons have agreed in writing to be bound by the confidentiality obligations established herein; (iii) Licensee ensures the performance of such confidentiality obligations at all time, bearing any cost that may be incurred for such purpose; and (iv) Licensee shall be liable to MOTIONTAG if the persons authorized by virtue of this clause breach in any manner their confidentiality obligations.
- 17.4 Licensee shall implement reasonable security measures to protect unauthorized access to the Confidential Information.
- 17.5 Licensee will be entitled to disclose Confidential Information if so required by a competent court or administrative authority in the exercise of its powers, and subject to the Law. Licensee shall notify said request to MOTIONTAG as soon as practicable and to the extent permitted by law, including information about the requesting authority and which Confidential Information is required to be disclosed.
- 17.6 Licensee undertakes to destroy or return to MOTIONTAG any Confidential Information under its control and to certify in writing that it has done so if so requested, at any time and, in any event, upon the termination of the License Agreement.

18. Miscellaneous

- 18.1 Applicable Law and Venue: the License Agreement shall be governed by the laws of Germany and the rules of conflict of laws nor the United Nations Convention on the Contracts of the International Sale of Goods (CISG) shall not be applicable. The Parties expressly agree that Potsdam (Germany) shall be legal venue for the resolution of any dispute or conflict that may arise related to the validity, application, enforcement or interpretation of the License Agreement, waiving any other jurisdiction they may be entitled to under applicable law.
- 18.2 Entire agreement: The License Agreement is the entire agreement between the Parties relating to its subject matter and supersedes any agreement or contract, made orally or in writing, that the Parties may have made related to its object.
- 18.3 Independence of the Parties: The relationship between the Parties under the License Agreement is that of independent legal entities. Therefore, neither Party, nor any of



its employees, acts or may be construed to act as a representative, agent, nominee or factor of the other Party, nor may its acts or omissions give rise to relationships of any kind binding the other Party to third parties. Additionally, neither the completion nor the performance of this License Agreement means or may be construed to imply the creation of a partnership or relationship of risk and venture shared by the Parties.

- 18.4 Amendments: This Agreement, including this clause 18.4, may only be amended through a written instrument signed by both Parties including an express statement of the agreed amendment.
- 18.5 Non-waiver: Any failure by MOTIONTAG to demand performance of the License Agreement shall not be construed in any manner whatsoever as a waiver of that clause, or of any other clause, nor shall it affect in any manner whatsoever the validity of the License Agreement, nor the right to demand performance of the License Agreement.
- 18.6 Notices: All notices, requests and demands given to or made upon either Party shall be in writing and shall be addressed by registered or certified mail, by an internationally recognized delivery service; or by ordinary mail or e-mail or any other procedure provided that its appropriate receipt by the recipient(s) is evidenced or hand-delivered to either Party to the addresses as follows:

If the recipient is MOTIONTAG:

MOTIONTAG GmbH
For the attention of: Fabien Sauthier
Address: Rudolf-Breitscheid-Straße 162, 14482 Potsdam, Germany
Telephone: +49 159 04348412
E-mail: fabien.sauthier@motion-tag.com

If the recipient is Licensee:

[...]
For the attention of: [...]
Address: [...]
Telephone: [...]
E-mail: [...]

Any amendment to the contact persons and addresses set out for the purpose of receipt of notification under this Agreement shall be notified immediately to the other Parties as provided for in this Clause. To the extent that one Party has not received a notice of amendment of this kind, the notices it served as provided for above to the persons and addresses contemplated in this document will be deemed valid.



- 18.7 Severability: Should any of the clauses of the License Agreement become null or unenforceable, in whole or in part, this shall not affect the validity or enforceability of the rest of the clauses of the License Agreement, unless their enforceability is conditional on the enforceability of such null or unenforceable clause. The null and unenforceable clause shall be deemed to have been replaced by an adequate and fair clause that, to the extent legally possible, is as similar as possible to the intention and purpose of such null or unenforceable clause.
- 18.8 Subcontractors: Licensee shall remain liable for the acts and omissions of its subcontractors.
- 18.9 Survival: The provisions of the License Agreement which by their nature are intended to do so, shall survive the expiration or early termination of the License Agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement in two (2) counterparts as of the date first hereinabove mentioned.

MOTIONTAG:

Licensee:

Name: Fabien Sauthier

Name:

Date:

Date: