

## MOMENCE TERMS OF SERVICE

**Date of Last Revision:** [ \_\_\_\_\_ Feb. 2<sup>nd</sup> 2020 \_\_\_\_\_ ]

### **1. Services And Support**

1.1 Momence Inc. (“Momence”) provides its cloud based one-stop-shop online platform and related services for live and recorded events, which may include software, client applications, APIs, and hosted subscription services (collectively “Service(s)”) to you (“Customer”) pursuant to these Terms of Service (the “Agreement”). By agreeing to (or issuing a purchase order in relation to) an applicable order form or other ordering document or Services-related agreement with Momence (each an “Order Form”) or otherwise registering for, accessing or using the Services, Customer unconditionally accepts and agrees to all of the terms of this Agreement. By entering into this agreement on behalf of a company or other legal entity, Customer represents that it has the authority to bind such entity and its affiliates to the terms of this Agreement, and, accordingly, the term “Customer” shall refer to such entity and its affiliates. If Customer does not have such authority, or Customer does not agree to all of the terms of this Agreement, Customer may not use the Services. Subject to the terms of this Agreement, Momence will use commercially reasonable efforts to provide Customer (a) the Services solely for Customer’s business operations in accordance with the terms, limitations and restrictions of each Order Form, and (b) reasonable support services in accordance with Momence’s standard practices. Capitalized terms not defined herein shall be given the meaning set forth in the applicable Order Form.

1.2 Momence reserves the right to change or modify portions of this Agreement at any time. If Momence does so, it will post the changes on this page and will indicate at the top of this page the date this Agreement was last revised. Momence will also notify Customer, either through the Services user interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after being posted, except that changes addressing new functions of the Services or changes made for legal reasons may become effective immediately. Customer’s continued use of the Services after the date any such changes become effective constitutes acceptance of the new Agreement.

1.3 From time to time, Customer may be invited to try certain services at no charge for a free trial or evaluation period or if such services are not generally available to customers (collectively, “Evaluation Services”). Evaluation Services will be designated as beta, pilot, evaluation, trial,

limited release, or the like. Evaluation Services are for Customer’s internal evaluation purposes only and not for production use, are not supported, are provided “as is” without warranty of any kind, and may be subject to additional terms. Unless otherwise stated, any Evaluation Services trial period will expire sixty (60) days from the trial start date. Momence may discontinue Evaluation Services at any time in its sole discretion and may never make them generally available. Momence will have no liability for any harm or damage arising out of or in connection with any Evaluation Services.

### **2. Restrictions And Responsibilities**

2.1 Customer will only use the Services as expressly permitted herein, and subject to any terms or restrictions in the applicable Order Form (including, without limitation, any capacity or active user limits). Customer further agrees that it will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software (including any applications, APIs, and the like), documentation, or data related to the Services (collectively, “Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Momence in writing or authorized within the Services); use (or disclose) the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; use or access the Services or any Software to develop a product or service that is competitive with the Services or engage in competitive analysis or benchmarking; remove any proprietary notices or labels; or modify, adapt, or hack the Services, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks. With respect to any Software (in any form) that is provided to Customer (if any), Momence hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software solely during the Term (as defined below) and solely in connection with the Services and for no other purpose. All Software is Confidential Information of Momence and subject to the terms of Section 3.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Momence’s standard published policies and codes of conduct then in effect and all applicable laws and

regulations (including, without limitation, those relevant to privacy, spam, intellectual property, and the like). Although Momence has no obligation to monitor Customer's use of the Services, Momence may do so and may prohibit any use of the Services (or disable content or data) it believes may be (or alleged to be) in violation of the foregoing or any other term of this Agreement.

2.3 The Services may provide, or third parties may provide, links or other access to third party sites, services, content, and resources (collectively, "Third Party Services"). Momence has no control over any such Third Party Services and Momence is not responsible for and does not endorse any such Third Party Services. Customer further acknowledges and agrees that (i) any dealings Customer has with any Third Party Services are solely between Customer and the relevant third party, and (ii) Momence will not be, directly or indirectly, responsible or liable for, and Customer hereby agrees to hold Momence harmless from and against, any damages, harm, liabilities, losses or expenses in any way arising from or relating to any such Third Party Services or Customer's use thereof.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access, or otherwise use the Services, including, without limitation, modems, hardware, software, operating systems, networking, web servers, and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords), and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

### **3. Confidentiality; Security; Proprietary Rights**

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical, or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Momence includes all Software and other non-public information regarding features, functionality, and performance of the Services. Proprietary Information of Customer includes Customer Data (as defined below). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person (except employees and contractors involved in the Services who are bound by consistent terms) any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply

with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in its possession or known by it prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law.

3.2 Momence will maintain a security program materially in accordance with industry standards that is designed to (i) ensure the security and integrity of Customer data uploaded to the Services by Customer or collected by Momence in the provision of the Services ("Customer Data"), (ii) protect against threats or hazards to the security or integrity of Customer Data, and (iii) prevent unauthorized access to Customer Data. In furtherance of the foregoing, Momence will maintain reasonable administrative, physical, and technical safeguards to protect the security of Customer Data, including measures for preventing access, use, modification, or disclosure of Customer Data by Momence personnel, except (a) to provide and maintain the Services and prevent or address service or technical problems, (b) as required by applicable law, or (c) as Customer expressly permits in writing or under this Agreement. To the extent the parties intend that Momence will process any Personal Information (as defined in the DPA referenced below) contained in Customer Data that is subject to the GDPR or CCPA (as defined in the DPA), on Customer's behalf, in the provision of the Services, the parties will execute Momence's standard Data Processing Addendum ("DPA") as an addendum to this Agreement. Customer represents, warrants, and covenants that it has and will maintain all rights, authorizations, and consents necessary (and has provided its users all notices that may be required) for Momence to collect, process, and use Customer Data as contemplated by this Agreement.

3.3 Customer shall retain all ownerships rights, title, and interest in and to all Customer Data and all other Customer technology and intellectual property rights. Momence shall own and retain all right, title and interest in and to (a) the Services and all improvements, enhancements, or modifications thereto, (b) any software, applications, inventions, or other technology developed in connection with the Services or support, and (c) all intellectual property rights related to any of the foregoing. If Customer provides any suggestions or comments for enhancements or functionality or other feedback to Momence with respect to the Services, Software or any of Momence's other technology, products, or services, Momence will have the full, free, and unencumbered right

to use and otherwise fully exploit the same in connection with its business in perpetuity. No rights or licenses are granted except as expressly set forth herein.

3.4 Notwithstanding anything to the contrary, Momence shall have the right collect and analyze data and information relating to the use and performance of various aspects of the Services and related technologies (including Customer Data and data derived therefrom), and Momence will be free (during and after the Term) to (i) use such information and data to provide, improve, and enhance the Services and other Momence offerings, and (ii) otherwise use and disclose such data solely in aggregate or other de-identified form in connection with its business.

#### **4. Payment of Fees**

4.1 Customer will pay Momence the then applicable fees for the Services as described in the relevant Order Form (or in the Services itself, as applicable) in accordance with the terms therein (the "Fees"). All Fees are non-cancelable and non-refundable regardless of any early termination of this Agreement. If Customer's use of the Services exceeds any applicable limits set forth on the Order Form or Services (e.g., active user limits) or otherwise requires the payment of additional fees (per the terms of this Agreement or set forth in the Services), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Momence reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial Service term (as described in the Order Form or when Customer registers for the Services; the "Service Term") or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Momence has billed Customer incorrectly, Customer must contact Momence no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Momence's customer support department.

4.2 Momence may also choose to bill through an invoice, in which case full payment for invoices issued must be received by Momence within thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of the Services. Customer shall be responsible for all taxes associated with the Services other than U.S. taxes based on Momence's net income.

#### **5. Termination**

5.1 Subject to earlier termination as provided below, this Agreement is for the Service Term, and shall be automatically renewed for additional periods of the same duration as the Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current Term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or immediately upon notice in the case of nonpayment or a breach of Section 2.1), if the other party materially breaches any of the terms or conditions of this Agreement and such breach is not cured during the notice period. Momence may also reasonably suspend Customer's and/or any user's access to the Services at any time in its reasonable discretion if it possesses a good faith belief that Customer's (or any of its users) use of the Services may be in violation of this Agreement or otherwise place Momence (or its customers or other interests) at risk of harm, damage, loss, or liability. Upon termination, Customer's right to use the Services shall immediately terminate, all outstanding Fees due for the Services for the entire Service Term (regardless of any early termination) shall immediately become due and payable, Customer shall return (or at Momence's option destroy) all Software, and each party shall return to the other all Proprietary Information. Sections 2, 3, 4, 5, 6, and 8-10 shall survive expiration or termination of this Agreement.

#### **6. Indemnification**

Momence shall hold Customer harmless from liability to third parties resulting from infringement by the Services of any United States patent or copyright or misappropriation of any trade secret, provided Momence is promptly notified of any and all threats, claims, and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Momence will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to the Services or portions or components thereof (i) not supplied by Momence, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery, (iv) that are combined with other products, processes, or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Services is not strictly in accordance with this

Agreement. Customer will indemnify Momence from all damages, settlements, attorneys' fees, and expenses related to (i) any claim of infringement or misappropriation excluded from Momence's indemnity obligation by the preceding sentence, or (ii) any other claim arising from or in connection with Customer's breach of this Agreement or Customer's use of the Services (except to the extent covered by Momence's indemnity obligations above).

## **7. Warranty And Disclaimers**

Momence shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Momence or by third-party providers, or because of other causes beyond Momence's reasonable control, but Momence shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, MOMENCE DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND MOMENCE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **8. Limitation Of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BREACH OF SECTION 2, NEITHER PARTY NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND SUCH

PARTY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND PAYABLE TO MOMENCE FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. Government Matters**

Customer may not remove or export from the United States or allow the export or re-export of the Services, Software, or anything related thereto, or any direct product thereof in violation of any restrictions, laws, or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## **10. Miscellaneous**

Momence shall have the right to use Customer's name in a factual manner for marketing or promotional purposes on Momence's website and in other communication with existing or potential Momence customers. To decline Momence this right, Customer must email Momence (at the email address provided in the Services) stating that Customer does not wish to grant Momence this right. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable or transferable by either party without the other party's prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of such party's assets or business. Momence may use subcontractors in its performance of,

and its exercise of rights under, this Agreement; provided that Momence shall remain responsible for any such subcontractor's performance hereunder. Except to the extent the parties have mutually executed and delivered a separate written agreement covering the same Momence Services (a "Separate Signed Agreement"), this Agreement (along with each mutually agreed Order Form) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. In the event of a conflict between the terms of this Agreement and the terms of a Separate Signed Agreement, the terms of the Separate Signed Agreement shall supersede and control. However, any different or additional terms of any purchase order, confirmation, or similar pre-printed form will have no force or effect. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Momence in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Any claim, action or proceeding arising from or relating to this Agreement may only be brought in the state or federal courts of California and each party hereby consents to the exclusive jurisdiction thereof.