

# MOMENTUM SPINE Terms of Use

Last revision: [October 2023]

Momentum Health Inc. (“**Momentum**”, “**we**”, “**us**”, or “**our**”) is the operator of the Momentum Spine device, an optical contour sensing mobile application designed to quantify asymmetries, evaluate body angles, and curvature related to postural irregularities, including scoliosis (the “**App**”), whose access and use are governed by these Terms of Use.

Our App serves two distinct application scenarios, for individuals aged 8 years and older:

- Over the counter service: where the App is directly accessible to lay users (“**Lay Users**”), functioning as a screening and monitoring tool for assessing spinal asymmetries (the “**OC Services**”).
- Healthcare professional screening service: where the App is available for patients (“**Patients**”) through a recommendation from an independent healthcare professional (“**Healthcare Professional**”) within the context of a medical consultation, (the “**HPS Services**”), collectively referred to as (the “**Services**”).

By accessing or downloading and installing our App on your computer or other device(s), either as a Lay User, Patient or a Healthcare Professional, you agree to be bound by these Terms of Use and other applicable terms and conditions including, in the case of Healthcare Professionals, the terms and conditions of a separate agreement between Momentum and either you or the organization (hospital, clinic, etc.) you are affiliated with (a “**Service Contract**”). As a Healthcare Professional affiliated with such an organization, you acknowledge that your access to and use of the HPS Services is conditional upon the existence of a Service Contract.

**These Terms of Use contain provisions that have legal implications and constitute a legal contract between you, as a Lay User, Patient or Healthcare Professional, and Momentum.** You understand that by checking the “agree” box for these Terms of Use and/or any other forms presented to you on the App you are agreeing to these Terms of Use and that such action is the equivalent of a signature.

**IF YOU DO NOT WISH TO BE BOUND BY ANY OF THESE TERMS OF USE, YOU MAY NOT USE THE APP OR THE SERVICES.**

## 1. LEGAL RELATIONSHIP

### OC Services

Lay Users have direct access to the App as a screening tool for their personal use. As such, Lay Users are considered clients of Momentum and may use the App in accordance with the Terms of Use.

The Lay Users' rights and obligations vis a vis Momentum, and Momentum's rights and obligations vis a vis the Lay Users are exclusively set out in these Terms of Use and in applicable laws whose effect cannot be legally waived.

### **HPS Services**

Momentum is retained as a service provider by independent Healthcare Professionals or healthcare organizations (e.g. hospitals, clinics, etc.), to provide the HPS Services in connection with their delivery of healthcare services to their Patients. In this context, the Healthcare Professionals and healthcare organizations remain fully responsible for all healthcare services provided to their Patients including, where applicable, providing access to the HPS Services, interpretation of the results, diagnostic decisions and medical recommendations. The Patients' rights and obligations vis a vis Momentum, and Momentum's rights and obligations vis a vis the Patients are exclusively set out in these Terms of Use and in applicable laws whose effect cannot be legally waived.

## **2. NOT FOR MEDICAL EMERGENCIES**

The Services do not include emergency, time sensitive or urgent, remote, or critical care services and should not be used during a medical emergency. If you think you have a medical emergency, call 911 or go to the nearest open emergency room immediately.

## **3. NOT MEDICAL OR PROFESSIONAL ADVICE**

### **OC Services**

We do not provide medical or professional advice. We are not a physician, nurse or any other healthcare professional.

The Momentum App provides you with information intended to quantify asymmetries, evaluate body angles, and curvature related to postural irregularities, including scoliosis. It is designed to serve as a screening tool and should not be used as a definitive diagnostic tool or as a replacement for a physician's professional opinion. The information provided through the App is not a substitute for medical advice, and you should not rely on it for medical diagnosis, assessment, or treatment. Your reliance on any information provided by us or available on the App is at your own risk.

Always consult with your physician or another qualified healthcare provider for any questions or concerns regarding your personal health, medical conditions, medications, and before initiating or discontinuing any treatment, drug, or medication. Do not disregard, avoid, or delay seeking medical advice from your physician or other qualified healthcare professional based on any information you may have received or obtained through the App.

### **HPS Services**

The Healthcare Professionals who use Momentum to remotely monitor and interact with Patients through our App are professionals that are not affiliated with us. Momentum does not practice medicine or any other licensed profession, and does not interfere with the practice of medicine or any other licensed profession by Healthcare Professionals, each of whom is responsible for his or her professional services and compliance with the requirements applicable to his or her profession and license. Momentum will not be liable for any professional advice or healthcare services you obtain from a Healthcare Professional via the App.

As a Healthcare Professional using the App, you hereby represent and warrant that you are in good standing with your license to practice. Healthcare Professionals may be required to register with health insurance providers and/or other regulatory bodies to allow billing of HPS services.

#### **4. USAGE RIGHTS**

Momentum grants you a limited, non-exclusive, non-transferable right to access the App (including to download and install the App on a device) and use the Services solely for your personal use and only as permitted under these Terms of Use and, in the case of Healthcare Professionals, the terms of the applicable Service Contract.

We reserve the right, in our sole discretion, to deny or suspend use of the App or the Services to anyone. You agree that you will not, and will not attempt to: (a) impersonate any person or entity, or otherwise misrepresent your affiliation with a person, organization or entity; (b) use the App or the Services in violation of any applicable law; (c) reverse engineer, disassemble, decompile, or translate any software or other components of the App or the Services; (d) access the App or the Services for the purpose of building competing applications or service; (e) distribute viruses or other malware through the App; or (f) otherwise use the Services or the App in any manner that exceeds the usage right granted above.

#### **5. USER ACCOUNT**

##### **OC Services**

To initiate their use of the OC Services, Lay Users will create an account ("**Account**") directly through the App. This process entails providing essential contact information, including their name, email address, and telephone number, and selecting a password (collectively referred to as "**Account Information**"). To register and use the OC Services, you must have reached the age of majority in your jurisdiction (or be represented by your legal tutor) or else, you may not register to use the OC Services. You agree that the Account Information that you provide to us, including during registration as well any information you communicate through the App, will be true, accurate, current, and complete. You may not transfer or share your Account password with anyone. You are responsible for maintaining the confidentiality of your Account password and for all activities that occur under your Account. Momentum reserves the right to take any action as it deems necessary or reasonable regarding the security of the App and your

Account Information. In no event and under no circumstances will Momentum be held liable to you for any liabilities or damages resulting from or arising out of your use of the OC Services, or your use or release of your Account Information to a third party.

## **HPS Services**

Before patients can begin using the HPS Services, they will receive an invitation email from a healthcare organization. Following this, they must activate their account (“**HPS Account**”) created by their Healthcare Professional and provide any missing contact information (such as name, email address, and telephone number) before choosing a password (collectively “**HPS Account Information**”). The HPS Accounts of Healthcare Professionals are created by Momentum upon onboarding. To have a HPS Account on the HPS Services, you must have the age of majority in your jurisdiction (or be represented by your legal tutor) or else, you may not register to use the HPS Services. You agree that the HPS Account Information that you provide to us, including during registration as well any information you communicate through the App, will be true, accurate, current, and complete. You may not transfer or share your HPS Account password with anyone. You are responsible for maintaining the confidentiality of your HPS Account password and for all activities that occur under your HPS Account. Momentum reserves the right to take any action as it deems necessary or reasonable regarding the security of the App and your HPS Account Information. In no event and under no circumstances will Momentum be held liable to you for any liabilities or damages resulting from or arising out of your use of the HPS Services, or your use or release of your HPS Account Information to a third party.

## **6. PAYMENT FOR OC SERVICES**

Your access and use of the OC Services are contingent upon the payment of fees. You expressly agree to pay the subscription fees indicated for the OC Services at the then-current rates. These monthly/yearly fees are calculated on the basis of a yearly or annual license. Please note that all prices and charges associated with the OC Services are in Canadian dollars.

Payment must be made using a valid credit card. Valid credit cards include Visa, MasterCard, and American Express. We may obtain pre-approval from your credit card company for an amount up to the monthly/yearly fee. Subsequent billing to your credit card will occur on a monthly basis unless you cancel your subscription to the OC Services or we terminate it.

If you choose to cancel your subscription to the OC Services, you will maintain access until the next monthly renewal date (the “**Termination Period**”), at which point your subscription will terminate. Should you decide to re-subscribe prior to the expiration of the Termination Period, you will be charged a new subscription fee at the prevailing rate on the date of re-subscription.

Payments are processed on behalf of Momentum by a third-party payment processor using their secure platform. When you submit your order, your

information will be transmitted to the third-party payment processor. Your browser will require a recent version of at least 128-bit SSL encryption for secure connectivity. If your browser cannot support SSL, you may not be able to access the third-party payment processor's page. Personal information submitted during the payment process is subject to Momentum's privacy policy. Please note in this respect that Momentum does not collect or store your full credit card number or security code.

You are responsible for promptly paying all charges on your Account, including applicable taxes for your use or any authorized use of your Account and password to access the OC Services. You also agree to maintain up-to-date Account Information, including your address, payment details, telephone number, and email address. If your payment information expires, you remain liable for any outstanding amounts. If three (3) payment collection attempts fail, we will cancel your subscription to the App.

## **7. PRIVACY**

We acknowledge the paramount importance of safeguarding your privacy and the confidentiality of your personal information ("**Personal Information**"). To inform you about our privacy and protection practices with respect to your Personal Information, including how we collect, use and disclose your Personal Information, please refer to our Privacy Policy.

## **8. SERVICE AND APP AVAILABILITY**

Momentum uses reasonable efforts to make the Services available 24 hours a day, 7 days a week. However, there may be occasions when the Services will not be accessible for maintenance work or due to reasons that are beyond Momentum's control, such as failures in telecommunication networks outside of Momentum's organization.

Momentum may, from time to time, modify and update the Services and the App and you agree that Momentum will not be liable to you or anyone else if Momentum does so, except as may be set forth in a separate agreement.

You are responsible for obtaining and maintaining any equipment or ancillary services needed to access mobile and tablet App and you are responsible for all applicable fees incurred while accessing such applications, such as fees from your mobile carrier, overage charges, etc.

## **9. PROPERTY**

The App and their entire content, features and functionality (including but not limited to all information, software, text, displays, images, and the design and user interface), are owned by Momentum, its licensors or other providers of such material and are protected by copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on the App except as generally and ordinarily permitted through the App according to these Terms of Use.

The trademarks and logos displayed in the App (the “**Marks**”) are the property of Momentum or third-party rights holders. You are not permitted to use the Marks without the prior consent of Momentum or the rights holders. Momentum Spine and the Momentum logos are trademarks of Momentum.

## **10. OPTIMIZATION**

We use user information, including behavioural metrics, and other non-personally identifiable information to operate, provide, improve, and maintain our App and the Services, to develop new products and services, to prevent abuse and fraud, to personalize and display content for you, and for other administrative and internal business purposes.

## **11. TERMINATION**

You may deactivate your Account / HPS Account and terminate your registration on the Services at any time, for any reason as follows:

### **OC Services**

Lay Users may have their Account terminated by contacting Momentum; Momentum may also suspend or terminate your use of the OC Services and/or your Account should you breach any provision of these Terms of Use. Subject to applicable law, Momentum reserves the right to maintain, delete or destroy all communications, materials and data exchanged or stored through the OC Services pursuant to its internal record retention policies. After such termination, Momentum will have no further obligation to provide the OC Services.

### **HPS Services**

Patients may have their HPS Account terminated by contacting their Healthcare Professional; Healthcare Professionals should refer to the applicable Service Contract to know the process for terminating their HPS Account. Momentum may also suspend or terminate your use of the HPS Services and/or your HPS Account should you breach any provision of these Terms of Use. Subject to applicable law, Momentum reserves the right to maintain, delete or destroy all communications, materials and data exchanged or stored through the HPS Services pursuant to its internal record retention policies. After such termination, Momentum will have no further obligation to provide the HPS Services, except to the extent Healthcare Professionals are required to provide Patients with continuing care under their applicable legal, ethical and professional obligations to a Patient. Termination of the HPS Services by the organization you, as a Healthcare Professional, are affiliated with will terminate the HPS Services accessible through your HPS Account as well as the access to your HPS Account and your HPS Account Information. All Patient health information and data are under the custody and responsibility of the Healthcare Professional; Patients should direct their inquiries in that regard to their Healthcare Professional.

## **12. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY AGREE THAT USE OF THE APP OR THE SERVICES IS AT YOUR SOLE RISK. BOTH THE APP AND THE SERVICES ARE PROVIDED TO YOU, AS LAY USER, PATIENT OR HEALTHCARE PROFESSIONAL, ON AN "AS IS" AND "AS AVAILABLE" BASIS. MOMENTUM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT, TITLE, OPERABILITY, CONDITION, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA AND SYSTEM INTEGRATION.

## **13. LIMITATION OF LIABILITY**

YOU UNDERSTAND THAT TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL MOMENTUM OR ITS OFFICERS, EMPLOYEES, DIRECTORS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUES, PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATED TO YOUR USE OF THE APP OR THE SERVICES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, STATUTE OR OTHERWISE.

MOMENTUM'S AND ITS AFFILIATE'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THESE TERMS OF USE SHALL BE LIMITED TO ONE HUNDRED CANADIAN DOLLARS (CAD \$100) OR THE AMOUNT PROVIDED IN A SEPARATE AGREEMENT (IF ANY), WHICHEVER IS HIGHER. THIS LIMITATION WILL APPLY EVEN IF MOMENTUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

NOTE THAT SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF LIABILITY OR MAY PLACE LIMITATIONS ON OUR ABILITY TO LIMIT OUR LIABILITY TO YOU, SO SOME OR ALL OF THE FOREGOING MAY NOT APPLY TO YOU.

## **14. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Momentum, its officers, directors, employees, agents, subsidiaries, affiliates, licensors, and suppliers, harmless from and against any claim, actions, demands, liabilities and settlements, including without limitation reasonable legal and accounting fees, resulting from, or alleged to result from, your violation of these Terms of Use.

## **15. MODIFICATION OF THESE TERMS OF USE**

Momentum may change, add, or delete portions of these Terms of Use in the future. When making important changes to these Terms of Use, we will inform you in advance of such changes becoming effective and you will be presented with the updated version of the Terms of Use for acceptance upon your next connection to the App or the Services. In any event, continued use of the App and/or the Services following notice of any such changes will indicate your acknowledgement of such changes and agreement to be bound by the revised Terms of Use, inclusive of such changes.

## **16. APPLICATION LAW AND DISPUTE RESOLUTION**

These Terms of Use and your use of the App and the Services shall be governed by the laws of the Province of Québec, Canada, without giving effect to the principles of conflict of laws. Any dispute arising under or relating in any way to these Terms of Use will be resolved exclusively by the competent courts located in the judicial district of Montreal, Canada, except that either party may bring a claim related to intellectual property rights, or seek temporary and preliminary specific performance and injunctive relief, in any court of competent jurisdiction, without the posting of bond or other security.

## **17. MISCELLANEOUS**

The Services are controlled, operated and administered by Momentum from its offices in Montreal, Quebec, Canada. If you access and use the Services from a location outside Canada, then you are responsible for compliance with all local laws.

Nothing contained in these Terms of Use should be regarded or construed as creating any relationship (whether by way of employer/employee, agency, mandatary, attorney, joint venture, association, or partnership) between Momentum and Lay Users or Patients and between Momentum and Healthcare Professionals other than as independent contractors as set out herein. Neither party has authority or power to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

The Terms of Use constitute the entire agreement between Momentum and you with respect to your access to or use of the App and the Services. These Terms of Use supersede any prior agreements between you and Momentum on such subject matter.

You may not assign or otherwise transfer your rights and obligations pursuant to these the Terms of Use without Momentum's written consent. Momentum's rights and obligations under these Terms of Use are assignable by Momentum.

If a court of competent jurisdiction finds any provision of these Terms of Use, or any portion thereof, to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to reflect the

intent of the parties, and the remainder of these Terms of Use will continue in full force and effect.

Any failure by Momentum to enforce or exercise any provision of these Terms of Use, or any related right, will not constitute a waiver of that provision or right.