

BUYQ PARTICIPATION AGREEMENT

This Participation Agreement (the "**Agreement**") is made and entered into between the undersigned entity or person ("**you**" or "**Member**") and Momentum Ventures, LLC, d/b/a BuyQ, a Colorado limited liability company ("**BuyQ**") as of either the date you first acknowledge and accept the terms set forth herein electronically on BuyQ's website or the date you first obtain certain products and services under Vendor Contracts between BuyQ and Vendors, whichever date is first (the "**Effective Date**"). BuyQ has negotiated and organized a Program for the purchase of certain products and services for the common benefit of you and other Members to enable Members to purchase goods and services from Vendors at more competitive pricing than Members might otherwise be able to obtain on an individual basis. For good and valuable consideration, the sufficiency of which is hereby acknowledged, you and BuyQ hereby agree to the terms of this Agreement as set forth herein.

1. **Definitions.** As used herein, the following terms have the following meanings:

(a) "**Confidential Information**" means materials and information furnished to Members from time to time during the term of this Agreement by BuyQ, including, without limitation all information related to Vendor Contracts and any Programs.

(b) "**Member**" or "**Members**" means an entity that submits, accepts and agrees separately to the terms set forth in this Agreement and participates in the Program.

(c) "**Product**" or "**Products**" means any goods or services purchased, used, licensed or leased under a BuyQ contract with any Vendor.

(d) "**Program**" or "**Programs**" means the group purchasing programs conducted by BuyQ, pursuant to which you and other Members are provided access to the Vendor Contracts.

(e) "**Vendor Contracts**" means the purchasing agreements between Vendors and BuyQ for the purchase, use, license or lease of any Products, and any agreements between Vendor and third parties that have agreed that Members may purchase, license or lease under such agreements.

(f) "**Vendor**" or "**Vendors**" means the supplier of products and services under the Vendor Contracts.

2. **Purchase of Products.**

(a) You hereby engage BuyQ to act as your independent group purchasing organization and authorize BuyQ to negotiate and enter into Vendor Contracts on your behalf, and you are hereby granted access to the Vendor Contracts, pursuant to which you may purchase Products available thereunder for your use.

(b) You hereby agree to purchase Products under Vendor Contracts only for your own use, and to abstain from any resale, diversion or other use of such of Products as may be prohibited by applicable law.

(c) You hereby agree to abide by the terms and conditions of individual Programs in which you choose to participate. You hereby specifically agree not to seek or accept price reductions or other changes to the terms of the Vendor Contracts negotiated by BuyQ with any Vendor, unless BuyQ expressly consents to such changes in advance and in writing.

(d) You hereby acknowledge that BuyQ shall have the right, in its sole discretion, to select and approve Vendors under the Program(s). You shall be solely responsible for deciding whether to do business with any Vendor, and for payment to each Vendor for any and all purchases made. Vendors may require Members to sign agreements with them, and Members are solely responsible for the negotiation of the terms

thereof and performance thereunder. BuyQ shall have the right to review, and Members shall produce promptly to BuyQ upon its written request, copies of all documentation between Vendors and such Members.

(e) You hereby acknowledge that BuyQ is not liable for any denied pricing, chargeback, refusal of Vendors to honor contract pricing, or failure of Vendors to deliver Products in a timely fashion or of the requisite quality.

3. Member Information and Administrative Fees.

(a) You hereby agree to cooperate with BuyQ in the auditing of Vendor invoices, as may be requested from time to time by BuyQ, so as to ensure Vendor compliance with applicable contract terms under any of the Vendor Contracts.

(b) You hereby agree to provide in writing to BuyQ, upon request, all requested information concerning pricing, volume of purchases, choice of products, or other information related to purchases made or orders placed by you.

(c) You hereby acknowledge that BuyQ will receive payment of fees for administrative and other services provided by BuyQ from one or more Vendors based on Products that you purchase, license or lease.

4. BuyQ Disclaimer and Member Release and Indemnification. YOU HEREBY ACKNOWLEDGE THAT BUYQ, NOT BEING THE MANUFACTURER, WHOLESALER, PROVIDER OR DISTRIBUTOR OF ANY PRODUCTS, GOODS OR SERVICES MAKES NO WARRANTIES IN CONNECTION WITH THE PRODUCTS, GOODS OR SERVICES TO BE PROVIDED HEREUNDER, WHETHER EXPRESSED OR IMPLIED, AND INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYQ MAKES NO GUARANTEES AS TO PRICE DISCOUNTS, COST SAVINGS, OR LEVEL OF SATISFACTION WITH ANY VENDOR. IN NO EVENT SHALL BUYQ BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES INCURRED, INCLUDING WITHOUT LIMITATION ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM BUYQ'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE. Further to the foregoing, you agree to indemnify, defend, and hold harmless BuyQ, its respective affiliates, agents, officers, members and employees on demand from and against any and all suits, losses liabilities, claims, damages and expenses (whatsoever, including but not limited to reasonable attorneys' fees) arising out of or resulting from (i) damage to property or injury to persons that is caused by or arises out of any of the Products purchased under the Programs, or the use of such Products, or (ii) acts or omissions of Member which related in any way to this Agreement.

5. Term and Termination. The initial term of this Agreement will be for one year commencing on the Effective Date, with automatic renewal thereafter for terms of one year each unless either party gives written notice of non-renewal of this Agreement at least (30) thirty days prior to the end of the initial term or any subsequent renewal term. Either party may cancel this Agreement after the initial term by providing thirty (30) days written notice to the other party.

6. Confidentiality. You hereby acknowledge and agree that the Confidential Information constitutes the confidential and proprietary information of BuyQ, and that substantial and irreparable harm would be suffered by BuyQ in the event that you should disclose any Confidential Information to any third party, either during or after the term of this Agreement, without the prior written consent of BuyQ, except to the extent required by law. Upon termination of this Agreement, you will return to BuyQ or certify the

destruction of all originals and copies of the Confidential Information, and will not retain any copies. For purposes of this section, Confidential Information includes information in printed format, in microfiche, or in any other electronic or other form whatsoever.

7. **Privacy Policy.** Any information submitted in this Agreement or collected by BuyQ regarding you or other Members shall be used exclusively to facilitate this Agreement and to ensure compliance with the terms of this Agreement. BuyQ may disclose this information to its agents and the Vendors for the purpose of facilitating the Program. BuyQ will take reasonable technical and organizational precautions to prevent the loss, misuse or alteration of your personal information. This information shall not be disclosed to any third parties, except BuyQ may disclose such information to the extent that it is required to do so by law, in connection with any legal proceedings or prospective legal proceedings, and in order to establish, exercise or defend its legal rights.

8. **Miscellaneous.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given when delivered in person, sent via e-mail, or when mailed by certified mail, return receipt requested, addressed to the other party at their respective business addresses (or to such other business address or e-mail address as the recipient may have notified the sender in such manner). This Agreement is not, and shall not be considered, an employer-employee relationship, joint venture, or partnership of any kind, and neither party shall represent to any third persons that any such relationship exists. If any provision of this Agreement is found to be unlawful, invalid, or unenforceable, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect so long as no party is deprived of the material benefits afforded to such party under this Agreement. This Agreement and all related documents may be executed and delivered either by electronic signature or electronic acknowledgement as provided on BuyQ's website by any of the parties to any other party and the receiving party may rely on the receipt of such document so acknowledgement and delivered by such electronic means as if the original had been received. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral. Any legal suit, action or proceeding arising out of or in connection with this Agreement or the transactions contemplated hereby shall be instituted in the courts of the State of Colorado in each case located in Denver County and each party hereto irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The substantially prevailing party or parties in any proceeding (as determined by the court in such proceeding) shall be entitled, in addition to such other relief that may be granted, to be reimbursed by the losing party for all costs and expenses incurred, including attorneys' fees and costs for services rendered to the prevailing party or parties.