

Asset Purchase Agreement (APA)

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Template Text

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of [SIGNING DATE] by and between [SELLER ENTITY NAME] ("Seller") and [BUYER ENTITY NAME] ("Buyer").

- 1. Purchase and Sale of Assets.** Subject to the terms and conditions of this Agreement, Seller shall sell and Buyer shall purchase, on the Closing Date, all of Seller's right, title, and interest in the assets described on Schedule 1.1 (the "Acquired Assets"), free and clear of all liens and encumbrances except as set forth on the Disclosure Schedule.
- 2. Excluded Assets and Liabilities.** The Acquired Assets exclude the assets described on Schedule 2.1 (the "Excluded Assets"). Buyer shall not assume any liabilities of Seller except those expressly assumed on Schedule 2.2 (the "Assumed Liabilities"). All other liabilities remain with Seller.
- 3. Purchase Price.** The total purchase price shall be \$[AMOUNT] (the "Purchase Price"), payable as follows: (a) \$[CASH AMOUNT] in cash at Closing; (b) \$[ESCROW AMOUNT] deposited into Escrow per Section 5; and (c) \$[NOTE AMOUNT] evidenced by the Seller Financing Note attached as Exhibit A. The Purchase Price shall be allocated among the Acquired Assets per Schedule 3.1 and reported consistently on IRS Form 8594.
- 4. Working Capital Adjustment.** The Purchase Price assumes Target Working Capital of \$[AMOUNT], calculated using the methodology in Schedule 4.1 (based on the trailing 12-month average). Within sixty (60) days after Closing, Buyer shall deliver a Closing Working Capital Statement. Disputes shall be resolved by an independent accountant.
- 5. Escrow Holdback.** \$[AMOUNT] (representing [10%] of the Purchase Price) shall be deposited at Closing with [ESCROW AGENT] (the "Escrow Agent") for a period of [18] months (the "General Escrow Period") to fund indemnification claims. An additional \$[AMOUNT] (representing [5%] of the Purchase Price) shall be held for [36] months (the "Fundamental Reps Escrow Period").
- 6. Seller Financing Note.** The Seller Financing Note shall be on full standby (no payments) for [24] months following Closing as required by the SBA, with a term of [5] years thereafter, bearing interest at [PRIME + 2%], with a 30-day cure period for monetary defaults and a 60-day cure period for non-monetary defaults.
- 7. Earnout.** [INCLUDE OR OMIT]. If included, Seller may earn up to \$[AMOUNT] in additional purchase price based on the achievement of [METRIC] over the [3-year] earnout period. Buyer covenants to operate the business in the ordinary course consistent with past practice during the earnout period. Disputes resolved by an independent accountant.
- 8. Representations and Warranties of Seller.** Seller represents and warrants to Buyer that, except as set forth in the Disclosure Schedule, the representations on Schedule 8.1 are true and correct on the Signing Date and on the Closing Date. The "Fundamental Representations" are: (a) due organization and authority; (b) title to Acquired Assets; (c) capitalization (if applicable); (d) tax matters; and (e) brokers and finders fees.
- 9. Indemnification.** Seller shall indemnify Buyer for losses arising from breach of any representation, warranty, or covenant of Seller. Buyer shall not be entitled to recover until aggregate losses exceed \$[BASKET AMOUNT] (the "Basket"), at which point Seller shall pay from the first dollar (the "Tipping Basket"). Seller's aggregate liability under this Section 9 shall not exceed [15%] of the Purchase Price for general representations, but the Fundamental Representations shall be subject to a cap of [100%] of the Purchase Price. The Basket shall not apply to Fundamental Representations or fraud. The cap shall not apply to fraud or willful misconduct.

10. Closing Conditions. Closing is conditioned upon: (a) accuracy of Seller's representations as of Closing Date; (b) Buyer's receipt of SBA 7(a) loan approval on commercially reasonable terms; (c) receipt of all required third-party consents listed on Schedule 10.1 including landlord consent for lease assignment; (d) absence of any Material Adverse Change; and (e) execution of all transaction documents.

11. Material Adverse Change. "Material Adverse Change" means any change or event having a material adverse effect on the business, financial condition, or operations of the target, including: (a) loss of any of the top three customers; (b) departure of [NAMED KEY EMPLOYEE]; (c) any litigation seeking damages in excess of \$[THRESHOLD]; or (d) any other event causing a [10%] or greater decline in trailing-twelve-month revenue. Carve-outs for general economic conditions and industry-wide events shall not apply where the target is disproportionately affected.

12. Non-Compete. For a period of [5] years following the Closing Date, Seller and its principals shall not, directly or indirectly, engage in or own any interest in any business that competes with the target business within [100] miles of the target's principal place of business. This restriction is supported by a portion of the Purchase Price allocated as consideration for non-compete.

13. Survival. General representations survive for [18] months following Closing. Fundamental Representations survive for [36] months. Tax representations survive for the applicable statute of limitations plus 60 days. Covenants requiring performance after Closing survive until performed.

14. Governing Law. This Agreement shall be governed by the laws of the State of [STATE].

[SIGNATURE BLOCKS]

[SCHEDULES AND EXHIBITS]