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### APA - Assumed & Excluded Liabilities

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**Contracts");**

(viii) any rights of Seller or the Seller Indemnified Parties under this Agreement, the Buyer Documents and the Seller Documents;

(ix) the Books and Records; provided, however, that Buyer shall be entitled to acquire, at its own expense, copies of any materials reasonably necessary for its human resources, accounting, tax or legal purposes;

(x) any other assets, rights and properties set forth on **Schedule 2.1(b)(xi)**;  
and

(xi) any other assets, Contracts, rights and properties not used or held for use in the Business.

## **2.2 Assumed and Excluded Liabilities.**

(a) On the terms and subject to the conditions contained in this Agreement and except as otherwise provided in **Section 2.2(b)**, at the Closing, Buyer will assume and thereafter timely pay, perform or otherwise discharge the following liabilities and obligations of Seller related exclusively to the Business (the "**Assumed Liabilities**"):

(i) At the Closing, Buyer will assume Seller's obligations under the Acquired Assets solely to the extent such obligations first arise and must be performed from and after the Closing Date, were incurred in the ordinary course and are not past due or the result of any action, inaction, breach, violation or default by Seller occurring on or prior to the Closing Date.

(b) Notwithstanding any other provision of this Agreement, other than the Assumed Liabilities, Seller shall retain, and Buyer shall not assume or become responsible or liable with respect to any, liabilities or obligations of Seller (collectively, the "**Excluded Liabilities**"). By way of example and not of limitation, Buyer will not be responsible or liable for any of the following liabilities or obligations of Seller (each of which will constitute an Excluded Liability):

(i) any liability or obligation of Seller or any of its Affiliates, or any of their respective directors, officers, security holders, members, managers or agents, that is imposed upon or assumed by such Persons pursuant to this Agreement or the transactions contemplated hereby;

(ii) any liability or obligation relating to, based in whole or in part on events or conditions occurring or existing in connection with, or arising out of, any Excluded Asset;

(iii) any liability or obligation arising out of, or relating to, Taxes of Seller, including any Taxes arising as a result of Seller's operation of the Business or ownership of the

Acquired Assets prior to the Closing Date, or any of the transactions contemplated by this Agreement;

(iv) any liability or obligation of Seller under any Environmental Law arising from or relating to the ownership, performance, operation, use or possession of the Business, Acquired Assets or Assumed Liabilities prior to the Closing Date;

(v) any indebtedness for borrowed money or guarantees, make-whole or keep well Contracts in connection therewith;

(vi) any liabilities and obligations arising out of or relating to Contracts between the Business, on the one hand, and Seller and/or any of its Affiliates, on the other hand;

(vii) any liabilities and obligations arising out of, or relating to, any intercompany payables, accounts and notes payable and other obligations of the Business to make payment in favor of, discharge or otherwise be responsible for the liabilities or obligations of Seller or any of its Affiliates;

(viii) any worker's compensation liabilities, liabilities arising out of, or relating to, any Legal Proceeding involving Seller or its Affiliates whether or not related to the Acquired Assets or the Business, and liabilities related to the use or ownership of the Acquired Assets or the Business by Seller or any predecessor in interest;

(ix) any liability or obligation arising out of, or relating to, the failure of Seller to obtain any Permits material to or necessary for the conduct of the Business prior to the Closing;

(x) any liabilities or obligations arising out of, or relating to, any current or former employees or consultants of the Business and their beneficiaries and other employee, employment related or compensation or benefit plan related liabilities, including (A) with respect to Laws regarding employment arising or incurred on or prior to the Closing Date or as a result of the transactions contemplated by this Agreement and (B) any liability arising out of, or relating to, any key employee retention plans, any "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended), and COBRA coverage for employees or consultants of Seller or the Business terminated prior to or as part of the consummation of the transactions contemplated by this Agreement;

(xi) any liabilities or obligations attributable to, arising out of or relating to, any actual or deemed breach or default, or any facts or circumstances that could give rise to such a breach or default, pursuant to any Contract other than the Acquired Contracts;

(xii) any liability for commissions or similar sales incentives payable to employees of the Business arising prior to the Closing; and

(xiii) the other liabilities specifically described on **Schedule 2.2(b)**.