

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM489225

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|---|--|-----------------------|----------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| APNICURE (ABC), LLC | | 02/14/2018 | Limited Liability Company: |
| RECEIVING PARTY DATA | | | |
| Name: | Somnics, Inc. | | |
| Street Address: | 5F, No. 22, Sec. 2, Shengyi Rd. | | |
| City: | Zhubei, Hsinchu | | |
| State/Country: | TAIWAN | | |
| Postal Code: | 30261 | | |
| Entity Type: | Corporation: TAIWAN | | |
| PROPERTY NUMBERS Total: 4 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 4259043 | WINX | |
| Registration Number: | 4280815 | WINX | |
| Registration Number: | 4143040 | APNICURE | |
| Registration Number: | 4258212 | UNMASKING SLEEP APNEA | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 7032058050 | | |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> | | | |
| Phone: | 7032058000 | | |
| Email: | mussie.beyene@bskb.com | | |
| Correspondent Name: | BIRCH, STEWART, KOLASCH, & BIRCH, LLP. | | |
| Address Line 1: | 8110 Gatehouse Road, Suite 100E | | |
| Address Line 4: | Falls Church, VIRGINIA 22042 | | |
| ATTORNEY DOCKET NUMBER: | 5025-0291M | | |
| DOMESTIC REPRESENTATIVE | | | |
| Name: | Birch, Stewart, Kolasch & Birch, LLP | | |
| Address Line 1: | 8110 Gatehouse Road, Suite 100E | | |
| Address Line 4: | Falls Church, VIRGINIA 22042 | | |
| NAME OF SUBMITTER: | Robert J. Kenney | | |

OP \$115.00 4259043

| | |
|--|--------------------|
| SIGNATURE: | /Robert J. Kenney/ |
| DATE SIGNED: | 09/10/2018 |
| Total Attachments: 17 source=2018-09-10 Assignment to Somnics#page1.tif source=2018-09-10 Assignment to Somnics#page2.tif source=2018-09-10 Assignment to Somnics#page3.tif source=Asset Purchase Agreement#page1.tif source=Asset Purchase Agreement#page2.tif source=Asset Purchase Agreement#page3.tif source=Asset Purchase Agreement#page4.tif source=Asset Purchase Agreement#page5.tif source=Asset Purchase Agreement#page6.tif source=Asset Purchase Agreement#page7.tif source=Asset Purchase Agreement#page8.tif source=Asset Purchase Agreement#page9.tif source=Asset Purchase Agreement#page10.tif source=Asset Purchase Agreement#page11.tif source=Asset Purchase Agreement#page12.tif source=Asset Purchase Agreement#page13.tif source=Asset Purchase Agreement#page14.tif | |

TRADEMARK ASSIGNMENT

THIS TRADEMARK ASSIGNMENT is made as of February 14, 2018, by and between ApniCure (ABC), LLC, a California limited liability company ("Seller"), as Assignee for the Benefit of Creditors of ApniCure, Inc., a Delaware corporation, and Somnics, Inc., a Taiwan corporation ("Buyer"). Seller and Buyer are parties to a certain Asset Purchase Agreement dated as of February 14, 2018, (the "Asset Purchase Agreement"). Capitalized terms used without definitions herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to acquire from Seller, all of Seller's rights, title and interest in and to the trademarks and/or service marks identified in Schedule A attached hereto (the "Marks"); and

WHEREAS, the parties accordingly wish to execute this recordable instrument, assigning all of Seller's right, title and interest in and to the Marks to Buyer;

NOW, THEREFORE, for valuable consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Seller hereby assigns, transfers and conveys to Buyer all of its right, title and interest in and to the Marks, including without limitation any and all registrations, applications, and/or common law rights for the Marks throughout the world, together with all of the goodwill of Seller's business symbolized by or associated with the Marks, and any and all income, royalties, damages and payments now or hereafter due and/or payable with respect thereto including, without limitation, damages and payments for past, present or future infringements.

2. This Trademark Assignment is subject to the terms and conditions of the Asset Purchase Agreement and this Trademark Assignment shall not be deemed to limit, enlarge or extinguish any obligation of Seller or Buyer under the Asset Purchase Agreement, all of which obligations shall survive the delivery of this Trademark Assignment in accordance with the terms of the Asset Purchase Agreement, and that to the extent there is any conflict between this Trademark Assignment and the terms and conditions of the Asset Purchase Agreement, the Asset Purchase Agreement shall control.

3. This Trademark Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SELLER:

ApniCure (ABC), LLC, a California limited liability company, as Assignee for the Benefit of Creditors of ApniCure, Inc.

By: Andries Verschelden
Andries Verschelden (Feb 16, 2018)

Name: Andries Verschelden

Title: Manager

BUYER:

Somnics, Inc., a Taiwan corporation

By: Chung-Chu Chen
Chung-Chu Chen (Feb 16, 2018)

Name: Chung-Chu Chen

Title: CEO

Schedule A
To Trademark Assignment

Marks

Trademarks

1. Mark: ATTUNE (US, EU), APNICURE (US, EU), UNMASKING SLEEP APNEA (US), DREAMLINE (EU), Winx (and design) (US, EU, Australia, Japan)

2. Logos:

APNICURE



EXHIBIT 6.2 (i)

TO ASSET PURCHASE AGREEMENT

ASSIGNMENT AND BILL OF SALE

THIS ASSIGNMENT AND BILL OF SALE AGREEMENT (the "Agreement") is made as of February 14, 2018, by and between ApniCure (ABC), LLC, a California limited liability company ("Seller"), as Assignee for the Benefit of Creditors of ApniCure, Inc., a Delaware corporation, and Somnics, Inc., a Taiwan corporation ("Buyer"). Seller and Buyer are parties to a certain Asset Purchase Agreement dated as of February 14, 2018 (the "Asset Purchase Agreement"). Capitalized terms used without definitions herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

1. Sale and Assignment of Purchased Assets. Pursuant to the Asset Purchase Agreement, Buyer has on the date hereof purchased the Purchased Assets from Seller. In accordance with and subject to the terms and conditions set forth in the Asset Purchase Agreement, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby sell, assign, bargain, transfer, convey and deliver unto Buyer all of its right, title and interest in and to the Purchased Assets.

2. Cooperation. Buyer and Seller agree to cooperate with each other to execute and deliver such other documents and instruments and to do such further acts and things as may be reasonably requested by the other to evidence, document or carry out the sale of the Purchased Assets and the assumption of the Assumed Liabilities.

3. Effect of Agreement. Nothing in this Agreement shall, or shall be deemed to, modify or otherwise affect any provisions of the Asset Purchase Agreement or affect the rights of the parties under the Asset Purchase Agreement. In the event of any conflict between the provisions hereof and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, Seller and Buyer have caused this Assignment and Bill of Sale Agreement to be executed on the date first written above.

SELLER:

ApniCure (ABC), LLC, a California limited liability company, as Assignee for the Benefit of Creditors of ApniCure, Inc.

By: Andries Verschelden
Andries Verschelden (Feb 14, 2018)

Name: Andries Verschelden

Title: Manager

BUYER:

Somnics, Inc., a Taiwan corporation

By: Chung-Chu Chen
Chung-Chu Chen (Feb 15, 2018)

Name: Chung-Chu Chen

Title: CEO

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “*Agreement*”) is entered into as of February 14, 2018 (the “*Effective Date*”) among ApniCure (ABC), LLC, a California limited liability company (“*Seller*”), as assignee for the benefit of ApniCure, Inc., a Delaware Corporation (“*Assignor*”), and Somnics, Inc., a Taiwan Corporation (“*Buyer*”).

RECITALS

A. **WHEREAS**, by resolution of Assignor’s board of directors and shareholders, Assignor has transferred ownership of all its rights, title and interest in and to all of its tangible and intangible assets (“*Assets*”) to Seller, and in so doing has also designated Seller to act, pursuant to Sections 493.010, 493.030(a), 1204, 1204.5, 1800, 1801, and 1802 of the California Code of Civil Procedure, and under other applicable law, as the assignee for the benefit of creditors of Assignor. The General Assignment, dated of August 21, 2017 and effective as of August 21, 2017 (“*General Assignment*”) between Assignor and Seller is attached hereto as Exhibit A.

B. **WHEREAS**, Buyer desire to purchase and Seller desires to sell to Buyer, on the terms and conditions set forth herein, certain assets of Seller defined in Section 1 below.

C. **WHEREAS**, Seller and Buyer have no prior affiliation and are entering into this Agreement following arms’ length negotiations conducted in good faith.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, agreements, representations and warranties hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

AGREEMENT

1. Sale/Purchased Assets.

1.1 Subject to the terms and conditions set forth herein and upon Seller’s receipt of the payment and consideration by Buyer as set forth below in Section 4.1, Seller hereby sells, conveys, assigns and transfers to Buyer all of Seller’s right, title and interest in and to certain of the Assets, as more fully listed on Exhibit 1.1 (the “*Purchased Assets*”).

1.2 The Purchased Assets will be sold, assigned, transferred and conveyed to Buyer on the Closing Date on a “AS IS” and “WHERE IS” basis, with no representations or warranties other than those specifically set forth below, and subject to any and all existing pledges, liens, licenses, rights of possession, security interests, restrictions, encumbrances, charges, title retention, conditional sale or other security arrangements of any nature whatsoever (collectively, “*Encumbrances*”).

2. Excluded Assets.

2.1 Notwithstanding anything to the contrary in this Agreement, the Purchased Assets shall not include any of the Excluded Assets and the Excluded Assets shall not be transferred to Buyer, but shall be retained by Seller. For purposes of this Agreement, “*Excluded Assets*” shall include but not limited to the following items: (i) all cash, cash equivalents and uncashed checks received on or before the Closing Date (as defined below); (ii) accounts receivable; (iii) any right that Seller has with respect to deposits, insurance refunds, tax refunds, claims for tax refunds and tax attributes arising prior to the Closing Date; (iv) any prepaid taxes of Seller or Assignor attributable to pre-Closing tax periods; (v) to the extent the transfer contemplated herein is prohibited by any license or other agreement, any software or other licensed products that may be installed on or attached to the Purchased Assets delivered to Buyer; (iv) except as set forth on Exhibit 1.1, any and all rights, title and interest in any litigation, claims, causes of action whether known or unknown, asserted or unasserted, for any action, conduct, or omissions arising prior to the Closing Date; (vii) claims for preference or fraudulent conveyance recoveries under applicable law; (viii) corporate minute books, and other books and records that do not relate to the Purchased Assets; (ix) all existing insurance policies and any rights, claims or interests granted under those policies; and (x) the Consideration and any other rights or obligations granted to the Seller under this Agreement.

3. **Assumed/Excluded Liabilities.**

3.1 Buyer hereby agrees to assume only the liabilities arising after the Closing date with respect to the Purchased Assets in addition to the following liabilities (collectively, the “*Assumed Liabilities*”):

Except for the Assumed Liabilities or as otherwise expressly set forth in this Agreement, Buyer shall not assume and shall have no responsibility with respect to, any other liabilities, indebtedness or obligations of Seller or Assignor, known or unknown, absolute or contingent, accrued or unaccrued, whether due or to become due (the “*Excluded Liabilities*”).

4. **Consideration.**

4.1 In consideration of the sale, conveyance, assignment, and transfer of the Purchased Assets and in full payment therefor, and after satisfaction of the conditions listed below, Buyer agrees to pay Seller an aggregate amount of one hundred and fifty thousand dollars (\$150,000.00) (the “*Purchase Price*”). Buyer shall pay the Purchase Price to Seller at the Closing by wire transfer or such other method as mutually agreed upon by the parties (the “*Closing Payment*”).

5. **Payment.**

5.1 RESERVED

6. **Closing.**

6.1 The parties agree that the consummation of the purchase and sale of the Purchased Assets by the Buyer (the “*Closing*”) shall take place at the offices of the Seller, 2735 Sand Hill Rd., Suite 205, Menlo Park, CA 94025 or at such other address designated by Buyer no

later than February 21, 2018, or such other date, place or time as may be agreed upon between the parties (the “**Closing Date**”). If the Closing does not occur on or prior to Closing Date or such later date upon which Buyer and Seller agree in writing this Agreement shall terminate upon written notice of termination given by either party hereto that is not in default of its obligations hereunder, and thereupon this Agreement shall become null and void and no party hereto will have any further rights or obligations hereunder, except that Section 9.1 shall survive such termination

6.2 Except as otherwise provided in this Section, upon Closing, (i) title to the Purchased Assets shall pass to Buyer, and (ii) Seller shall execute the following assignments, transfer, conveyances and/or bills of sale to convey to Buyer title to all of the Purchased Assets, subject to the Encumbrances, in accordance with Section 1.2 of this Agreement: (i) an assignment and bill of sale (the “**Bill of Sale**”), in the form attached hereto as Exhibit 6.2(i), (ii) a 510(k) transfer agreement (the “**510(k) Transfer Agreement**”), in the form attached hereto as Exhibit 6.2(ii), (iii) a patent assignment agreement (the “**Patent Assignment Agreement**”), in the form attached hereto as Exhibit 6.2(iii), and (iv) a trademark assignment agreement (the “**Trademark Assignment Agreement**”), in the form attached hereto as Exhibit 6.2(iv).

6.3 On the Closing Date, Seller shall make available to Buyer for Buyer’s possession the Purchased Assets, *provided, however*, that the expenses of retrieving, removing and transferring the Purchased Assets shall be borne exclusively by Buyer.

7. **Conditions to Closing.**

7.1 **Conditions to Buyer’s Obligations.** Buyer’s obligations hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Buyer may expressly waive the same in writing:

a. All representations and warranties of Seller in Section 8.1 are accurate in all material respects as of the Closing Date.

b. Seller has delivered, or stands ready to deliver, the counterparts of the documents described in Section 6.2 signed by the Seller.

7.2 **Conditions to Seller’s Obligations.** Seller’s obligations hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Seller may expressly waive the same in writing:

a. All representations and warranties of Buyer in Section 8.2 are accurate in all material respects as of the Closing Date.

b. Buyer has delivered the Purchase Price.

c. Buyer has delivered, or stands ready to deliver, the counterparts of the documents described in Section 6.2 signed by the Buyer.

8. **Representations and Warranties.**

8.1 **Seller's Representations and Warranties**. Except as to Seller's representations and warranties provided below, the Purchased Assets are being sold "as is" and "where is" with no express or implied representation and warranties of any kind, nature, or type whatsoever from, or on behalf of Seller except that:

a. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California.

b. Seller warrants and represents that it has not made, and is not subject to, any other judgment, order, agreement, contract, or arrangement of any kind with any other party with respect to the Purchased Assets which would in any way prevent the consummation of the transactions contemplated by this Agreement, or give rise against Buyer, or either one of them, to any claim, demand, cause of action, or liability as a result of the execution or consummation of this Agreement; and

c. All rights, title and interests of Seller with regard to the ownership and possession of the Purchased Assets are rights, title and interests held as assignee pursuant to the General Assignment made by Assignor. Pursuant to this Agreement, Seller sells, assigns, and transfers all of its rights, title and interests in and to the Purchased Assets to Buyer. To the best of Seller's knowledge and belief after reasonable inquiry, including, without limitation, competent assessment of a UCC search in Assignor's state of incorporation, Seller, as Assignee, has good and marketable title to all of the Purchased Assets. Seller sells, assigns, transfers and conveys the Purchased Assets to Buyer "as is" and "where is", with no representations or warranties as to merchantability, fitness or use, and the Purchased Assets shall be subject to the Encumbrances.

8.2 **Buyer's Representations and Warranties**. Buyer represents and warrants to Seller, as follows:

a. Buyer (i) is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and (ii) has all requisite corporate power and authority to execute, deliver, and perform the transactions contemplated hereby.

b. The execution, delivery, and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby are within the power of Buyer and have been duly authorized by all necessary actions on the part of Buyer. The execution of this Agreement by Buyer constitutes, or will constitute, a legal valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to or affecting the enforcement of creditors' right generally and general principles of equity.

c. No consent, approval, authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body having jurisdiction or regulatory authority over Buyer (or any of its properties) is required for (i) Buyer's execution and delivery of this Agreement (and each agreement executed and delivered by it in connection herewith) or (ii) the consummation by Buyer of the transactions contemplated by this Agreement (and each agreement executed and delivered by it in connection herewith) or, to the extent so required, such consent, approval, authorization, order, registration, filing or notice has been obtained, made or given (as applicable) and is still in full force and effect.

d. No person or entity acting on behalf of Buyer or any of its affiliates or under the authority of any of them is or will be entitled to any “brokers” or “finders” fee or any other commission or similar fee, directly or indirectly, from Buyer or any of its affiliates in connection with any of the transactions contemplated by this Agreement.

e. To the best of Buyer’s knowledge, there is no litigation, suit, action, arbitration, inquiry, investigation or proceeding pending or, to the knowledge of Buyer, threatened, before any court, agency or other governmental body against Buyer (or any corporation or entity affiliated with Buyer) which seeks to enjoin or prohibit or otherwise prevent the transactions contemplated hereby.

9. **COVENANTS OF BUYER.**

9.1 **Confidential Information.** All copies, if any, of financial information, pricing, marketing plans, business plans, and other confidential and/or proprietary information of Assignor and/or Seller disclosed to Buyer in the course of negotiating the transactions contemplated by this Agreement, including the terms of this Agreement (“***Seller Confidential Information***”), will be held in confidence and not be used or disclosed by Buyer or any of its employees, affiliates or stockholders, *provided, however*, that from and after the execution of this Agreement, the foregoing covenant shall not be applicable to any Seller Confidential Information included in the Assets. It is agreed that Seller’s Confidential Information will not include information that: (a) is proven to have been known to Buyer prior to receipt of such information from Seller; (b) is disclosed by a third party having the legal right to disclose such information and who owes no obligation of confidence to Seller; (c) is now, or later becomes, part of the general public knowledge or literature, other than as a result of a breach of this Agreement by Buyer; or (d) is independently developed by Buyer without the use of any Seller Confidential Information.

9.2 **Taxes and any Other Charges Related to the Sale.** Buyer agrees to promptly pay all sales, transfer, use or other taxes, duties, claims or charges imposed on Buyer related to the purchase of the Purchased Assets under this Agreement by any tax authority or other governmental agency, including, without limitation, any United States or Taiwan tax authority or governmental agency, and to defend, indemnify and hold Seller harmless from and against any such taxes, duties, claims, or charges for payment thereof by any such tax authority or other governmental agency.

9.3 **Press Releases and Public Announcements.** Buyer shall not issue any press release or make any public disclosure or announcement relating to the financial terms of this Agreement or identifying Seller without the prior written approval of Seller, which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may disclose certain information relating to this Agreement if required to do so by law or applicable governmental regulation.

9.4 **Survival of Covenants.** The covenants set forth in this Section shall survive the Closing. The covenants set forth in Section 9.1 above shall, in addition, survive the termination of this Agreement for any reason.

10. **COVENANTS OF SELLER.**

Seller covenants and agrees with Buyer as follows:

10.1 **Further Assurances.** From and after the Closing Date, Seller shall cooperate with Buyer and promptly sign and deliver to Buyer any and such additional documents, instruments, endorsements and related information and take actions as Buyer may reasonably request for the purpose of effecting the transfer of Seller's and/or Assignor's title to the Assets to Buyer, and/or carrying out the provisions of this Agreement, provided, however, that Seller shall be reimbursed for its reasonable costs and expenses incurred in providing such documents, instruments, endorsements or related information, which additional documents, instruments, endorsements or related information shall be prepared solely by Buyer.

10.2 **Press Releases and Public Announcements.** Seller shall not issue any press release or make any public disclosure or announcement relating to the financial terms of this Agreement or identify Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Notwithstanding the foregoing, Seller may disclose certain information relating to this Agreement if required to do so by law or applicable governmental regulation, and Seller shall be permitted, at its discretion, to prepare and distribute a tombstone regarding the General Assignment and this Agreement without mentioning the identity of Buyer or the terms of this Agreement.

10.3 **Survival of Covenants.** Each of the covenants set forth in this Section 10 shall survive the Closing.

11. **SURVIVAL OF WARRANTIES AND INDEMNIFICATION.**

11.1 **Survival of Warranties.** All representations and warranties made by Buyer herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the Closing for a period of one (1) year after the Closing Date. All representations and warranties made by Seller herein shall survive the Closing for a period of one (1) year after the Closing.

11.2 **Indemnified Losses.** For the purpose of this Section 11.2 and when used elsewhere in this agreement, "**Loss**" shall mean and include any and all liability, loss, damage, claim, expense, cost, fine, fee, penalty, obligation or injury including, without limitation, those resulting from any and all actions, suits, proceedings, demands, assessments, judgments, award or arbitration, together with reasonable costs and expenses including the reasonable attorneys' fees and other legal costs and expenses relating thereto.

11.3 **No Indemnification by Seller.** Seller is selling to Buyer the Purchased Assets defined in this Agreement on an "AS IS" and "WHERE IS" basis, clear of any known Encumbrances, with no representations or warranties as to merchantability, fitness or usability or in any other regard (except for the limited representations and warranties specifically set forth above), and Seller does not agree to defend, indemnify or hold harmless Buyer, any parent, subsidiary or affiliate of Buyer or any director, officer, employee, stockholder, agent or attorney of Buyer or of any parent, subsidiary or affiliate of Buyer from and against and in respect of any Loss which arises out of or results the transactions described herein.

11.4 **Indemnification By Buyer.** Subject to the provisions and limitations set forth in this Section 11, Buyer agrees to defend, indemnify and hold harmless Seller, any parent, subsidiary or affiliate of Seller, and any officers, directors, members, agents, managers, representatives, employees or attorneys of Seller or of any parent, subsidiary or affiliate of Seller (collectively, the “*Seller Indemnitees*”) from and against and in respect of any Loss which arises out of or results from:

- (a) any breach by Buyer of any covenant made herein, or the inaccuracy or untruth of any representation or warranty of Buyer made herein; or
- (b) the use of the Purchased Assets after the Closing.

11.5 **Period for Making Claims.** A claim for indemnification by Seller under this Section 11 may be brought, if at all, for a period of 1 year after the Closing Date, with respect to any claim or claims for indemnification under this Section 11.

12. **Further Assurances.**

12.1 The Parties hereto agree to assist one another in good faith with respect to the transition of the Purchased Assets to Buyer.

13. **AS-IS Sale; Warranty Disclaimer.**

13.1 EXCEPT AS SET FORTH HEREIN, THE PURCHASED ASSETS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

13.2 BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PURCHASED ASSETS TO BUYER AND BUYER SHALL ACCEPT THE PURCHASED ASSETS “AS IS, WHERE IS, WITH ALL FAULTS”. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PURCHASED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PURCHASED ASSETS ARE BEING SOLD “AS IS, WHERE IS, WITH ALL FAULTS.”

13.3 BUYER ACKNOWLEDGES TO SELLER THAT BUYER WILL HAVE THE OPPORTUNITY TO CONDUCT PRIOR TO CLOSING SUCH INSPECTIONS AND INVESTIGATIONS OF THE PURCHASED ASSETS AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE PURCHASED ASSETS AND ITS ACQUISITION THEREOF. BUYER FURTHER WARRANTS AND REPRESENTS TO

SELLER THAT BUYER WILL RELY SOLELY ON ITS OWN REVIEW AND OTHER INSPECTIONS AND INVESTIGATIONS IN THIS TRANSACTION AND NOT UPON THE INFORMATION PROVIDED BY OR ON BEHALF OF SELLER, OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES WITH RESPECT THERETO. BUYER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

13.4 BUYER ACKNOWLEDGES THAT SOME ASSETS DESCRIBED IN EXHIBIT 1.1 MAY CONTAIN THIRD-PARTY INTELLECTUAL PROPERTY THAT MAY HAVE BEEN LICENSED BY ASSIGNOR OR OTHERWISE ACQUIRED BY ASSIGNOR. BUYER UNDERSTANDS THAT SELLER IS UNABLE TO TRANSFER INTELLECTUAL PROPERTY BELONGING TO, OWNED OR OTHERWISE RESTRICTED BY A THIRD-PARTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THAT PARTY, WHICH WILL NOT BE OBTAINED OR SOUGHT BY SELLER AS A PART OF THIS AGREEMENT. BUYER SHALL ACCEPT FULL RESPONSIBILITY FOR COMMUNICATING WITH THIRD-PARTIES WHOSE INTELLECTUAL PROPERTY MAY BE INCLUDED IN THE PURCHASED ASSETS TRANSFERRED HEREBY AND SHALL PAY ANY AND ALL LICENSING OR OTHER FEES, COSTS, EXPENSES OR CHARGES THAT MAY BE ASSOCIATED WITH USING SAID ASSETS.

14. **Limitation of Liability.**

14.1 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, SELLER SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS OTHER THAN THE RETURN OF THE PURCHASE PRICE IN ACCORDANCE WITH SECTION 4, (II) FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST DATA, (III) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (IV) FOR ANY MATTER BEYOND SELLER'S REASONABLE CONTROL.

15. **Termination of Agreement.**

15.1 **Termination.** This Agreement may be terminated: (i) by mutual written consent of Seller and Buyer; (ii) by Seller if Buyer does not pay the Purchase Price to Seller in the time and manner required by Section 4 hereof or otherwise does not comply with this Agreement; or (iii) by Buyer if Seller fails to provide Seller's deliveries specified in Section 6.2(i).

15.2 **Specific Performance.** If Buyer fails to complete the purchase contemplated in this Agreement because Buyer fails to comply with this Agreement, Seller shall have the option, but not the requirement, to bring an action for specific performance and thereby require performance in full of this Agreement.

16. **Notices.**

16.1 Any notice, report, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if delivered personally, or mailed by first-class U.S. mail, postage prepaid to the respective addresses of the parties as set below (or such other address as a party may designate by ten (10) days written notice) on the parties as set forth below

To Buyer: Somnics, Inc.
Attn: Chung-Chu Chen
Address: 5F, No. 22, Sec. 2, Shengyi Rd.
Zhubei, Hsinchu, 30261, Taiwan
E-Mail: chungchu1@somnics.com

With a copy to: _____
Attn: _____
Address: _____
E-Mail: _____

To the Seller: ApniCure (ABC), LLC
Attn: Michael Hogan
Address: 2735 Sand Hill Road, Suite 205
Menlo Park, CA 94025
Email: michael.hogan@armaninollp.com

With a copy to: Dorsey & Whitney
Attn: Stephen O'Neill
Address: 305 Lytton Ave.
Palo Alto, CA 94301
E-Mail: oneill.stephen@dorsey.com

17. **Non-Waiver.**

17.1 No failure to exercise, and no delay in exercising, on the part of any party, any privilege, any power or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder.

18. **Severability.**

If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

19. **Choice of Law.**

This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof.

20. **Attorney's Fees and Expenses.**

Except as provided in the next sentence, Buyer and Seller shall each bear their own expenses incurred in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, if any party breaches this Agreement, the breaching party shall be responsible for the costs and expenses, including reasonable attorneys' fees, incurred by the other parties in enforcing this Agreement against such breaching party.

21. **Modifications in Writing.**

Any waivers or amendments of this Agreement or any provision hereof shall be effective only if made in writing and signed by a representative of the respective parties authorized to bind the parties.

22. **Waiver of Jury Trial.**

SELLER AND BUYER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. SELLER AND BUYER HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

23. **Submission to Jurisdiction and Selection of Forum.**

23.1 EACH PARTY HERETO (A) AGREES THAT IT SHALL BRING ANY ACTION OR PROCEEDING IN RESPECT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTAINED IN OR CONTEMPLATED BY THIS AGREEMENT, WHETHER IN TORT OR CONTRACT OR AT LAW OR IN EQUITY, EXCLUSIVELY IN (I) THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA OR IN THE EVENT THAT SUCH COURT LACKS SUBJECT MATTER JURISDICTION OVER THE ACTION OR

PROCEEDING, (II) IN AN APPROPRIATE STATE COURT LOCATED IN THE COUNTY OF SANTA CLARA (HEREAFTER REFERRED TO AS THE “*CHOSEN COURT*”) AND (B) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CHOSEN COURT, (C) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN THE CHOSEN COURT, (D) WAIVES ANY ARGUMENT THAT THE CHOSEN COURT IS AN INCONVENIENT FORUM OR DOES NOT HAVE JURISDICTION OVER ANY PARTY THERETO, AND (E) AGREES THAT SERVICE OR PROCESS UPON ANY PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 14 OF THIS AGREEMENT.

24. **Confidentiality.**

24.1 The existence and terms of this Agreement, and the existence and substance of discussions and negotiations between Buyer and Seller regarding the Agreement, are subject to the Non-Disclosure Agreement executed by Buyer and Seller on December 24, 2017 and are confidential to Buyer.

25. **Complete Agreement.**

25.1 All parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties with regard to its subject matter, and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

26. **Counterparts/Facsimile Signature.**

26.1 This Agreement may be executed in any number of counterparts, each of which when executed by the parties hereto and delivered shall be deemed to be an original, and all such counterparts taken together shall be deemed to be but one and the same instrument. This Agreement may be executed by .PDF or facsimile signature, and any such .PDF or facsimile signature shall be deemed to be an original signature.

(signature page follows)

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first indicated above.

BUYER:

Somnics, Inc., a Taiwan corporation

By: 
Chung-Chu Chen (Feb 18, 2018)
Name: Chung-Chu Chen
Title: CEO

SELLER:

ApniCure (ABC) LLC, a California limited liability company, in its sole and limited capacity as Assignee for the Benefit of Creditors of Apnicure, Inc.

By: 
Andries Verschelden (Feb 18, 2018)
Name: Andries Verschelden
Title: Manager