

06-04-2003

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

RE 1



J.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Medical Software Solutions, Inc. 6.2.03
Individual(s) Association
General Partnership Limited Partnership
Corporation-State - Utah
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: AdvancedMD Software, Inc.
Internal Address: Suite 120
Street Address: 2795 Cottonwood Parkway
City: Salt Lake City State: UT Zip: 84070
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Utah
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: September 30, 2002

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 2523440; 2661244
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: John A. Mizhir, Jr.
Internal Address: Cooley Godward LLP
Street Address: 4401 Eastgate Mall
City: San Diego State: CA Zip: 92121-1909

6. Total number of applications and registrations involved: 2
7. Total fee (37 CFR 3.41): \$ 65.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number:
(Attach duplicate copy of this page if paying by deposit account)

06/03/2003 DBYRNE 00000045 2523440
01 FC:8522 40.00 OP
02 FC:8522 25.00 OP
Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
John A. Mizhir, Jr.
Name of Person Signing

Signature of John A. Mizhir, Jr.

05-21-2003 Date

Total number of pages including cover sheet, attachments, and document: 15

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

**ASSET PURCHASE AGREEMENT**

**dated as of August 22, 2002**

**between**

**DOMINION FUND V;**

**WINDWARD VENTURES 2000, L.P.;**

**WINDWARD VENTURES 2000-A, L.P.**

**and**

**MEDICAL SOFTWARE SOLUTIONS, INC.**

**dba PERFECTPRACTICE.MD**

(g) All contracts and agreements, Inventory and non-Inventory purchase orders for the benefit of Seller, and insurance policies as listed on **Schedule 2.1(g)** (the "**Assumed Contracts**") and rights thereunder of Seller (including, without limitation, royalties, license rights and all other forms of obligations owing to Seller arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Seller, subject, in each case, to the contractual rights of third parties to require funds received by Seller to be expended in a particular manner, whether or not earned by performance) and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Seller and Seller's books relating to any of the foregoing, to the extent assignable at no expense to Seller (other than payment of Cure Amounts) and that are (i) assignable without consent of a third party, (ii) with respect to which Seller shall have obtained the necessary consents prior to Closing, or (iii) assumable and assignable pursuant to the applicable provisions of the Bankruptcy Code or an order of the Bankruptcy Court;

(h) All documents, cash (other than any cash paid or to be retained by Seller pursuant to Section 3.2), deposit accounts, accounts receivable, letters of credit, letter of credit rights, supporting obligations, certificates of deposit, instruments, chattel paper, electronic chattel paper, tangible chattel paper and investment property, including, without limitation, all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, now owned or hereafter acquired and Seller's books relating to the foregoing;

(i) All other goods and personal property of Seller wherever located, whether tangible or intangible;

(j) Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof, including, without limitation, insurance, condemnation, requisition or similar payments and the proceeds thereof; and

(k) All goodwill related to the foregoing.

**Section 2.2 Excluded Assets.** Seller shall retain, and Buyers shall not purchase, any of Seller's right, title or interest in or to the following assets and properties of Seller (collectively, the "**Excluded Assets**"), all of which shall remain the exclusive property of Seller, free and clear of any claim of Buyers:

(a) All rights, demands, claims, actions and causes of action (collectively, the "**Claims**") that Seller or any of its Affiliates may have against any third party, including any Governmental Entity, for causes of action based on Sections 544, 545, 547, 548, or 553(b) of the Bankruptcy Code;

(b) All Claims which Seller or any of its Affiliates may have against any third Person with respect to any Excluded Assets;

(c) All rights of Seller under this Agreement and the agreements and instruments delivered to Seller by Buyers pursuant to this Agreement;

Section 4.4 **Third Party Approvals.** Except for (i) the Approval Order, (ii) the consent requirements that are not enforceable due to operation of applicable bankruptcy law, and (iii) any other third party approvals as are reflected on **Schedule 4.4** hereto, the execution, delivery and performance by Seller of this Agreement and the transactions contemplated hereby do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which have not been obtained by Seller.

Section 4.5 **Brokers and Finders.** Except as set forth on **Schedule 4.5**, Seller has not employed any investment bank, broker or finder or incurred any liability for any investment banking, brokerage, finders' or similar fees or commissions in connection with the transactions contemplated by this Agreement.

Section 4.6 **Tax Matters.** To Seller's knowledge, (a) Seller has filed or caused to be filed on a timely basis all Tax Returns that it was required to file; (b) all such Tax Returns were correct and complete in all materials respects; (c) Seller has paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns, or pursuant to any assessment received by Seller; (d) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party; and (e) there is no dispute or claim concerning any Tax Liability of Seller claimed or raised by any Governmental Entity in writing. Seller shall deliver to Buyers correct and complete copies of all federal and state income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by Seller since 1997.

Section 4.7 **Title to Assets.**

(a) Seller has good and marketable title to, or as to leaseholds a valid leasehold interest in, the Real Property Leases and all other Assets, and as of the Closing as provided in the Approval Order the Assets will be free and clear of Liens, Claims and Liabilities (other than the Assumed Liabilities). The Assets constitute all of the assets, tangible and intangible, of any nature whatsoever, reasonably necessary to operate the Business in the manner in which such Business is currently being conducted and in the manner in which such Business is proposed to be conducted;

(c) **Schedule 2.1(a)** lists all real property leased or subleased to Seller related to or used in connection with the Business; and

(d) Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the Real Property Leases.

Section 4.8 **Proceedings; Orders.** Except as set forth on **Schedule 4.8**,

(a) There is no pending Proceeding, and to the Seller's knowledge no Person has threatened to commence any Proceeding:

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Buyers as of the date first above written.

MEDICAL SOFTWARE SOLUTIONS, INC.

By: [Signature]  
Name: MECHIELE D. HILTON  
Title: CEO AND BOARD CEO

DOMINION FUND V,  
a Delaware Limited Partnership

By: Dominion Management V, L.L.C., its  
General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WINDWARD VENTURES 2000, L.P.

By: Windward 2000, LLC  
Title: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WINDWARD VENTURES 2000-A, L.P.

By: Windward 2000, LLC  
Title: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

{Signature Page to Asset Purchase Agreement}

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Buyers as of the date first above written.

MEDICAL SOFTWARE SOLUTIONS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DOMINION FUND V,  
a Delaware Limited Partnership

By: Dominion Management V, L.L.C., its  
General Partner

By: *Michael Lee*  
Name: *Mr. Michael Lee*  
Title: *Mg Member*

WINDWARD VENTURES 2000, L.P.

By: Windward 2000, LLC  
Title: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WINDWARD VENTURES 2000-A, L.P.

By: Windward 2000, LLC  
Title: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Buyers as of the date first above written.

MEDICAL SOFTWARE SOLUTIONS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DOMINION FUND V,  
a Delaware Limited Partnership

By: Dominion Management V, L.L.C., its  
General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WINDWARD VENTURES 2000, L.P.

By: Windward 2000, LLC  
Title: General Partner

By: [Signature]  
Name: [Name]  
Title: [Title]

[Signature Page to Asset Purchase Agreement]

WINDWARD VENTURES 2000-A, L.P.

By: Windward 2000, LLC

Title: General Partner

By: [Signature]

Name: Richard

Title: Partner

[Signature Page to Asset Purchase Agreement]



# BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "*Agreement*") is made and entered into as of September 30, 2002, by and among ADVANCEDMD SOFTWARE, INC., a Delaware corporation ("*Transferee*"), and MEDICAL SOFTWARE SOLUTIONS, DBA PERFECTPRACTICE.MD, a Utah corporation ("*Transferor*").

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of August 22, 2002, as amended, (the "*Asset Purchase Agreement*"), by and among Transferee, as successor-in-interest to Dominion Fund V, Windward Ventures 2000, L.P. and Windward Ventures 2000-A, L.P., on the one hand, and Transferor, on the other hand, Transferee has agreed to purchase all of the Assets and assume all of the Assumed Contracts and the Assumed Liabilities of Transferor, all upon and subject to the terms set forth or referred in the Asset Purchase Agreement;

WHEREAS, Transferee has been designated as a "Designee" under the Asset Purchase Agreement; and

WHEREAS, in connection with the proceedings of In re: Medical Software Solutions, Inc. d/b/a PerfectPractice.MD, Debtor-in-Possession, the United States Bankruptcy Court for the District of Utah entered an order under Sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code, and Federal Bankruptcy Rules of Procedure 2002, 6004, 6006 and 9014, dated September 27, 2002, (i) authorizing the sale of substantially all of the debtors' assets, free and clear of liens, claims, encumbrances and interests, (ii) determining that such sale is exempt from any stamp, transfer, recording or similar tax, (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases, and (iv) granting related relief (the "*Approval Order*").

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. All capitalized terms used herein, unless otherwise defined, shall have the respective meanings ascribed thereto in the Asset Purchase Agreement.

2. In accordance with, and with all of the protections afforded by, Sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code, Transferor hereby sells, grants, assigns, conveys, transfers and delivers to Transferee, to the extent authorized by the Approval Order, all of Transferor's right, title and interest in and to the Assets (other than any Excluded Assets), free and clear of any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance (collectively, the "*Purchased Assets*"), TO HAVE AND TO HOLD the Purchased Assets unto Transferee, its successors and assigns, together with all and singular the rights and appurtenances thereto in any wise belonging, subject, however, to the terms and conditions stated in this Agreement, forever.

3. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to effect, nor shall this Agreement constitute or evidence, the sale, grant, assignment, conveyance, transfer or delivery of any of the Excluded Assets.

4. Transferor makes no representations or warranty with respect to the Assets other than as expressly set forth in the Asset Purchase Agreement.

5. Transferor and Transferee hereby acknowledge and reaffirm their obligations under the Asset Purchase Agreement, including without limitation the obligation to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances, powers of attorney, confirmations and assurances as Transferor or Transferee may reasonably request to more effectively convey, assign and transfer to and vest in Transferee, its successors and assigns, full legal right, title and interest in and actual possession of the Purchased Assets, and to otherwise carry out the purposes of this Agreement.

6. Transferee hereby assumes and agrees to pay and perform when due the Assumed Liabilities (other than any Excluded Liabilities or Assumed Liabilities with respect to any Excluded Assets).

7. Notwithstanding anything in this Agreement to the contrary, neither Transferee nor any of its respective Affiliates hereby assumes or shall otherwise be obligated to pay, and none of the Purchased Assets shall be or become liable for or subject to, any of the Excluded Liabilities.

8. Transferor hereby constitutes and appoints Transferee and any successor or assign of Transferee, its true and lawful attorney-in-fact with full power of substitution for it and in its name, place and stead or otherwise on behalf of it, its successors and assigns, and for the benefit of Transferee and any successor or assign of Transferee, to demand and receive from time to time the Purchased Assets and to execute in the name of Transferor and its successors and assigns, instruments of conveyance, instruments of further assurance and to give receipts and releases in respect of the same, and from time to time to institute and prosecute in the name of Transferee or Transferor as may be appropriate, any and all proceedings at law, in equity or otherwise which Transferee or any successor and assign of Transferee may deem proper in order to collect, assert or enforce any claims, rights or titles of any kind in and to the Purchased Assets, and to defend and compromise any and all actions, suits or proceedings in respect of any of the Purchased Assets and to do any and all such acts and things in furtherance of this Agreement as Transferee or any successor or assign of Transferee shall deem advisable. Transferor hereby declares that the appointment hereby made and the powers hereby granted are coupled with an interest and are and shall be irrevocable and perpetual and shall not be terminated by any act of Transferor or any successor or assign of Transferor or by operation of law.

9. In the event of any conflict or ambiguity between the terms hereof and the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement, as approved by the Approval Order, shall govern and be controlling.

**10.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns permitted under the Asset Purchase Agreement.

**11.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of California, except that any provisions contained herein relating to the conveyance of interests in real property shall be governed by the substantive laws of the state in which the real property is located, in each case without regard to the conflict of law principles thereof or of any other jurisdiction.

**12.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be original and all of which together shall be deemed to be one and the same instrument. Facsimile signatures shall have the same effect as original signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**MEDICAL SOFTWARE SOLUTIONS, DBA  
PERFECTPRACTICE.MD**, a Utah corporation

By: Michael J. Helton

Name: MICHAEL J. HELTON

Title: CEO AND ACTING CEO

**ADVANCEDMD SOFTWARE, INC.**, a  
Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SIGNATURE PAGE TO BILL OF SALE,  
ASSIGNMENT AND ASSUMPTION AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.


**MEDICAL SOFTWARE SOLUTIONS, DBA  
PERFECTPRACTICE.MD**, a Utah corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADVANCEDMD SOFTWARE, INC.**, a  
Delaware corporation

By:  \_\_\_\_\_

Name: PAUL A. SCOTT

Title: CEO

[SIGNATURE PAGE TO BILL OF SALE,  
ASSIGNMENT AND ASSUMPTION AGREEMENT]