

02-12-2002



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

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

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

1. Name of conveying party(ies):

SmartHealth, Inc.

1-24-02

- Individual(s) Association General Partnership Limited Partnership Corporation-State Arizona Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Spintech Inc.

Internal Address:

Street Address: 220 South Orange Avenue

City: Livingston State: NJ Zip: 07039

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware 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: November 13, 2001

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,226,868

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Stephen A. Zelnick, Esq.

Internal Address: Morse, Zelnick, Rose & Lander, LLP

Street Address: 450 Park Avenue, Suite 902

City: New York State: NY Zip: 10022

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.

Dean M. Monti

Signature

11/13/01

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 14

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

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AGREEMENT FOR PURCHASE OF ASSETS

THIS AGREEMENT is made and entered into this 13th day of November, 2001, by and between SPINTECH INC., a Delaware corporation ("Seller") and SMARTHEALTH, INC., an Arizona corporation ("Buyer").

I. Recitals

- 1.1 Seller is the owner of certain tangible and intangible assets, rights and properties relative to the prophylactic known as "Splatfree" ("Product").
- 1.2 Seller desires to sell to Buyer, and Buyer desires to purchase from Seller certain tangible and intangible assets, rights and properties owned by Seller relative to the Product on the terms and conditions set forth in this Agreement.

II. Terms and Conditions

NOW, THEREFORE, the parties hereto, for and in consideration of the mutual promises, covenants, conditions and agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, covenant and agree as follows:

- 2.1 Sale of Assets. Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, all tangible and intangible assets, rights and properties (collectively, the "Assets") owned by Seller relative to the Product, including but not limited to the following:
 - A. All equipment, tools and molds;
 - B. All inventory, parts and supplies (collectively, the "Inventory");
 - C. All contracts, purchase orders and other business arrangements between Seller and its customers and clients, whether written or oral, together with all records, files, lists and other information relating to the customers and clients;
 - D. All transferable permits, licenses, approvals, contracts and other documents;
 - E. All copyrights, computer software and other intellectual property;
 - F. All patents, tradenames, trademarks, service marks and other identifying names; and
 - G. All goodwill.

- 2.2 Excluded Assets. Seller and Buyer agree that the Assets to be purchased by Buyer from Seller shall exclude the following:
 - A. Accounts receivable;
 - B. Cash on hand;
 - C. Bank accounts; and
 - D. Vendor contracts which Buyer elects not to accept.

- 2.3 Purchase Price. The purchase price ("Purchase Price") of the Assets shall be the sum of Fifty-Five Thousand and 00/100 Dollars (\$55,000.00). The Purchase Price shall be payable as follows:
 - A. Buyer shall pay to Seller at Closing (as hereinafter defined) the sum of Twenty-Six Thousand Six Hundred Forty-Nine and 00/100 Dollars (\$26,649.00), which sum shall be payable in cash or cashiered funds.
 - B. Buyer shall pay to Team Technologies, Inc. ("Team Technologies") at Closing the sum of Twenty-Eight Thousand Three Hundred Fifty-One and 00/100 Dollars (\$28,351.00) in satisfaction of an account payable of Seller to Team Technologies.

- 2.4 Allocation of Purchase Price. The Purchase Price for the Assets shall be allocated in such manner as shall be selected by Buyer. Seller agrees to take, on its federal or state income tax return, a position which is consistent with the foregoing allocation.

- 2.5 Liabilities. Seller and Buyer acknowledge that Buyer is not assuming or agreeing to pay any liabilities of Seller, whether accrued, known, unknown, contingent or otherwise, in connection with the Assets as the result of the consummation of the transactions contemplated by this Agreement, unless specifically assumed or agreed to be paid by Buyer in writing. Seller shall pay and be responsible for all such liabilities, including but not limited to any accounts payable of Seller relating to the sale of the Product or sales tax incurred by Seller in connection with this Agreement.

- 2.6 Accounting. Seller and Buyer agree that Seller shall be entitled to receive all amounts relating to the Product sold, shipped and billed by Seller prior to Closing (as hereinafter defined). All accounts receivable of Seller in connection with the Product sold, shipped and billed by Seller prior to Closing shall remain the property of Seller.

Seller and Buyer further agree that in the event any Product purchase orders are pending or unshipped as of the date of Closing, such Product purchase orders shall be deemed an Asset and shall become the property of Buyer.

Buyer shall be responsible for the fulfillment of any pending or unshipped Product purchase orders as of the date of Closing. Buyer shall have the right to collect and retain any amounts due as the result of the fulfillment of such pending or unshipped Product purchase orders.

- 2.7. Prorations. Seller and Buyer agree to prorate as of the date of Closing (as hereinafter defined) the following items: (i) personal property taxes on the Assets, on the basis of the latest available tax information; and (ii) any items which are either prepaid or paid in arrears. If the amount of any item which is to be adjusted has not been determined or is not determinable as of the date of Closing, the item shall be adjusted as soon as the amount of the item is determined.
- 2.8. Books and Records. Seller shall make available to Buyer for inspection and copying all books, contracts and records relating to the Assets, including but not limited to marketing materials, supply contracts, credit records, accounts receivable, shipment schedules, purchase records and internal management reports that provide strategic plans for the Product. In addition, Seller shall promptly provide to Buyer all current and prior customer lists, and a listing of all current sales leads and open quotes. If the transaction contemplated by this Agreement does not close, Buyer shall promptly return all copies to Seller.
- 2.9. Covenant Not to Compete. Seller agrees that it shall not, for a period of three (3) years from and after the date of Closing (as hereinafter defined), directly or indirectly, either as a principal, agent, manager, employee, owner, proprietor, partner, stockholder, director, officer, trustee, consultant, or otherwise, engage in business similar to or in competition with the dental prophylaxis business engaged in by Seller, or any business reasonably relating thereto or competing therewith, within the United States, and on such terms as a court of competent jurisdiction shall deem permissible in order to give effect to this Paragraph 2.9 ("Covenant Not to Compete"). Seller and Buyer acknowledge and agree that any damages sustained or to be sustained by Buyer as a result of any breach or intended breach of the Covenant Not to Compete by Seller shall be extremely difficult to ascertain, and therefore agree that Buyer shall have the right, in addition to any right of damages or other relief, to enjoin, or to obtain other appropriate equitable relief to prevent or stop, any breach or intended breach of the Covenant Not to Compete by Seller.
- 2.10. Consulting. As partial consideration for the sale of the Assets from Seller to Buyer, Buyer agrees to retain Seller as a consultant pursuant to a consulting agreement, the form of which is attached hereto as Exhibit "A" and by this reference incorporated herein ("Consulting Agreement").
- 2.11. Services. As partial consideration for the sale of the Assets from Seller to Buyer, Buyer agrees to provide to Seller printing services, in an amount not to exceed the sum of Two Hundred Fifty Thousand (250,000.00)

- C. Execution and delivery by Buyer of a resolution of the Board of Directors of Buyer, duly certified by its Secretary, authorizing the consummation of the transactions contemplated by this Agreement and the execution of all other documents contemplated hereby;
- D. Execution and delivery by Buyer of a certificate, dated as of the date of Closing, that all the representations and warranties of Buyer set forth in Paragraph 2.19 are true and accurate as of the date of Closing; and
- E. Compliance by Buyer with all covenants required by this Agreement to be performed and complied with by Buyer.

2.15 Conditions Precedent of Buyer. All obligations of Buyer are subject to the satisfaction prior to Closing (as hereinafter defined) of each of the following conditions precedent:

- A. Execution and delivery by Seller of a bill of sale, in the form of Exhibit "B" attached hereto and by this reference incorporated herein, to transfer, assign and convey all right, title and interest of Seller in, to and under the Assets described in Paragraphs 2.1A, 2.1B and 2.1E to 2.1G hereof;
- B. Execution and delivery by Seller of an assignment of customer accounts, in the form of Exhibit "C" attached hereto and by this reference incorporated herein, to transfer, assign and convey all right, title and interest of Seller in, to and under the Assets described in Paragraph 2.1C hereof;
- C. Execution and delivery by Seller of an assignment of contracts, in the form of Exhibit "D" attached hereto and by this reference incorporated herein, to transfer, assign and convey all right, title and interest of Seller in, to and under the Assets described in Paragraph 2.1D hereof;
- D. Execution and delivery by Seller of the Consulting Agreement;
- E. Execution and delivery by Seller of a resolution of the Board of Directors of Seller, duly certified by its Secretary, authorizing the consummation of the transaction contemplated by this Agreement and the execution of all other documents contemplated hereby;
- F. Execution and delivery by Seller of a certificate, dated as of the date of Closing, that all representations and warranties of Seller set forth in Paragraph 2.20 are true and accurate as of the date of Closing; and
- G. Compliance by Seller with all covenants required by this Agreement to be performed and complied with by Seller.

2.16. Closing. The closing ("Closing") of the transaction contemplated by this Agreement shall take place at the office of Buyer, 3400 E. McDowell Road,

Phoenix, Arizona 85008-7899, on or before thirty (30) days following the date of full execution of this Agreement, at 10:00 a.m. Mountain Time, or at such other time and place as the parties may mutually agree upon. Seller and Buyer each agree to bear their own costs and expenses associated with Closing, including attorneys' fees payable by the respective parties hereto.

2.17. Bulk Sales Law. Seller and Buyer agree to waive compliance with the applicable bulk sales laws of the State of Arizona and the State of New Jersey.

2.18. Indemnification. Seller agrees to indemnify, defend and hold Buyer, its shareholders, directors, officers, employees, agents, successors and assigns harmless from any and all losses, damages, expenses, claims, judgments, liabilities, suits and proceedings arising from (i) the breach by Seller of any representation, warranty or covenant made by Seller in this Agreement; and (ii) the assertion against Buyer of any claim for payment or performance of any obligation, liability or debt in connection with Seller's ownership of the Product or the Assets prior to the Closing, including but not limited to tax claims.

Buyer agrees to indemnify, defend and hold Seller, its shareholders, directors, officers, employees, agents, successors and assigns harmless from any and all losses, damages, expenses, claims, judgments, liabilities, suits and proceedings arising from (i) the breach by Buyer of any representation, warranty or covenant made by Buyer in this Agreement; and (ii) the assertion against Seller of any claim for payment or performance of any obligation, liability or debt in connection with Buyer's ownership of the Product or the Assets from and after the Closing.

2.19 Representations of Buyer. Buyer hereby covenants, warrants and represents, which covenants, warranties and representations shall be continuing covenants, warranties and representations, and shall survive Closing as follows:

- A. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Arizona;
- B. The execution, delivery and performance of this Agreement have been duly and validly authorized and is legally binding and enforceable against Buyer in accordance with its terms; and
- C. The execution and delivery of this Agreement by Buyer and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under the Articles of Incorporation or Bylaws of Buyer or any instrument by which Buyer is bound.

- 2.20 Representations of Seller. Seller hereby covenants, warrants and represents, which covenants, warranties and representations shall be continuing covenants, warranties and representations, and shall survive Closing as follows:
- A. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware;
 - B. Seller has good and marketable title to the Assets, free and clear of all liens, claims and encumbrances of any nature whatsoever;
 - C. Seller has the right to assign, transfer and deliver the Assets to Buyer;
 - D. The Inventory shall be in good and saleable condition at Closing;
 - E. There is no pending, or to the best of Seller's knowledge, threatened suit, action, legal or administrative proceeding which would adversely affect the Assets or their value, the Product, or the consummation of this transaction in accordance with the terms of this Agreement;
 - F. There is no circumstance, action, proceeding or investigation pending or threatened against Seller nor any term or provision of any agreement, instrument, judgment, decree, order, statute, rule or regulation which prevents or interferes with or limits adversely its entering into this Agreement or the validity of this Agreement or carrying out of the terms hereof;
 - G. All documents and information delivered or furnished to Buyer, its agents or representatives by or on behalf of Seller in connection with the Assets or this Agreement are true, complete and accurate and have not been modified, amended, rescinded or revoked, except as disclosed in writing to Buyer. Seller will immediately notify Buyer in the event of any material adverse change in the documents and information previously delivered or furnished to Buyer, its agents or representatives;
 - H. Seller has complied with all federal, state and local laws, rules and regulations relative to the ownership of the Product;
 - I. The execution, delivery and performance of this Agreement has been duly and validly authorized and is legally binding and enforceable against Seller in accordance with its terms; and
 - J. The execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of the terms, conditions or provisions of or constitute an event of default under the Articles of Incorporation or Bylaws of Seller or any instrument by which Seller is bound.

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- 2.21 Remedies. In the event the transaction contemplated by this Agreement is not consummated as a result of Buyer's default under this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement, and on such termination the parties will be discharged from any further obligations and liabilities hereunder. In the event the transaction contemplated by this Agreement is not consummated as a result of Seller's default under this Agreement, Buyer shall have the right to: (i) terminate this Agreement, and on such termination the parties will be discharged from any further obligations and liabilities hereunder; or (ii) maintain an action for specific performance.
- 2.22 Risk of Loss. The risk of loss of any of the Assets shall remain with Seller until the date of Closing. In the event of any material loss, destruction or damage to the Assets prior to Closing, Buyer shall have the right to either (i) terminate this Agreement, in which event neither party shall have any further duty or obligation to the other; or (ii) elect to proceed with the Closing, in which event any insurance proceeds payable as a result of the damage or destruction shall be paid to Buyer. Buyer shall take possession of the Assets and shall assume the risk of loss as of the date of Closing.
- 2.23 Diligence. Buyer and Seller hereby agree to exercise due diligence in the satisfaction of any and all conditions to be satisfied by either of them according to the terms of this Agreement.
- 2.24 Time. Time is of the essence of this Agreement and Buyer and Seller hereby agree to perform each and every obligation hereunder in a prompt and timely manner.
- 2.25 No Partnership. Nothing contained in this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership or similar relationship by or between Seller and Buyer.
- 2.26 Invalidity. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.
- 2.27 Notice. Any and all notices or demands by or from Seller to Buyer, or Buyer to Seller, shall be in writing. Such notices shall be served either personally, by certified mail or by telephone facsimile transmission. If served personally, notice shall be conclusively deemed given at the time of receipt. If served by certified mail, notice shall be conclusively deemed given forty-eight (48) hours after deposit thereof in the United States mail, postage prepaid, addressed to

the party to whom such notice or demand is to be given as hereinafter provided. If served by telephonic facsimile transmission, notice shall be conclusively deemed given at the time of receipt. Any notice or demand to Seller and Buyer may be given to each respective party at the following addresses, or at such other address as the parties may designate in writing by notice to the other party from time to time:

Seller: Spintech Inc.
220 S. Orange Avenue
Livingston, New Jersey 07039
Attn: Stuart Wildhorn
Telephone: (973) 535-2717
Fax: (973) 535-2829

With copy to: Stephen A. Zelnick, Esq.
Morse, Zelnick, Rose & Lander, LP
450 Park Avenue, Suite 902
New York, New York 10022
Telephone: (212) 838-8040
Fax: (212) 838-9190

Buyer: SmartHealth, Inc.
3400 E. McDowell Road
Phoenix, Arizona 85008-7899
Attn: Steven Prieser
Chief Financial Officer
Telephone: (602) 225-9090
Fax: (602) 225-0599

With a copy to: Gary A. Drummond, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Circle, Suite 117
Phoenix, AZ 85016
Telephone: (602) 224-9222
Fax: (602) 224-9366

- 2.28 Attorneys' Fees. In the event it becomes necessary for either Buyer or Seller to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party.
- 2.29 Third Parties. This Agreement shall not be construed to create any rights in persons or entities not parties hereto, and there are no third-party beneficiaries of this Agreement.

- 2.30 Waiver. No failure on the part of any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or by law.
- 2.31 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the matters set forth herein, and supersedes all prior arrangements and understandings between the parties, and no other agreement, statement or promise made by either party hereto which is not contained herein shall be binding or valid.
- 2.32 Amendment. This Agreement may only be amended by written document signed by each of the parties hereto.
- 2.33 Additional Documents. Each party will, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to consummate the transaction contemplated by this Agreement.
- 2.34 Execution. This Agreement shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
- 2.35 Successors. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties hereto.
- 2.36 Applicable Law. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of Arizona.
- 2.37 Authority. Each of the individuals executing this Agreement represents and warrants to the other party that the execution and delivery of this Agreement has been duly authorized by all necessary action and that this Agreement constitutes and will constitute a binding obligation of each such party.
- 2.38 Captions. Captions and paragraph headings used herein are for convenience only and are not part of this Agreement and shall not be deemed to limit or alter any provision hereof, and shall not be deemed relevant in construing this Agreement.
- 2.39 Exhibits. All exhibits referred to herein are incorporated into this Agreement the same as if set forth herein.

- 2.40 Interpretations. To the extent permitted by the context in which used (i) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; and (ii) references to "persons" or "parties" in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and all other entities.
- 2.41 Commission Indemnification. Buyer and Seller represent each to the other that they have not dealt with any broker or agent in connection with the transaction which is the subject matter of this Agreement and each agrees to indemnify and hold harmless the other from and on account of any claims, demands, costs and expenses including, but not limited to, reasonable attorneys' fees which may be asserted against, suffered or incurred by the indemnitee on account of the action or inaction of the indemnitor.
- 2.42 Representation by Counsel. Each of the parties has been represented by or has had the opportunity to be represented by legal counsel of his or its own choice. This Agreement has been negotiated among them and if there is any ambiguity, no presumption concerning the Agreement against a party shall be imposed because this Agreement was prepared by counsel for the party.

III. Grant of Security Interest

- 3.1 The term "Collateral" as used herein shall mean all of the assets set forth on Schedule A to Exhibit B hereto, valued as set forth in Paragraph 2.3 hereof.
- 3.2 As security for the
- A. timely payment of all consulting fees due to Seller under the Consulting Agreement; and
 - B. prompt performance of all printing services requested by Seller pursuant to Paragraph 2.11 hereof.

Buyer hereby grants to Seller a security interest in, and a continuing lien upon the Collateral and Buyer agrees that such security interest shall continue until the obligations set forth in subparagraphs A and B of this Paragraph 3.2 (hereinafter the "Obligations") have been fully paid and performed.

- 3.3 Buyer has delivered to Seller and/or will deliver to Seller at its request the following:

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- A. Uniform Commercial Code financing statements naming the Collateral as collateral and naming the Buyer as Debtor, and the Seller as Secured Party;
 - B. U.S. Patent and Trademark Office Recordation Form Cover Sheets (hereinafter the "PTO Forms") executed by Buyer which will enable Seller to record with the U.S. Patent and Trademark Office Seller's security interest in the patent and trademark included among the Collateral;
 - C. Any and all agreements, instruments or other documents as the Seller shall require, evidencing Seller's security interest in the Collateral;
 - D. Such other instruments, financing statements, continuation statements, security agreements, assignments, affidavits, reports, notices, letters of authority and all other documents that Seller may reasonably request, in form and substance reasonably satisfactory to Seller, to perfect and maintain the perfection of Seller's security interest in the Collateral and in order fully to consummate all of the transactions contemplated under this Agreement and the Consulting Agreement.

3.4 Buyer represents and warrants to Seller that:

- A. From and after the Closing, Buyer shall have good and valid title to the Collateral;
- B. The Collateral is free of all liens, security interests and encumbrances of any kind whatsoever;
- C. The security interest granted hereby has been given for value and is hereby declared to be irrevocable;
- D. The security interest created in favor of Seller pursuant to this Agreement will constitute, upon proper filing of the Uniform Commercial Code financing statements and PTO Forms authorized by Buyer to be filed by Seller, a first priority perfected security interest in the Collateral, subject to no other security interests; and
- E. Buyer's legal name as set forth in its Articles of Incorporation is "Smarthealth, Inc."

3.5 Seller agrees that, upon Buyer's satisfaction of the obligations set forth in Paragraphs 3.2A. and 3.2B. above, Seller will provide to Buyer UCC financing statement amendment forms, executed PTO Forms and such


other documents as Buyer may reasonably request to evidence the termination of Seller's security interest in the Collateral.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement the day and year set forth above.

SPINTECH, INC., a Delaware corporation

SMARTHEALTH, INC., an Arizona corporation

By: 
Leonard Osser

By: 

Its: President

Its: VP + CFO

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