

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

**HEALTHCARE TECHNOLOGY
HOLDINGS, INC.,
a corporation.**

Docket No. C-4340

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Healthcare Technology Holdings, Inc. (“Respondent Healthcare Technology”) through its wholly owned subsidiary, IMS Health Incorporated (“IMS”), of SDI Health LLC, and Respondent having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues

its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets:

1. Respondent Healthcare Technology is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 83 Wooster Heights Road, Danbury, CT 06810.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Hold Separate and Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Healthcare Technology” means Healthcare Technology Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Healthcare Technology Holdings, Inc. (including SDI Health LLC, after the Acquisition Date), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “SDI” means SDI Health LLC, a limited liability corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1 SDI Drive, Plymouth Meeting, PA 19462.
- C. “Commission” means the Federal Trade Commission.
- D. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- E. “Effective Date” means the date on which the divestitures and assignments pursuant to Paragraph II or VII of the Decision and Order are consummated.
- F. “Held Separate Business” means the SDI Audit Business, SDI SFSS, SDI OSA, SDI Report Generator (including all development and maintenance thereof), and the Held Separate Business Employees.

PROVIDED HOWEVER, Respondent Healthcare Technology may use SDI Report Generator as allowed under the license described in Paragraph II.A. of the Order.

- G. “Held Separate Business Employees” means the Designated Audit Employees and any full-time, part-time, or contract employee of SDI who devoted more than 50% of his or her time to the SDI Audit Business, SDI SFSS, SDI OSA, or SDI Report Generator.
- H. “Hold Separate” means this Order to Hold Separate and Maintain Assets.
- I. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VII hereof.
- J. “Monitor” means any monitor appointed pursuant to Paragraph III of this Hold Separate or Paragraph VI of the Decision and Order.
- K. “Orders” means the Decision and Order and this Hold Separate.

II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Monitor, except to the extent that Respondent must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Decision and Order, and all applicable laws.
- B. Until the Effective Date, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the SDI Audit Business, to minimize any risk of loss of competitive potential for the SDI Audit Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the SDI Audit Business except for ordinary wear and tear. Respondent shall not sell, transfer, encumber, or otherwise impair the SDI Audit Business (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the SDI Audit Business.
- C. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. To the extent that such employees leave or have left the Held Separate Business prior to the Effective Date, the Manager, with the approval of the Monitor, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such

departing or departed employees.

1. In connection with support services or products not included within the Held Separate Business, Respondent shall continue to provide, or offer to provide, the same support services to the Held Separate Business as customarily have been or are being provided to such businesses by SDI as of the date of the Acquisition. Respondent's personnel providing such services or products must retain and maintain all Confidential Business Information of or pertaining to the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Held Separate Business.
- D. Respondent shall offer to the Held Separate Business any services and products that Respondent provides, in the ordinary course of its business, to their other businesses directly or through third party contracts, or that it has provided in the ordinary course of its business directly or through third party contracts to the Held Separate Business at any time since before the Acquisition Date. The Held Separate Business may, at the option of the Manager and with the approval of the Monitor, obtain such services and products from Respondent. Subject to the foregoing, the services and products that Respondent shall offer the Held Separate Business shall include, but shall not be limited to, the following:
1. human resources and administrative services, including but not limited to payroll processing, labor relations support, pension administration, and procurement and administration of employee benefits, including health benefits;
 - a. federal and state regulatory compliance and policy development services;
 - b. environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - c. financial accounting services;
 - d. preparation of tax returns;
 - e. audit services;
 - f. information technology support services;
 - g. processing of accounts payable and accounts receivable;

- h. technical support;
 - i. procurement of supplies;
 - j. maintenance and repair of facilities;
 - k. procurement of goods and services utilized in the ordinary course of business by the Held Separate Business; and
 - l. legal services.
2. The Held Separate Business shall have, at the option of the Manager and with the approval of the Monitor, the ability to acquire services and products from third parties unaffiliated with Respondent.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall hold the Held Separate Business separate, apart, and independent of Healthcare Technology on the following terms and conditions:
- 1. Stuart A. Samuels shall serve as the Monitor, pursuant to the agreement executed by the Monitor and Respondent and attached as Exhibit C to the Decision and Order (“Monitor Agreement”).
 - a. Respondent shall, no later than one (1) day after the Acquisition Date, pursuant to the Monitor Agreement, transfer to and confer upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities pursuant to this Hold Separate, in a manner consistent with the purposes of the Decision and Order and in consultation with Commission staff, and shall include in the Monitor Agreement all provisions necessary to effectuate this requirement.
 - b. The Monitor Agreement shall require that the Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - c. The Monitor shall have the responsibility for monitoring the organization of the Held Separate Business; supervising the management of the Held Separate Business by the Manager; maintaining the independence of the Held Separate Business; and monitoring Respondent’s compliance with its obligations pursuant to the Orders, including maintaining the viability, marketability, and competitiveness of the SDI Audit Business pending divestiture.

- d. Subject to all applicable laws and regulations, the Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business, and to any other relevant information as the Monitor may reasonably request including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Monitor may reasonably request and shall cooperate with the Monitor. Respondent shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with this Hold Separate or the Decision and Order or otherwise to perform his duties and responsibilities consistent with the terms of this Hold Separate.
- e. The Monitor shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
- f. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Monitor's duties.
- g. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however,* such agreement shall not restrict the Monitor from providing any information to the Commission.
- h. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate terminates, the Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Monitor's assessment of the extent to which the SDI Audit Business is meeting (or exceeding) its projected goals as reflected in operating plans, budgets, projections, or any other regularly prepared financial statements.
- i. If the Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Monitor consistent with the terms of this Hold Separate, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within ten (10) days after

notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor. Respondent and the substitute Monitor shall execute a Monitor Agreement, subject to the approval of the Commission, consistent with this paragraph.

- j. The Monitor shall serve until the day after the Effective Date; *provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

2. No later than one (1) day after the Acquisition Date, Respondent shall enter into a management agreement with, and shall transfer all rights, powers, and authority necessary to manage and maintain the Held Separate Business, to Kelly M. Sborlini (“Manager”).

- a. In the event that the aforementioned individual declines an offer to act as a Manager, or accepts the position of Manager and subsequently ceases to act as a Manager, then Respondent shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers, and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate. The Manager named under this Paragraph may be the same person named as Monitor in Paragraph III.A.1.
- b. The Manager shall report directly and exclusively to the Monitor and shall manage the Held Separate Business independently of the management of Respondent. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate.
- c. The management agreement between Respondent and the Manager shall provide that:
 - (1) Respondent shall provide the individual who agrees to serve as Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Held Separate Business’s viability, marketability, and competitiveness until the Effective Date has occurred, and as may otherwise be necessary to achieve the purposes of this Hold Separate; and
 - (2) Respondent shall, at the option of the Manager, offer to continue the Manager’s employment for a period of no less than one (1)

year following the Manager's acceptable completion of service as a Manager at terms no less favorable than those pursuant to which the Manager was employed prior to the Acquisition; *provided, however*, this requirement shall not apply if the Manager was removed from service for cause.

- d. The Manager shall make no material changes in the ongoing operations of the Held Separate Business except with the approval of the Monitor, in consultation with the Commission staff.
 - e. The Manager shall have the authority, with the approval of the Monitor, to remove Held Separate Business employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the Monitor, may request Respondent to, and Respondent shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
 - f. In addition to Held Separate Business employees, the Manager may, with the approval of the Monitor, employ such Persons as are reasonably necessary to assist the Manager in managing the Held Separate Business.
 - g. The Monitor shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondent shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in this paragraph.
3. The Monitor and the Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
4. Respondent shall indemnify the Monitor and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's or the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor or the Manager.
5. Respondent shall cause the Monitor, the Manager, the Held Separate Business Employees, and each of Respondent's employees having access to Confidential Business Information of or pertaining to the Held Separate Business to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These

individuals must retain and maintain all Confidential Business Information of or pertaining to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves any of Respondent's businesses or activities other than the Held Separate Business.

6. Except for the Manager, Held Separate Business Employees, and support services employees involved in providing services to the Held Separate Business pursuant to this Hold Separate, and except to the extent provided in this Hold Separate, Respondent shall not permit any other of its employees, officers, directors, agents, or representatives to be involved in the operations of the Held Separate Business.
7. Respondent's employees (excluding the Held Separate Business employees and employees involved in providing support services to the Held Separate Business pursuant to Paragraph II.C.6) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Held Separate Business not in the public domain except:
 - a. as required by law; and
 - b. to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition;
 - (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - (3) in complying with this Hold Separate or the Consent Agreement;
 - (4) in overseeing compliance with policies and standards concerning the safety, health, and environmental aspects of the operations of the Held Separate Business and the integrity of the financial controls of the Held Separate Business;
 - (5) in defending legal claims, investigations, or enforcement actions threatened or brought against or related to the Held Separate Business; or
 - (6) in obtaining legal advice.

Nor shall the Manager or any Held Separate Business Employees receive or have access to, or use or continue to use, any Confidential Business Information not in the public domain relating to Respondent or its businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondent may receive aggregate financial and operational information relating

to the Held Separate Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

8. Respondent and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Monitor, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Held Separate Business, including, but not limited to, the opportunity by the Monitor, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate.
 9. No later than five (5) days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the Monitor, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate.
 10. No later than five (5) days after the date this Hold Separate becomes final, Respondent shall circulate to employees of the Held Separate Business, and to Persons who develop, produce, market, or sell IMS Medical Audit Products or IMS Promotional Audit Products, a notice of this Hold Separate and the Consent Agreement.
- B. The purpose of this Hold Separate Order is to maintain the full economic viability, marketability, and competitiveness of the SDI Audit Business through the divestiture, transfer, and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the SDI Audit Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any assets of the SDI Audit Business except for ordinary wear and tear.

IV.

IT IS FURTHER ORDERED that not later than thirty (30) days after the Respondent signs the Agreement Containing Consent Order, and every thirty (30) days thereafter until Respondent Healthcare Technology has fully complied with its obligations to divest, assign, grant, license, transfer, deliver, or otherwise convey the SDI Audit Business as required by Paragraph II or Paragraph VII of the Decision and Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate Order and the related Decision and Order;

PROVIDED, HOWEVER, that, after the Decision and Order in this matter becomes final, the reports due under this Hold Separate Order may be consolidated with, and submitted

to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph IX of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent Healthcare Technology shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of the Respondent;
- B. any proposed acquisition, merger, or consolidation of Respondent; or
- C. any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Healthcare Technology made to its principal United States offices or headquarters' address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with the Orders, which copying services shall be provided by Respondent at the request of an authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
 - 1. The later of:
 - a. The day after the divestiture of the SDI Audit Business, as required by and described in the Decision and Order, has been completed and the Monitor, in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers, and other transitions related to such divestiture are complete, or the Commission otherwise directs that this Hold Separate is terminated; or
 - b. Three (3) days after the related Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: October 28, 2011