

## **ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED**

### **Notice of acceptance of final undertakings from Iron Mountain Incorporated pursuant to section 82 of and Schedule 10 to the Enterprise Act 2002**

#### **Background**

1. On 14 January 2016, the Competition and Markets Authority (CMA) made a reference (the Reference) to its chair in accordance with section 33(1) of the Enterprise Act 2002 (the Act) for the constitution of a Group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to investigate and report on the proposed acquisition by Iron Mountain Incorporated (Iron Mountain Inc) of Recall Holdings Limited (Recall).
2. On 30 March 2016, the CMA gave its consent under section 78(2) of the Act to the acquisition by Iron Mountain Inc of shares in Recall. Completion of that acquisition occurred at a global level on 2 May 2016.
3. On 16 June 2016 the CMA published a report on the completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited (the Report).
4. In the Report, the CMA concluded that:
  - (a) the completed acquisition by Iron Mountain Inc of Recall in the UK may be expected to result in the creation of a relevant merger situation;
  - (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in certain product markets in the Aberdeen/Dundee areas;
  - (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
  - (d) undertakings should be given to the CMA to give effect to the remedies identified by the CMA in Chapter 9 of the Report.
5. The Report further concluded that the transaction should be allowed to proceed on condition that Iron Mountain Inc and Iron Mountain UK dispose of

the entire share capital of C21 Data Services Limited (C21), in line with the criteria set out in Chapter 9 of the Report.

6. In addition, the Report concluded that the commitment to sell the shares in C21 will be subject to CMA approval of the prospective purchaser meeting certain purchaser approval criteria. If a purchaser is not identified within three months (or such longer period as may be approved by the CMA), the CMA reserved the right to require appointment of a trustee to oversee the sale process to a suitable purchaser at the cost of Iron Mountain in order to ensure that the sale proceeds.
7. The CMA published a notice of proposal to accept undertakings on 10 August 2016, but received no representations on the draft undertakings on which the CMA consulted. Therefore, the CMA has decided to accept those undertakings as final undertakings in the form consulted on.
8. The CMA under section 82 of the Act now accepts final undertakings as given by Iron Mountain Incorporated. A copy of the final undertakings is attached. The reference has now been finally determined and the final undertakings come into force accordingly.
9. This Notice and a non-confidential version of the final undertakings will be published on the CMA website. The CMA has excluded from the non-confidential version of the final undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [X].

Anne Lambert  
*Inquiry Chair*  
7 September 2016

# ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED

## Final Undertakings given by Iron Mountain Incorporated, Iron Mountain UK Services (Holdings) Limited, Iron Mountain (UK) Services Limited and Iron Mountain (UK) Limited pursuant to section 82 of the Enterprise Act 2002

### 1. Background

- 1.1 On 14 January 2016, the Competition and Markets Authority (CMA) made a reference (the **Reference**) to its chair in accordance with section 33(1) of the Enterprise Act 2002 (the **Act**) for the constitution of a Group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 to investigate and report on the proposed acquisition by Iron Mountain Incorporated (**Iron Mountain**) of Recall Holdings Limited (**Recall**).
- 1.2 On 30 March 2016, the CMA gave its consent under section 78(2) of the Act to the acquisition by Iron Mountain of shares in Recall. Completion of that acquisition occurred at a global level on 2 May 2016. However, interim undertakings accepted by the CMA on 30 March 2016 (the second set of undertakings) prevented Iron Mountain from integrating Recall's UK business. The second set of interim undertakings were superseded by a fourth set of interim undertakings on 15 July 2016, reflecting only the measures required to achieve holding separate and ultimate divestment of C21 Data Services Limited (**C21**)<sup>1</sup>.
- 1.3 All of the interim undertakings cease to be in force on the date of acceptance by the CMA of these Final Undertakings pursuant to section 82 of the Act.
- 1.4 On 16 June 2016 the CMA published its final report on the *Completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited (the Report)*. In the Report, the CMA concluded that:
  - (i) the completed acquisition by Iron Mountain Inc of Recall in the UK may be expected to result in the creation of a relevant merger situation;

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<sup>1</sup> The first and third set of undertakings relate to the appointment and functions of the monitoring trustee.

- (ii) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the following markets:
  - A. the supply of records management services (RMS) in each of Aberdeen and Dundee;
  - B. the supply of off-site data protection services (OSDP) in Aberdeen;
  - C. the supply of OSDP in Dundee; and
  - D. the supply of records and information management services (RIMS) to the oil and gas sector for customers in Aberdeen;
- (iii) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedies identified by the CMA in Chapter 9 of the Report.

1.5 The Report further concluded that the transaction should be allowed to proceed on condition that Iron Mountain disposes of the entire share capital of C21, in line with the criteria set out in Chapter 9 of the Report.

1.6 The implementation of the divestitures will be subject to the following safeguards:

- a) The CMA will wish to satisfy itself of the suitability of potential purchasers of C21.
- b) Iron Mountain will be required to give undertakings to put in place appropriate interim management arrangements pending any divestiture. A monitoring trustee should be appointed or retained, at Iron Mountain's expense, to monitor compliance with these Undertakings and the steps being taken to ensure a prompt disposal.
- c) To the extent that C21 requires support from Iron Mountain to continue to operate effectively prior to divestment, these support services will be provided to C21 at the expense of Iron Mountain and subject to oversight from the monitoring trustee.

- d) Provisions will be included in these Undertakings for the ability to appoint a divestiture trustee should Iron Mountain fail to achieve an effective disposal of C21 by the end of the divestiture period.
- e) In order to prevent the disclosure of any confidential information in relation to C21, all senior management who have been employed by Recall and who have or will be transferred to Iron Mountain and who have knowledge of C21's operations and customer details will be required to sign non-disclosure agreements.
- f) Iron Mountain will be required to sell C21 with the benefit of all the contracts held by C21 at the date of the Report. If any customer holdings cannot be transferred with C21 because the customer has the right to opt out or has a contract with Recall and not C21 and is not willing to transfer to C21, Iron Mountain will be required to replace those holdings with Iron Mountain UK holdings from the local area in an amount at least equivalent in terms of revenue and volume of holdings to the holding lost.
- g) In accordance with paragraphs 9.36 – 9.38 of the Report, no charges which would arise as a result of this divestiture package will be incurred by customers during the divestiture period.

1.7 Now therefore, Iron Mountain Inc and Iron Mountain UK give to the CMA the following Undertakings for the purpose of remedying the SLC identified in the Report and any adverse effects resulting from it.

## **2. Interpretation**

2.1 The Appendices form part of these Undertakings.

2.2 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.

2.3 Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).

2.4 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.7 References to recitals, paragraphs, subparagraphs, appendices and schedules are references to the recitals to, paragraphs and subparagraphs of, appendices and schedules to, these Undertakings unless otherwise stated.
- 2.8 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include bodies of persons whether corporate or incorporate.
- 2.9 Further, in these Undertakings:

**'Aberdeen'** means the catchment area consisting of a 50-mile radius around C21's facility in Aberdeen, as defined in the Report;

**'the Act'** means the Enterprise Act 2002;

**'affiliate'** and **'Affiliate'** means a person is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;

**'Approved Agreement'** means a binding agreement or agreements between Iron Mountain and an Approved Purchaser as approved by the CMA bringing about the Final Disposal;

**'Approved Purchaser'** means any purchaser or purchasers approved by the CMA pursuant to the Purchaser Approval Criteria set out in [Appendix 1](#);

**'Approved Timetable'** has the meaning given in paragraph 8.1;

**'Associated Person'** means a person who is an associated person within the meaning of section 127 of the Act;

**'Asset Maintenance Undertakings'** means those undertakings set out in paragraph 5;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'the C21 business'** means the business of C21 Data Services Limited carried on as at the date of the CMA's formal acceptance of these Undertakings;

**'the C21 divestment'** means the divestment of C21 to a purchaser approved by the CMA in accordance with section 82 of the Act;

**'Commencement Date'** means the date on which these Undertakings are accepted by the CMA;

**'confidential information'** means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary and non-public nature relating to the business of Iron Mountain Inc, Iron Mountain UK or C21;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'Direction'** means written directions given to Iron Mountain by the CMA as set out in paragraph 9.1;

**'Divestiture Period'** means a period of up to three months beginning with the Commencement Date or such longer period as approved by the CMA;

**'Divestiture Trustee'** means a person appointed in accordance with paragraph 11;

**'Dundee'** means the catchment area consisting of a 50-mile radius around C21's facility in Dundee, as defined in the Report;

**'Final Disposal'** means completion of the sale of the entire share capital of C21 under an Approved Agreement to an Approved Purchaser;

**'Group of Interconnected Bodies Corporate'** means a group of interconnected bodies within the meaning of section 129(2) of the Act, as constituted from time to time;

**'Heads of Terms'** means an agreement in principle to acquire the entire share capital of C21 and which sets out the terms of the disposal, and that is expressed by all parties to be final (1) subject to contract (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;

**'Iron Mountain Inc'** means Iron Mountain Incorporated of One Federal Street, Boston, Massachusetts 02110;

**'Iron Mountain UK'** means Iron Mountain (UK) Limited (company registration number 01478540), Iron Mountain UK Services (Holdings) Limited (company registration number 08322913) and Iron Mountain (UK) Services Limited

(company registration number 08322913) whose registered offices are Cottons Centre 3rd Floor, Tooley Street, London, SE1 2TT;

**'the Iron Mountain UK business'** means the business of Iron Mountain UK including the business of Recall UK excluding C21 carried on as at the date of the CMA's formal acceptance of these Undertakings;

**'key staff'** means staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**'Monitoring Trustee'** means a person appointed in accordance with paragraph 7;

**'Monitoring Trustee Functions'** has the meaning given in paragraph 7.8;

**'the ordinary course of business'** means a party's customary commercial transactions and practices in the day-to-day supply of records and information management services by C21, Iron Mountain Inc or Iron Mountain UK;

**'OSDP'** means offsite data protection services, as more fully defined in the Report;

**'Purchaser Approval Criteria'** means the criteria set out in Appendix 1;

**'Recall'** means Recall Holdings Limited (ABN 27 116 537 832) of 697 Gardeners Road, Alexandria, Sydney, Australia;

**'Recall Europe'** means Recall Europe Limited whose registered address is Level 8 4 Thomas More Square, London, E1W 1YW and whose company registration number is 01136000;

**'Recall UK'** means Recall Limited whose registered address is Level 8 4 Thomas More Square, London, E1W 1YW and whose company registration number is 01331798, as well as its subsidiaries;

**'Related Person'** means any Subsidiary, Affiliate or Associated Person;

**'RIMS'** means records and information management services, as more fully defined in the Report; and

**'RMS'** means records management services, as more fully defined in the Report.

**'specified period'** means the period beginning on the date of the CMA's formal acceptance of these Undertakings and terminating with the completion of the sale of C21 to a purchaser approved by the CMA in accordance with section 82 of the Act;

**'Subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'SLC'** means a substantial lessening of competition pursuant to section 22 of the Act;

**'the transaction'** means the completed acquisition by Iron Mountain Inc of Recall;

**'Trustee Obligation'** means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of making the Final Disposal promptly and in any event within the Trustee Divestiture Period;

**'Trustee Divestiture Period'** means a period of up to three months for the Divestiture Trustee to meet the Trustee Obligation commencing on a date specified by the CMA after the expiration of the Divestiture Period;

**'Undertakings'** means these Undertakings;

**'Working Day'** means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Undertakings to 'days' means calendar days.

### **3. Commencement**

- 3.1 These Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

### **4. Divestiture Undertakings**

- 4.1 Iron Mountain and Iron Mountain UK give the following Divestiture Undertakings:

4.1.1 Iron Mountain Inc and Iron Mountain UK undertake that they will complete the sale of the entire share capital of C21 to an Approved Purchaser in accordance with the procedure set out in paragraph 6 and pursuant to an Approved Agreement within the Divestiture Period. Iron Mountain Inc and Iron Mountain UK recognise that in considering whether to approve any agreement the CMA shall consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the entire share capital of C21 would not remedy the SLC and any adverse effects likely to arise from it.

4.1.2 Iron Mountain Inc and Iron Mountain UK undertake to carry out the Divestment Undertakings having due regard to the findings in the Report.

- 4.1.3 Iron Mountain undertakes that it will procure that any Related Person or any member of any Group of Interconnected Bodies Corporate to which it belongs will not for a period of ten years from the date of the Final Disposal bring under common ownership or control (as defined in section 26 of the Act) in whole or in part the C21 business or any asset of the C21 business without the prior written consent of the CMA.

## **5. Asset Maintenance Undertakings**

- 5.1 Except with the prior written consent of the CMA, Iron Mountain Inc and Iron Mountain UK shall at no time during the specified period exercise any voting rights specifically in relation to the C21 business or take any action which might prejudice the divestment of C21 to a purchaser approved by the CMA or impede the taking of any action under the Act by the CMA which may be justified by the CMA's findings in the Report, including any action which might:
  - 5.1.1 lead to the integration of the C21 business with the Iron Mountain UK business
  - 5.1.2 transfer the control of the C21 business or any of its operations or subsidiaries;
  - 5.1.3 otherwise impair the ability of the C21 business or the Iron Mountain UK business to compete independently on any of the relevant markets; or
  - 5.1.4 impede the taking of any action under the Act which may be justified by the CMA's decisions in the Report.
- 5.2 Without prejudice to the generality of paragraph 6.1 and subject to paragraphs 8 and 9, Iron Mountain Inc and Iron Mountain UK shall at all times during the specified period procure that, except with the prior written consent of the CMA:
  - 5.2.1 the C21 business is carried on separately from the Iron Mountain UK business and the C21 business's separate sales and/or brand identity is maintained;
  - 5.2.2 the C21 business is maintained as a going concern and adequate and sufficient resources are made available for the development of the C21 business on the basis of its pre-merger plans;
  - 5.2.3 no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within C21; and

- 5.2.4 the nature, description, range and quality of RIMS (including RMS and OSDP) supplied by C21 are maintained and preserved;
- 5.2.5 except in the ordinary course of business for the separate operation of the businesses:
- a) all of the assets of the C21 business are maintained and preserved, including facilities, vehicle fleet, customer lists and goodwill;
  - b) none of the assets of the C21 business are disposed of; and
  - c) no interest in the assets of the C21 business is created or disposed of.
- 5.2.6 there is no integration of the information technology of the business of C21 with the Iron Mountain Inc or Iron Mountain UK businesses, and the software and hardware platforms of the C21 business remain essentially unchanged, except for:
- a) routine changes and maintenance which, to the extent that such services are provided by employees of Iron Mountain Inc or Iron Mountain UK, may only be provided once the relevant employees have signed non-disclosure agreements in respect of any confidential information obtained in the course of providing such services; and;
  - b) existing integration between the information technology systems of Iron Mountain Inc and Iron Mountain UK and C21 at the date on which these Undertakings are formally accepted by the CMA, provided that Iron Mountain Inc and Iron Mountain UK implement appropriate firewall procedures, system access controls and non-disclosure agreements to prevent the sharing of confidential information between C21 and Iron Mountain Inc or Iron Mountain UK (and vice versa).
- 5.2.7 the customer and supplier lists of the Iron Mountain UK and C21 businesses are operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the C21 business are carried out by the C21 business alone and, for the avoidance of doubt, the Iron Mountain UK business does not negotiate on behalf of the C21 business (and vice versa) or enter into any joint agreements with the C21 business (and vice versa);

- 5.2.8 all existing contracts of the C21 business and the Iron Mountain UK business continue to be serviced by the business to which they were awarded and Iron Mountain UK takes all reasonable steps to avoid discouraging existing customers of C21 from remaining with C21;
- 5.2.9 no staff are transferred between the C21 business and the Iron Mountain UK business;
- 5.2.10 all reasonable steps are taken to encourage all key staff to remain with the C21 business, and incentive arrangements remain in place in respect of [X] (divisional manager for C21) until completion of the C21 divestment, to ensure insofar as is reasonably practicable that he remains with C21 under the terms of his employment prior to the merger (which employment is with, for the purposes of such incentive arrangements, Recall UK);
- 5.2.11 no confidential information (as defined above) passes, directly or indirectly, from the C21 business (or any of its employees, directors, agents or affiliates) to the Iron Mountain Inc or Iron Mountain UK businesses (or any of their employees, directors, agents or affiliates), or vice versa, except where required for compliance with external regulatory and/or accounting obligations and on the basis that:
- a) approval is obtained from the CMA in each case;
  - b) an up-to-date record of all such confidential information is maintained by Iron Mountain Inc and Iron Mountain UK, as the case may be; and
  - c) it being understood that Iron Mountain Inc and Iron Mountain UK may have access to C21's confidential information required for the purposes of compliance with Iron Mountain's external regulatory and/or accounting obligations as approved by the CMA, provided that the relevant Iron Mountain Inc and Iron Mountain UK employees with access to such confidential information execute appropriate non-disclosure agreements in respect of the information received from C21 for these reporting purposes;
  - d) following the divestment of C21, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, are returned to the business to which they relate and any copies are destroyed, except to the extent (if any) that Iron

Mountain Inc and Iron Mountain UK may be required to retain a copy of specific records in order to comply with external regulatory and/or accounting obligations, in which case such copy shall be used solely for that purpose; and

- e) it being understood that [X], who for reasons relating to his retention arrangements remains an employee of Recall UK, shall be deemed for the purpose of this paragraph 5.2.11 to be an employee of C21;

5.2.12 a log of communications from the C21 business (or any of its employees, directors, agents or affiliates) to the Iron Mountain Inc or Iron Mountain UK businesses (or any of their employees, directors, agents or affiliates), or vice versa, is maintained, it being understood that [X], who for reasons relating to his retention arrangements remains an employee of Recall UK, shall be deemed for the purpose of this paragraph 5.2.12 to be an employee of C21.

5.3 Iron Mountain UK shall, and shall procure that C21 shall, actively inform their respective existing and potential customers that they are operating independently of each other, such notice to be given by means and in communications approved by the CMA.

5.4 Notwithstanding the provisions of paragraph 6 (Procedure for consent and notification), Iron Mountain Inc and Iron Mountain UK will ensure that:

5.4.1 they will continue to provide certain transitional support services to C21 for the specified period, as are provided to C21 by Recall and Recall UK at the time that these undertakings are formally accepted by the CMA, on the basis that:

5.4.2 such transitional support services shall be limited to the provision of human resource functions and services relating to the Request O'Neil operating system and other software used for business operations, accounting, and billing and credit control services for C21; and

5.4.3 any Iron Mountain employees with access to confidential information shall execute non-disclosure agreements in respect of any confidential information received from C21 in connection with the provision of such services;

- 5.4.4 C21 continues to provide the same RIMS, RMS and OSDP services (as appropriate) to [X] and [X] as it provided prior to the date that these Undertakings are formally accepted by the CMA, to the extent required by such customers;
  - 5.4.5 C21 maintains sufficient working capital and any additional capital required to meet the pre-merger business plan of C21 and these funds are held separately for the sole use of and access by C21;
  - 5.4.6 employees of Iron Mountain Inc and any of its subsidiaries, including the employees of Recall Europe, are located in offices which are separate from the offices used by C21;
  - 5.4.7 C21 continues to operate under the same brand name as prior to the merger; and
  - 5.4.8 C21 can use any other intellectual property which belongs to C21 which it used prior to the merger.
- 5.5 For the purposes of facilitating the sale of shares in C21, Iron Mountain Inc and Iron Mountain UK (or their nominated advisors) shall have access to such information in so far as it is necessary to facilitate the sale. The list of Iron Mountain Inc and Iron Mountain UK employees with access to such information is set out in Appendix 2. This will be subject to the following conditions:
- 5.5.1 all personnel with access to the information to enter into non-disclosure agreements; and
  - 5.5.2 no individuals subject to the non-disclosure agreements having any influence on the operation of Iron Mountain's business in the UK.
- 5.6 Iron Mountain Inc and Iron Mountain UK undertake that until the Final Disposal they will keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 7.9 of these Undertakings) relating to all of C21's operations which include but are not limited to:
- 5.6.1 details of key staff who leave or join;
  - 5.6.2 material changes in performance; and
  - 5.6.3 any other substantial changes.

## **6. Procedure for consent and notification**

- 6.1 Iron Mountain Inc and Iron Mountain UK undertake that any application by them for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.
- 6.2 Iron Mountain Inc and Iron Mountain recognise that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 6.3 In the event that Iron Mountain Inc or Iron Mountain UK discover that an application for consent or approval has been made without full disclosure to the CMA, Iron Mountain Inc and Iron Mountain UK undertake to:
- 6.3.1 inform the CMA in writing identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
  - 6.3.2 at the same time or no later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 6.3.1 above, provide to the CMA an application for consent that includes the missing information.
- 6.4 Iron Mountain Inc and Iron Mountain UK shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of the Undertakings.
- 6.5 The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five-Working-Day period referred to in paragraph 6.4 above. This provision is without prejudice to the CMA's duties under the Act.

## **7. Monitoring Trustee**

- 7.1 Iron Mountain Inc and Iron Mountain UK undertake that by no later than five Working Days after the Commencement Date it shall secure the appointment or retention of a Monitoring Trustee to perform the Monitoring Trustee Functions in paragraph 7.8 on behalf of the CMA.

- 7.2 The Monitoring Trustee must possess appropriate qualifications and experience to carry out his functions. The Monitoring Trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out his functions to the best of his abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his duties under these Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. Iron Mountain Inc and Iron Mountain UK shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out his functions.
- 7.3 The appointment of the Monitoring Trustee and their terms and conditions must be approved by the CMA. Iron Mountain Inc and Iron Mountain UK must inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that Iron Mountain Inc and Iron Mountain UK propose to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, Iron Mountain Inc and Iron Mountain UK must provide the CMA with a copy of the agreed terms and conditions of appointment.
- 7.4 If the proposed Monitoring Trustee is rejected by the CMA, Iron Mountain Inc and Iron Mountain UK shall submit the names of at least two further persons within two Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 7.2 and 7.3 above.
- 7.5 The provisions of paragraph 7.6 below shall apply if:
- 7.5.1 Iron Mountain Inc and Iron Mountain UK fail to nominate persons in accordance with paragraphs 7.3 or 7.4 above; or
  - 7.5.2 those further persons nominated by Iron Mountain in accordance with paragraphs 7.3 or 7.4 above are rejected by the CMA; or
  - 7.5.3 Iron Mountain Inc and Iron Mountain UK are unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.

- 7.6 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Iron Mountain and Iron Mountain UK shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 7.7 The Monitoring Trustee must take such steps as they reasonably considers necessary in order to carry out their functions effectively. The Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under the Undertakings. The Monitoring Trustee will carry out the functions set out below and will monitor the compliance of Iron Mountain Inc and Iron Mountain UK with their obligations under these Undertakings.
- 7.8 The Monitoring Trustee Functions set out in this paragraph are to monitor and review compliance with these Undertakings and progress towards the Final Disposal; and shall in particular include:
- 7.8.1 monitoring compliance by Iron Mountain Inc and Iron Mountain UK with the Asset Maintenance Undertakings set out in paragraph 5 above; and
- 7.8.2 monitoring the progress made by Iron Mountain Inc and Iron Mountain UK against the timetable towards Final Disposal and the steps that have otherwise been taken to comply with the Undertakings including:
- (a) the steps that have been taken towards the preparation of agreements for disposal of the entire share capital of C21, and the persons to whom such agreements have been distributed; and
- (b) monitoring communications (including attending any meetings (save where those communications are subject to legal privilege) which the Monitoring Trustee reasonably deems necessary) between Iron Mountain Inc and Iron Mountain UK and their financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process.
- 7.9 The Monitoring Trustee will promptly inform the CMA of any material developments arising from the operation of its functions and will provide to the CMA a written report every two weeks.

## 8. Divestment Reporting Obligations

- 8.1 Iron Mountain Inc and Iron Mountain UK undertake that within the period of five Working Days from the Commencement Date they will provide a written report to the CMA setting out the timetable that they propose to adopt, subject to the CMA's approval, to ensure the Final Disposal (the '**Approved Timetable**'). The report will outline the progress that Iron Mountain has made towards the Final Disposal and the steps that have otherwise been taken to comply with the Undertakings and shall in particular report:
- 8.1.1 on the status of any discussions that have been held with potential purchasers of the share capital of C21;
  - 8.1.2 on the status of any information memorandum, the identities of the persons to whom it has been circulated and the responses to the information memorandum;
  - 8.1.3 on the progress that has been made towards agreeing Heads of Terms (if applicable);
  - 8.1.4 on the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed; and
  - 8.1.5 on such other matters as may be directed by the CMA from time to time.
- 8.2 Iron Mountain Inc and Iron Mountain UK will provide similar reports to the CMA every two weeks until Final Disposal. The reports will include an update on the progress that has been made against the Approved Timetable, and with the consent of the CMA such reports may be provided through the Monitoring Trustee in accordance with paragraph 7.9 of these Undertakings.
- 8.3 Iron Mountain Inc and Iron Mountain UK undertake that in the report to the CMA they shall, among other things, provide to the CMA:
- 8.3.1 the name, address, email address, contact point and telephone number of each person who has expressed an interest in the acquisition of the share capital of C21 or any part thereof since the publication of the CMA's provisional findings; and

- 8.3.2 details of the efforts taken by each of Iron Mountain Inc and Iron Mountain UK and their financial advisers to solicit purchasers for the share capital of C21.
- 8.4 In the event that Iron Mountain Inc or Iron Mountain UK do not meet a step as set out in the Approved Timetable, or are otherwise delayed in implementing the remedy, Iron Mountain Inc and Iron Mountain UK undertake to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.

## **9. Directions**

- 9.1 Iron Mountain Inc and Iron Mountain UK will comply with such written Directions as the CMA may from time to time issue and will take such steps as may be specified or described in the Directions for complying with these Undertakings.
- 9.2 Any delay by the CMA in making a written Direction shall not affect the obligations of Iron Mountain and Iron Mountain UK at such time as the CMA makes any written Direction under paragraph 9.1.

## **10. Conditions for the appointment of a Divestiture Trustee**

- 10.1 Without prejudice to the CMA's order-making power under section 83 of the Act, Iron Mountain Inc and Iron Mountain UK undertake that they shall at the written Direction of the CMA appoint a Divestiture Trustee to give effect to the Trustee Obligation on the expiry of the Divestiture Period or at any point thereafter.
- 10.2 The Divestiture Trustee shall fulfil the Trustee Obligation and shall undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CMA may specify in the written Direction referred to in paragraph 10.1 above.

## **11. Divestiture Trustee – appointment procedure**

- 11.1 Iron Mountain Inc and Iron Mountain UK undertake that on the Direction of the CMA at any time after the expiry of the Divestiture Period, and in accordance with such Directions as are given by the CMA as to the timing for taking these steps, Iron Mountain Inc and Iron Mountain UK shall submit to the CMA for approval a list of two or more persons who they propose to appoint as Divestiture Trustee. The proposal shall contain sufficient information for the CMA to verify

that each proposed person fulfils the requirements set out in paragraph 11.2 below and shall include among other things:

- 11.1.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and
  - 11.1.2 a schedule of the steps to be taken to give effect to the mandate.
- 11.2 Each person on the list referred to in paragraph 11.1 shall be independent of and unconnected to Iron Mountain Inc and Iron Mountain UK, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 11.3 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, Iron Mountain Inc and Iron Mountain UK shall use their best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Iron Mountain Inc and Iron Mountain UK shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Iron Mountain Inc and Iron Mountain UK undertake to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 11.4 If all the proposed Divestiture Trustees are rejected by the CMA, Iron Mountain Inc and Iron Mountain UK shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.1 and 11.2 above.
- 11.5 The provisions of paragraph 11.6 below shall only apply if:
- 11.5.1 Iron Mountain Inc and Iron Mountain UK fail to nominate persons in accordance with paragraph 11.1 above; or
  - 11.5.2 those further persons nominated by Iron Mountain Inc and Iron Mountain UK in accordance with paragraph 11.1 above are rejected by the CMA; or

- 11.5.3 Iron Mountain Inc and Iron Mountain UK are unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 11.6 The CMA shall nominate one or more persons to act as Divestiture Trustee, and Iron Mountain Inc and Iron Mountain UK shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.
- 12. Divestiture Trustee – functions**
- 12.1 Iron Mountain Inc and Iron Mountain UK undertake to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 12.2 Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that:
- 12.2.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee or Iron Mountain Inc or Iron Mountain UK, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Trustee Obligation to bring about the Final Disposal;
- 12.2.2 the CMA may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and
- 12.2.3 the Divestiture Trustee shall protect the legitimate financial interests of Iron Mountain Inc and Iron Mountain UK subject to the Divestiture Trustee’s overriding obligations to give effect to the Trustee Obligation.
- 12.3 Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Trustee Obligation and to that end the Divestiture Trustee may give written directions to Iron Mountain Inc and Iron Mountain UK, as applicable. Iron Mountain Inc and Iron Mountain UK undertake to comply with such directions or to procure compliance with such directions as are within their powers and to take such steps within their competence as the Divestiture Trustee may specify.
- 12.4 Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that in the performance of the Trustee Obligation the Divestiture Trustee shall act solely on

the instructions of the CMA and shall not be bound by any instruction of Iron Mountain Inc and Iron Mountain UK. Iron Mountain Inc and Iron Mountain UK undertake that they shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

**13. Divestiture Trustee – duties and obligations of Iron Mountain Inc and Iron Mountain UK**

- 13.1 Iron Mountain Inc and Iron Mountain UK undertake to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the Final Disposal but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Trustee Obligation.
- 13.2 Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and Iron Mountain Inc and Iron Mountain UK undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. Iron Mountain Inc and Iron Mountain UK undertake to make available to the Divestiture Trustee one or more offices on their premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with Iron Mountain Inc's and Iron Mountain UK's internal policies.
- 13.3 Iron Mountain Inc and Iron Mountain UK undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the disposal process. Iron Mountain Inc and Iron Mountain UK undertake that upon the reasonable request of the Divestiture Trustee Iron Mountain Inc and Iron Mountain UK shall execute the documents required to give effect to the Trustee Obligation.
- 13.4 Iron Mountain Inc and Iron Mountain UK undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that the Divestiture Trustee,

its employees, agents or advisers shall have no liability to Iron Mountain Inc or Iron Mountain UK or any of their subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

- 13.5 Iron Mountain Inc and Iron Mountain UK undertake that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Should Iron Mountain Inc and Iron Mountain UK refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Iron Mountain Inc and Iron Mountain UK, approve and direct the appointment of such advisers.
- 13.6 Iron Mountain Inc and Iron Mountain UK undertake to make no objection to the Final Disposal save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of Iron Mountain Inc or Iron Mountain UK, subject always to the Trustee Obligation; and where Iron Mountain Inc or Iron Mountain UK wish to make an objection on the grounds of bad faith it shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

#### **14. Divestiture Trustee – replacement, discharge and reappointment**

- 14.1 Iron Mountain Inc and Iron Mountain UK acknowledge that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Iron Mountain Inc and Iron Mountain UK to replace the Divestiture Trustee.
- 14.2 If the Divestiture Trustee is removed under paragraph 14.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 12 above.
- 14.3 Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that, other than in accordance with paragraph 14.1 above, the Divestiture Trustee shall

cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

## **15. Additional Undertakings to protect the divestment of C21**

- 15.1 Iron Mountain Inc and Iron Mountain UK shall procure that all senior management who have been employed by Recall and who have or will be transferred to Iron Mountain and who have knowledge of C21's operations and customer details sign non-disclosure agreements.
- 15.2 Iron Mountain will be required to sell C21 with the benefit of all the contracts held by C21 at the date of the Report. If any customer holdings cannot be transferred with C21 because the customer has the right to opt out or has a contract with Recall and not C21 and is not willing to transfer to C21, Iron Mountain will be required to replace those holdings with Iron Mountain UK holdings from the local area in an amount at least equivalent in terms of revenue and volume of holdings to the holding lost.
- 15.3 In accordance with paragraphs 9.36 – 9.38 of the Report, no charges which would arise as a result of this divestiture package will be incurred by customers during the divestiture period.

## **16. Variations to these Undertakings**

- 16.1 The terms of these Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 16.2 Where a request for consent to vary the Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.
- 16.3 The consent of the CMA shall not be unreasonably withheld.

## **17. General obligation to provide information to the CMA**

- 17.1 Iron Mountain Inc and Iron Mountain UK undertake that they shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Undertakings or under sections 82, 83, 93(6) and 94 of the Act.

- 17.2 Iron Mountain Inc and Iron Mountain UK undertake that should they at any time be in breach of any provision of the Undertakings, they will notify the CMA within two Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.
- 17.3 Where any person, including the Monitoring Trustee or Divestiture Trustee must provide information in relation to Iron Mountain Inc or Iron Mountain UK to the CMA under or in connection with these Undertakings, whether in the form of any notice, application, report or otherwise, Iron Mountain Inc and Iron Mountain UK undertake that they will procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Iron Mountain Inc or Iron Mountain UK to any person other than to the CMA, without the prior written consent of both the CMA and Iron Mountain Inc and Iron Mountain UK.

## **18. Acceptance of service**

- 18.1 Iron Mountain Inc and Iron Mountain UK hereby authorise Weil Gotshal & Manges LLP whose address for service is 110 Fetter Lane, London EC4A 1AY to accept on their behalf service of all documents, orders, requests, notifications or other communications connected with the Undertakings (including any such document which falls to be served on or sent to Iron Mountain or Iron Mountain Inc in connection with any proceedings in courts in the United Kingdom)
- 18.2 Any document, order, request, notification or other communication connected with the Undertakings shall be deemed to have been validly served on Iron Mountain Inc and Iron Mountain UK if it is served on Weil Gotshal & Manges LLP at its registered office (Reference: CMA Undertakings, attention: Douglas Nave) and service or receipt shall be deemed to be acknowledged by Iron Mountain Inc and Iron Mountain UK if it is acknowledged by a receptionist or mail room employee of Weil Gotshal & Manges LLP.
- 18.3 Paragraph 18.1 has effect irrespective of whether, as between Weil Gotshal & Manges LLP and Iron Mountain Inc and Iron Mountain UK, Weil Gotshal & Manges LLP has or continues to have any authority to accept and acknowledge service on behalf of Iron Mountain Inc and Iron Mountain UK, and no failure or mistake by Iron Mountain Inc or Iron Mountain UK (including a failure to notify Iron Mountain Inc or Iron Mountain UK of the service of any document, order, request, notification or other communication) shall invalidate any action taken in

respect of these Undertakings, including any proceeding or judgment pursuant to these Undertakings.

## **19. Effect of invalidity**

19.1 Iron Mountain Inc and Iron Mountain UK undertake that should any provision of the Undertakings be contrary to law or invalid for any reason, Iron Mountain Inc or Iron Mountain UK (as the case may be) shall continue to observe the remaining provisions.

## **20. Extension of time**

20.1 Iron Mountain Inc and Iron Mountain UK recognise and acknowledge that the CMA may, where it considers appropriate, in response to a written request from Iron Mountain Inc and Iron Mountain UK showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Undertakings within which Iron Mountain Inc and Iron Mountain UK, the Monitoring Trustee and/or the Divestiture Trustee must take action.

## **21. Governing law**

21.1 These Undertakings shall be governed by and construed in all respects in accordance with English Law.

21.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

## **22. Termination and release**

22.1 These Undertakings shall remain in force until the later of the dates on which the obligation on Iron Mountain Inc and Iron Mountain UK under paragraph 4.3 expires.

22.2 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

For and on behalf of Iron Mountain Incorporated

.....

Signature

.....

Name

.....

Title

.....

Date

For and on behalf of Iron Mountain (UK) Limited

..... Signature  
..... Name  
..... Title  
..... Date

For and on behalf of Iron Mountain UK Services (Holdings) Limited

..... Signature  
..... Name  
..... Title  
..... Date

For and on behalf of Iron Mountain (UK) Services Limited

..... Signature  
..... Name  
..... Title  
..... Date

## **Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraphs 9.45 -9.46 of the Report.

### **1. Independence**

The proposed purchaser is independent of and unconnected to Iron Mountain Inc and any Associated Person or Affiliate of Iron Mountain Inc or its Group of Interconnected Bodies Corporate.

### **2. Capability**

The proposed purchaser must have access to appropriate financial resources and expertise to operate the divested business and to be an effective competitor.

### **3. Commitment to the relevant market**

The proposed purchaser has the intention demonstrated by (among other things) a suitable business plan (including managerial capability, operational capability and technical capability) to maintain and operate the divested business as a viable and active business in competition with Iron Mountain UK and other competitors in the relevant market so as to remedy the SLC and any adverse effect.

### **4. Absence of competitive or regulatory concern**

The acquisition by the proposed purchaser raises no competition concerns within any market or markets in the UK.

**Approved Iron Mountain Inc and Iron Mountain UK employees with access to C21 confidential information for the purposes of the sale**

Iron Mountain Inc/Iron Mountain UK employee	Function
[X]	Corporate Development
[X]	Corporate Development
[X]	Corporate Development
[X]	Legal
[X]	Legal
[X]	Legal
[X]	Tax
[X]	Tax
[X]	Operations
[X]	Operations
[X]	Operations
[X]	Finance
[X]	Finance
[X]	Finance
[X]	Real estate
[X]	Security
[X]	IT
[X]	Risk Management
[X]	HR