

## **REFERENCE RELATING TO THE ANTICIPATED ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED**

### **Notice of acceptance of interim undertakings pursuant to section 80 of the Enterprise Act 2002**

On 8 June 2015 Iron Mountain Incorporated (Iron Mountain) and Recall Holdings Limited (Recall) entered into a Scheme Implementation Deed pursuant to which Iron Mountain would acquire all of the shares in Recall and thereby ownership of Recall's global business, including Recall's business in the UK.

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.

On 26 January 2016, Iron Mountain requested the CMA's consent under section 78(2) of the Enterprise Act 2002 to the acquisition by Iron Mountain of shares in Recall. Broadly, Iron Mountain was concerned that section 78(2) of the Act might operate to prevent the acquisition from proceeding at a global level.

On 26 February 2016, the CMA wrote to Iron Mountain indicating that it was prepared, in principle, to give its consent in due course to the acquisition subject to agreement on two sets of undertakings. The first set of undertakings concerned the appointment of a monitoring trustee and was accepted by the CMA on 21 March 2016. The second set of undertakings includes the remainder of the proposed hold separate arrangements.

The CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference. The Reference has not been finally determined in accordance with section 79(1) of the Act.

Now, pursuant to section 80(2) of the Act, for the purpose of preventing pre-emptive action, the CMA accepts the undertakings from Iron Mountain and its subsidiaries set out in the Annex (the second set of undertakings) and accordingly the second set of

undertakings comes into force pursuant to section 80(5) of the Act with immediate effect.

Signed by authority of the CMA

Anne Lambert  
*Inquiry Chair*  
30 March 2016

## ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED

### 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 80 of the Enterprise Act 2002

Whereas:

- (a) 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**”);
- (b) on 26 January 2016, Iron Mountain Inc, through its advisers, requested the consent of the CMA under section 78(2) of the Act to the acquisition by Iron Mountain Inc of shares in Recall;
- (c) the CMA has indicated that it is prepared, in principle, to give its consent in due course subject to the agreement of undertakings substantially in the form of two sets of draft undertakings attached to a letter of 26 February 2016;
- (d) the CMA accepted the first set of such undertakings on 21 March 2016;
- (e) these Undertakings constitute the second set of such undertakings;
- (f) the CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA’s decisions on the reference; and
- (g) the Reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 80(2) of the Act, Iron Mountain Inc and its UK subsidiaries - namely Iron Mountain UK Services (Holdings) Limited, Iron Mountain (UK) Services Limited and Iron Mountain (UK) Limited (together, “**Iron Mountain UK**”) - give to the CMA the following Undertakings.

## **Commencement and application**

- 1 These Undertakings apply from the Implementation Date.
- 2 These Undertakings apply to Iron Mountain Inc and Iron Mountain UK.
- 3 Any reference to these Undertakings shall be taken to include the first set of undertakings (unless the context requires otherwise) accepted by the CMA on 21 March 2016.

## **Management of the Iron Mountain UK and Recall UK businesses until determination of proceedings**

- 4 Except with the prior written consent of the CMA, Iron Mountain Inc and Iron Mountain UK shall not, during the specified period, exercise any voting rights specifically in relation to the Recall UK business or take any action which might prejudice the Reference or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the Recall UK business with the Iron Mountain UK business;
  - (b) transfer the control of the Recall UK business or any of its subsidiaries; or
  - (c) otherwise impair the ability of the Recall UK business or the Iron Mountain UK business to compete independently in any of the markets affected by the transaction.
- 5 Further and without prejudice to the generality of paragraph 4 and subject to paragraphs 6 and 7, 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:
  - (a) the Recall UK business is carried on separately from the Iron Mountain UK business and the Recall UK business's separate sales and/or brand identity is maintained;
  - (b) the Recall UK business and Iron Mountain UK business are each maintained as a going concern and sufficient resources are made available for the development of the Recall UK business and the Iron Mountain UK business, on the basis of their respective pre-merger business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management

responsibilities within, the Recall UK business or the Iron Mountain UK business;

- (d) the nature, description, range and quality of records and information management services supplied in the UK by Iron Mountain UK and Recall UK are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Recall UK business and the Iron Mountain UK business are maintained and preserved, including facilities, vehicle fleet, customer lists and goodwill;
  - (ii) none of the assets of the Recall UK business or the Iron Mountain UK business are disposed of outside the ordinary course of business; and
  - (iii) no interest in the assets of the Recall UK business or the Iron Mountain UK business is created or disposed of outside the ordinary course of business;
- (f) there is no integration of the information technology of the business of Recall UK with the Iron Mountain Inc or Iron Mountain UK businesses, and the software and hardware platforms of the Recall UK business remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the Iron Mountain UK and Recall UK businesses are operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Recall UK business are carried out by the Recall UK business alone and, for the avoidance of doubt, the Iron Mountain UK business does not negotiate on behalf of the Recall UK business (and vice versa) or enter into any joint agreements with the Recall UK business (and vice versa);
- (h) all existing contracts of the Recall UK business and the Iron Mountain UK business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Recall UK business or Iron Mountain UK business;
- (j) no staff are transferred between the Recall UK business and the Iron Mountain UK business;

- (k) all reasonable steps are taken to encourage all key staff to remain with the Recall UK business and the Iron Mountain UK business, respectively, and incentive and loyalty arrangements approved by the CMA are put in place for Recall UK's sales personnel and for the roughly 20 highest paid employees of Recall UK to ensure insofar as is reasonably practicable that they remain with Recall UK under their terms of employment prior to the merger;
- (l) no confidential information (as defined below) passes, directly or indirectly, from the Recall UK 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:
  - (i) approval is obtained from the CMA in each case;
  - (ii) 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
  - (iii) should the acquisition of Recall UK by Iron Mountain Inc be prohibited, 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 may be required to retain a copy of specific records in order to comply with its external regulatory and/or accounting obligations, in which case such copy shall be used solely for that purpose;
- (m) a log of communications from the Recall UK 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.

6 Iron Mountain UK shall, and shall procure that Recall UK 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.

7 Notwithstanding the provisions of paragraph 5, Iron Mountain Inc and Iron Mountain UK will ensure that:

- (a) Recall UK continues to provide the same records and information services to [X] as it provided prior to the merger, to the extent required by that customer;

- (b) Recall UK continues to provide the same records and information services to [X] as it provided prior to the merger, to the extent required by that customer;
- (c) the same information technology facilities and services are provided to Recall UK from Recall Europe Limited (“**Recall Europe**”), Recall Sweden AB, Recall Information Services (Romania) Srl and Recall Total Information Inc. as those provided to Recall UK prior to the merger and on the basis that access to information regarding the business of Recall UK shall be firewalled in such manner as approved by the CMA and restricted to the employees of Recall UK, its subsidiaries, and any technical personnel whose services may be required and are performed under a non-disclosure agreement that prohibits such technical service personnel from disclosing any commercially sensitive information to any other person;
- (d) Recall UK is provided with sufficient working capital and any additional capital required to meet the pre-merger business plan of Recall UK and these funds are held separately for the sole use of and access by Recall UK;
- (e) 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 Recall UK;
- (f) Recall UK continues to operate under the same brand name as prior to the merger; and
- (g) Recall UK can use any other intellectual property which belongs to Recall or Recall Europe which it used prior to the merger.

## **Compliance**

- 8 Iron Mountain Inc and Iron Mountain UK shall procure that all of their subsidiaries comply with these Undertakings as if such subsidiaries had given them.
- 9 Iron Mountain Inc and Iron Mountain UK shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Iron Mountain Inc and Iron Mountain UK and their subsidiaries with these Undertakings. In particular, by 5pm (UK time) on the day after the Implementation Date and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Iron Mountain Inc and Iron Mountain UK or other persons of Iron Mountain Inc and Iron Mountain UK

as agreed with the CMA shall, on behalf of Iron Mountain Inc and Iron Mountain UK provide a statement to the CMA in the form set out in the Annex to these Undertakings confirming compliance with these Undertakings.

- 10 At all times, Iron Mountain Inc and Iron Mountain UK shall, or shall procure that Recall UK shall, actively keep the CMA informed of any material developments relating to the Recall UK business or the Iron Mountain UK business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Recall UK business or the Iron Mountain UK business;
  - (b) any interruption of the Recall UK business or Iron Mountain UK business (including without limitation its procurement, service, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost, or substantial changes to the customer contracts for the Recall UK business or Iron Mountain UK business, including any substantial changes in customers' demand; and
  - (d) substantial changes in the contractual arrangements or relationships with key suppliers of the businesses of Recall UK and Iron Mountain UK.
- 11 If Iron Mountain Inc or Iron Mountain UK has any reason to suspect that these Undertakings might have been breached, it shall immediately notify the CMA and the monitoring trustee and any other person that Iron Mountain Inc and Iron Mountain UK may be directed to appoint under paragraph 12.
- 12 The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, these Undertakings, or to do or refrain from doing any specified action in order to ensure compliance with these Undertakings.
- 13 The CMA may require the appointment of a hold separate manager as defined in Appendix C of Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2, January 2014).
- 14 Iron Mountain Inc and Iron Mountain UK shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.



## Interpretation

The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.

For the purposes of these Undertakings:

**“the Act”** means the Enterprise Act 2002;

**“an affiliate”** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

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

**“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 Recall UK;

**“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;

**“the decisions”** means the decisions of the CMA on the questions which it is required to answer by virtue of section 36 of the Act;

**“Implementation Date”** has the meaning given in the Scheme Implementation Deed of 8 June 2015;

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

**“the Iron Mountain business”** means the business of Iron Mountain Inc and its subsidiaries carried on as at the Implementation Date;

**“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 carried on as at the Implementation Date;

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

**“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 Recall UK, Iron Mountain Inc or Iron Mountain UK;

**“specified period”** means the period beginning on the date of these Undertakings and terminating when the Reference is finally determined in accordance with sections 79(1) and (2) of the Act;

**“subsidiary”**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**“the transaction”** means the proposed acquisition by Iron Mountain Inc of Recall;

**“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 company 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, including Preferred Media Limited (company registration number 02974071), C21 Data Services Limited (company registration number SC187604) and Recall GQ Limited (company registration number 02457556), but does not include Recall (Schweiz) AG or its subsidiary Secur Archiv SA;

**“the Recall UK business”** means the business of Recall UK and its subsidiaries carried on as at the Implementation Date;

unless the context requires otherwise, the singular shall include the plural and vice versa.

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

## ANNEX

### Compliance statement for Iron Mountain Incorporated

I **[insert name]** confirm on behalf of Iron Mountain Incorporated (“**Iron Mountain Inc**”) that:

#### Compliance in the Relevant Period

1. In the period from **[insert date]** to **[insert date]** (the “**Relevant Period**”):
  - (a) Iron Mountain Inc has complied with the Undertakings accepted by the CMA in relation to the transaction on **[insert date of these Undertakings]** (the “**Undertakings**”).
  - (b) Iron Mountain Inc’s subsidiaries also have complied with these Undertakings.
2. Subject to paragraphs 6 and 7 of the Undertakings and except with the prior written consent of the CMA:
  - (a) No action has been taken by Iron Mountain Inc that might prejudice the reference under section 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Recall UK business with the Iron Mountain UK business;
    - (ii) transfer the control of the Iron Mountain UK business or the Recall UK business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Recall UK business or the Iron Mountain UK business to compete independently in any of the markets affected by the transaction.
  - (b) The Recall UK business has been carried on separately from the Iron Mountain UK business and the Recall UK business’s separate sales or brand identity has been maintained.
  - (c) The Recall UK business and the Iron Mountain UK business have each been maintained as a going concern and sufficient resources have been made available for the development of the Recall UK business and the Iron Mountain UK business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Recall UK business or the Iron Mountain UK business, except in the ordinary course of business.
- (e) The nature, description, range and quality of records and information management services supplied in the UK by the Recall UK business and the Iron Mountain UK business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Recall UK business and the Iron Mountain UK business, including facilities, customer lists, vehicle fleet and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Recall UK business or the Iron Mountain UK business have been disposed of; and
  - (iii) no interest in the assets of the Recall UK business or the Iron Mountain UK business has been created or disposed of.
- (g) There has been no integration of the information technology of the Recall UK or Iron Mountain UK businesses, and the software and hardware platforms of the Recall UK business have remained essentially unchanged, except for routine changes and maintenance.
- (h) The customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Recall UK business have been carried out by the Recall UK business alone and, for the avoidance of doubt, the Iron Mountain UK business has not negotiated on behalf of the Recall UK business (and vice versa) or entered into any joint agreements with the Recall UK business (and vice versa).
- (i) All existing contracts of the Recall UK business and the Iron Mountain UK business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the Implementation Date.
- (j) No changes have been made to key staff of the Recall UK business or the Iron Mountain UK business.

- (k) No staff have been transferred between the Recall UK business and the Iron Mountain UK business.
  - (l) All reasonable steps have been taken to encourage all key staff to remain with the Recall UK business and the Iron Mountain UK business.
  - (m) Except as permitted by the Undertakings, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary and non-public nature relating to either of the two businesses, has passed, directly or indirectly, from the Recall UK business (or any of its employees, directors, agents or affiliates) to the Iron Mountain UK business (or any of its employees, directors, agents or affiliates), or vice versa.
  - (n) Except as listed in paragraph (o) below, there have been no:
    - (i) key staff that have left or joined the Recall UK business or the Iron Mountain UK business;
    - (ii) interruptions of the Recall UK business or the Iron Mountain UK business (including without limitation procurement, service, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
    - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Recall UK business or the Iron Mountain UK business; or
    - (iv) substantial changes in the Recall UK or Iron Mountain UK business's contractual arrangements or relationships with key suppliers.
  - (o) *[list of material developments]*
3. The working capital, intellectual property and information technology services and facilities specified in the Undertakings have been provided to Recall UK in the manner prescribed in paragraph 7 of the Undertakings.
4. Iron Mountain Inc and Iron Mountain UK and their subsidiaries remain in full compliance with the Undertakings and will, or will procure that Recall UK, continue actively to keep the CMA informed of any material developments relating to the Recall UK or the Iron Mountain UK business in accordance with paragraph 10 of the Undertakings.

**Interpretation**

- 5. Terms defined in the Undertakings have the same meaning in this compliance statement.

For and on behalf of Iron Mountain Incorporated

.....Signature

.....Name

.....Title

.....Date