

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

Notice of acceptance of interim undertakings pursuant to section 80(2) of the Enterprise Act 2002

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 accepted undertakings from 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'). Those undertakings constitute the second set of undertakings and prevent Iron Mountain Inc and Iron Mountain UK from integrating Recall's UK business until the Reference is finally determined. Those undertakings are still in force.
3. 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.
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').
5. 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;
 - (ii) 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; and
 - (iii) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it.

6. 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.
7. On 20 June 2016, Iron Mountain Inc requested that the hold separate arrangements between Iron Mountain Inc, Iron Mountain UK and Recall be updated to reflect only the measures required to achieve the holding separate and ultimate divestment of C21.
8. 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.
9. 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 Inc and its subsidiaries set out in the Annex (the fourth set of undertakings) and accordingly the fourth set of undertakings come into force with immediate effect. In accordance with section 80(5) of the Act, the second set of undertakings is superseded.

Signed by authority of the CMA

Anne Lambert
Inquiry Chair
15 July 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**), pursuant to section 33 (1) of the Enterprise Act (**the Act**), referred the anticipated acquisition of Recall Holdings Limited in the United Kingdom (**Recall**), by Iron Mountain Incorporated (**Iron Mountain Inc**), for further investigation and report by a group of CMA panel members;
- (b) On 30 March 2016, the CMA gave consent to the acquisition by Iron Mountain of shares in Recall so that the transaction could complete at a global level. Completion took place on 2 May 2016. However, interim undertakings accepted by the CMA on 30 March 2016 (the second set of undertakings) prevent Iron Mountain Inc and Iron Mountain UK from integrating Recall's UK business until completion of the CMA's Inquiry.
- (c) On 16 June 2016 the CMA published its final report on the *Completed acquisition by Iron Mountain Incorporated of Recall Holdings Limited (the Report)*.
- (d) 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;
 - (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 RMS in each of the Aberdeen and Dundee;
 - (B) the supply of OSDP in Aberdeen;
 - (C) the supply of OSDP in Dundee; and
 - (D) the supply of 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;

- (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; and
 - (v) the creation of that situation may not be expected to result in an SLC in relation to the UK markets for the supply of RIMS, RMS or OSDP in England.
- (e) 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.
- (f) On 20 June 2016, Iron Mountain Inc requested that the hold separate arrangements between Iron Mountain Inc, Iron Mountain UK and Recall be updated to reflect only the measures required to prevent Iron Mountain Inc and Iron Mountain UK from integrating the C21 business with the Iron Mountain UK business.

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 (the fourth set of undertakings) which replace the second set of undertakings.

Commencement and application

- 1 These Undertakings apply from the date on which they are formally accepted by the CMA.
- 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. The second set of undertakings accepted by the CMA on 30 March 2016 is superseded.

Management of the Iron Mountain UK and C21 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 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:

- (a) lead to the integration of the C21 business with the Iron Mountain UK business;
- (b) transfer the control of the C21 business or any of its subsidiaries; or
- (c) otherwise impair the ability of the C21 business or the Iron Mountain UK business to compete independently on any of the markets affected by the transaction as identified in the Report.

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 C21 business is carried on separately from the Iron Mountain UK business and the separate sales and/or brand identity of the C21 business is maintained;
- (b) the C21 business is maintained as a going concern and sufficient resources are made available for the development of the C21 business, on the basis of its pre-merger business plan;
- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the C21 business;
- (d) the nature, description, range and quality of RIMS (including RMS and OSDP) supplied by C21 are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the businesses:
 - (i) all of the assets of the C21 business are maintained and preserved, including facilities, vehicle fleet, customer lists and goodwill;
 - (ii) none of the assets of the C21 business are disposed of; and
 - (iii) no interest in the assets of the C21 business is created or disposed of;
- (f) 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:

- (i) 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;
 - (ii) existing integration between the information technology systems of Iron Mountain Inc, Iron Mountain UK (including Recall and Recall Europe) and C21 at the date on which these Undertakings are formally accepted by the CMA, provided that Iron Mountain implements appropriate firewall procedures, system access controls and non-disclosure agreements to prevent the sharing of confidential information between C21 and Iron Mountain or Iron Mountain UK (and vice versa);
- (g) 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);
- (h) 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 encourage existing customers of C21 to remain with the C21 business;
- (i) no changes are made to key staff of the C21 business;
- (j) no staff are transferred between the C21 business and the Iron Mountain UK business;
- (k) 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);

- (l) no confidential information (as defined below) 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:
- (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) promptly 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 or Iron Mountain UK may be required to retain a copy of specific records in order to comply with their external regulatory and/or accounting obligations, in which case such copy shall be used solely for that purpose;
 - (iv) 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 their external regulatory and/or accounting obligations as approved by the CMA, provided that the relevant Iron Mountain employees with access to such confidential information execute appropriate confidentiality agreements in respect of the data received from C21 for these reporting purposes; and
 - (v) 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(l) to be an employee of C21;
- (m) 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(l) to be an employee of C21.

- 6 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.

- 7 Notwithstanding the provisions of paragraph 5, Iron Mountain Inc and Iron Mountain UK will ensure that:
- (a) 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:
 - (i) 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
 - (ii) any Iron Mountain employees with access to confidential information shall execute non-disclosure agreements in respect of any confidential data received from C21 in connection with the provision of such services;
 - (b) C21 continues to provide the same RIMS, RMS and OSDP services (as appropriate) to [X] as it provided prior to the date that these Undertakings are formally accepted by the CMA, to the extent required by such customers;
 - (c) 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;
 - (d) 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;
 - (e) C21 continues to operate under the same brand name as prior to the merger; and
 - (f) C21 can use any other intellectual property which belongs to C21 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 working day after these Undertakings are formally accepted by the CMA, 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 C21 shall, actively keep the CMA informed of any material developments relating to the C21 business, which includes but is not limited to:
 - (a) details of key staff who leave or join the C21 business;
 - (b) any interruption of the C21 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 C21 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 C21.
- 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:

'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;

'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;

'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;

'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;

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

'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;

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

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

'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;

'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 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;

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

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 sale of C21 to a purchaser approved by the CMA in accordance with section 82 of the Act 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:
 - (i) lead to the integration of the C21 business with the Iron Mountain UK business;
 - (ii) transfer the control of the Iron Mountain UK business or the C21 business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the C21 business or the Iron Mountain UK business to compete independently in any of the markets affected by the transaction.
 - (b) C21 business has been carried on separately from the Iron Mountain UK business and the C21 business’s separate sales or brand identity has been maintained.
 - (c) The C21 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 C21 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 C21 business or the Iron Mountain UK business, except in the ordinary course of business.
- (e) The nature, description, range and quality of RIMS, RMS and OSDP services supplied in the UK by the C21 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 C21 business and the assets of the Iron Mountain UK business servicing Aberdeen and/or Dundee, 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 C21 business or the assets of the Iron Mountain UK business servicing Aberdeen and/or Dundee have been disposed of; and
 - (iii) no interest in the assets of the C21 business or the Iron Mountain UK business servicing Aberdeen and/or Dundee has been created or disposed of.
- (g) There has been no integration of the information technology of the C21 or Iron Mountain UK businesses, and the software and hardware platforms of the C21 business have remained essentially unchanged, save for: [i] for routine changes and maintenance; and [ii] as permitted by the Undertakings.
- (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 C21 business have been carried out by the C21 business alone and, for the avoidance of doubt, the Iron Mountain UK business has not negotiated on behalf of the C21 business (and vice versa) or entered into any joint agreements with the C21 business (and vice versa).
- (i) All existing contracts of the C21 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 C21 business or the Iron Mountain UK business servicing Aberdeen and/or Dundee.
 - (k) No staff have been transferred between the C21 business and the Iron Mountain UK business.
 - (l) All reasonable steps have been taken to encourage all key staff to remain with the C21 business and the Iron Mountain UK business servicing Aberdeen and/or Dundee.
 - (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 C21 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 C21 business or the Iron Mountain UK business servicing Aberdeen and/or Dundee;
 - (ii) interruptions of the C21 business or the Iron Mountain UK business servicing Aberdeen and/or Dundee (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 C21 business or the Iron Mountain UK business servicing Aberdeen and/or Dundee; or
 - (iv) substantial changes to the contractual arrangements or relationships with key suppliers of the C21 business or the Iron Mountain UK business servicing Aberdeen and/or Dundee.
 - (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 C21 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 C21, continue actively to keep the CMA informed of any material developments relating to

the C21 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