

IRON MOUNTAIN OFFSITE DATA PROTECTION

COMMERCIAL CONTRACT FOR MAGNETIC MEDIA STORAGE

REFERENCE NO: REA/COM/A000302

(Please quote the above reference number in all correspondence)

This Agreement dated 17 April 2002 is between **IRON MOUNTAIN OFFSITE DATA PROTECTION** ("IM") whose registered office is at 114/118 Southwark Bridge Road, London, SE1 0EF and **THE GLOBAL NAME REGISTRY, LIMITED** ("the Customer") of 125 High Holborn, London WC1V 6QA.

1. Definitions

1.1 In this Agreement:-

"Ad-Hoc Delivery/Collection" means a request received by 5.30pm during any Normal Working Day for delivery or collection the next Normal Working Day.

"Articles" means the magnetic media and other materials agreed to be stored by IM.

"Effective Date" 24th April 2002.

"Day Emergency Delivery/Collection" means a request received by 3.30pm during any Normal Working Day for delivery or collection within the next two hours. This service is available for a maximum of ten Articles.

"Night, Weekend or Bank Holiday Emergency Delivery/Collection" means a request received after 3.30pm during any Normal Working Day or outside Normal Working Hours for delivery or collection within the next two hours. The service is available for a maximum of ten (10) Articles.

"Inventory" means the list of all Articles stored by IM showing reference number or serial number as appropriate.

"Normal Working Day" means Monday to Friday excluding statutory holidays in the United Kingdom.

"Normal Working Hours" means 9am to 5.30pm during Normal Working Days.

"Quotation" means the two quotations numbered JA0050A and JA0050B included in Clause 6.1 of this Agreement.

2. Agreement

2.1 IM agrees to provide the storage facilities and services specified in this Agreement and in the Quotation subject to the conditions set out in this Agreement.

2.2 These conditions apply to any agreement between IM and the Customer whereby IM agrees to provide storage facilities or other services to the Customer. All other terms, conditions and warranties, whether express or implied, statutory or otherwise, are excluded save to the extent provided in these conditions or in any written document forming part of the Agreement and signed on behalf of both parties by their duly authorised representatives.

2.3 This Agreement shall take effect from the date of execution of this agreement and will continue for a period of thirty six (36) months, after which time it will continue unless and until terminated. Either party may terminate this Agreement by serving upon the other party at least three (3) months written notice to expire on the last day of the month immediately prior to any anniversary of the Effective Date. The Customer may also terminate the Agreement subject to the terms of Clause 6.2 below.

3. Inventory and Storage Location

- 3.1 On receipt by IM of new or returned Articles the Customer must supply an inventory of the Articles detailing the Customer's reference information that will be used by the Customer to order subsequent retrievals. The reference information must be in a form that is acceptable to IM. The Customer will be informed of any discrepancy between the inventory of Articles and Articles actually received by IM.
- 3.2 IM reserves the right to re-locate Articles to other IM storage locations at IM's sole discretion. Said relocation will not materially affect the quality of services provided to the Customer.

4. Containers

- 4.1 IM will only accept Articles packed in containers of a type size and style approved by IM as suitable for the storage of the specific Articles ("Approved Containers").
- 4.2 If the Customer does not have containers suitable for use as Approved Containers IM will at the Customer's request supply sufficient Approved Containers to the Customer and will invoice the Customer for the Approved Containers supplied in accordance with the charges separately quoted by IM at the time.

Withdrawals

- 5.1 IM will not hand over or permit withdrawals of any Articles to any person who is not able to provide proof of identity or affiliation with the Customer satisfactory to IM.
- 5.2 If the Customer wishes to collect any Articles from IM's premises, IM reserves the right to require the Customer's duly authorised representative whilst on its premises to be accompanied by a representative of IM at all times and to charge the Customer in accordance with the charges separately quoted by IM within the supplied Schedule of Rates.

6. Charges

- 6.1 The Customer will be charged for storage and services at the rates specified in the Quotation (subject to any increases in the rates levied by IM under the terms of Clause 6.2 below) or at the rates quoted by IM upon receipt of Customers application for the provision of services not detailed in the Quotation.
- 6.2 The charges shown in the Quotation will remain fixed for a minimum period of one (1) year from the Effective Date. IM reserves the right to review the charges shown in the Quotation or amend any term or condition of this Agreement at any time after the expiry of the first year of this Agreement by giving the Customer at least one (1) months written notice. The Customer has the right within twenty-eight (28) days of receiving such notice to give IM three (3) months written notice of termination of this Agreement. IM will not seek to apply any review of charges or amend any term or condition of this Agreement during the Customers three (3) month period of notice of termination of this Agreement.
- 6.3 If for whatever reason storage facilities or services are provided by IM after the expiry of any period of notice of termination of this Agreement IM reserves the right to continue its charges at such rates or increased rates as would have been charged had the Customer not given notice to terminate this Agreement in accordance with Clauses 2.3 or 6.2
- 6.4 All rates are quoted exclusive of VAT or any similar duty or tax which will be included in all relevant invoices.
- 6.5 IM reserves the right to charge the Customer for waiting time at IM's charge rate then prevailing, and as set forward in the Quotation, if Articles requested for delivery or collection cannot be delivered or collected by IM at the appointed time.

7. Withdrawal Procedures and Charges

- 7.1 The Customer will provide written notice of a request for permanent retrieval or destruction of Articles stored by IM who will comply with such reasonable written requests on the dates specified and will provide to the Customer documentary evidence of such destruction. No credits will be issued for Articles that are later destroyed or permanently retrieved.
- 7.2 Upon termination of this Agreement howsoever caused or for whatever reason IM will invoice the Customer for all costs incurred in permanently retrieving the Articles and in delivering the Articles to the Customer at the rates specified in the Quotation.

8. Payment

- 8.1 All charges due hereunder will be invoiced monthly in arrears and are due for payment within thirty (30) days of the date of the invoice.

- 8.2 Notwithstanding the provisions of this Agreement and the Quotation the total of any invoice rendered by IM shall not be less than twenty five pounds (£25) excluding VAT.
- 8.3 IM reserves the right to charge interest on payments outstanding after the due date for payment at the rate (both before and after judgement) of 2% per month calculated on the outstanding balance (including interest accrued thereon) due from the due date for payment until receipt of payment by IM of the entire outstanding balance.
- 8.4 IM should have the right to terminate the Agreement, upon providing five (5) days' written notice of termination to IM in the event that the Customer has failed to pay any invoice to IM (absent any amounts being disputed in good faith) within sixty (60) days of the date on which such invoice became due and payable.
- 9. Customer's Warranties**
- 9.1 The Customer warrants that he is contracting as principal and not as agent and that he is entitled to deal with the Articles in accordance with this Agreement.
- 9.2 The Customer warrants that the Articles are not dangerous to persons or property and are not especially inflammable and contain no explosive or contaminative substances, when stored under normal conditions.
- 10. Environmental Storage Conditions**
- So far as is reasonably practicable IM will endeavour to store all Articles under the following environmental conditions:
- Temperature and humidity controlled environment.
Fire protection afforded by a Halon Gas Suppression System.
- 11. Assignment**
- 11.1 Neither IM or the Customer will assign the benefit of this Agreement without the prior written consent of the other, which will not be unreasonably withheld.
- 11.2 IM shall be entitled to sub-contract the whole or any part of its obligations hereunder other than those relating to the storage of the Articles to such sub-contractors and upon such terms and conditions as IM in its absolute discretion shall think fit, provided that as between IM and the Customer, IM shall remain primarily responsible for the performance of its duties and obligations hereunder and for the performances of sub-contractors successors and assigns.
- 12. Death or Personal Injury**
- 12.1 ***IM will indemnify the Customer in respect of death or personal injury which is caused by the negligence of IM (being negligence as defined in Section 1 of the Unfair Contract Terms Act 1977).***
- 12.2 ***The indemnity given in Clause 12.1 is given on the condition that the Customer will notify IM of such death or personal injury within five (5) days of its becoming aware of such death or personal injury and will allow IM full access to investigate the cause of death or examine the injury.***
- 12.3 ***Save as expressly otherwise provided in this Agreement, IM will not be liable for any loss or damage arising from or in connection with death or personal injury.***
- 13. Damage, Insurance and Indemnity**
- 13.1 ***IM will indemnify the Customer against direct damage to Articles to the extent caused by the negligent acts or omissions of IM, its sub-contractors, servants or agents under this Agreement, but not otherwise, provided that the total liability of IM shall not exceed the physical replacement cost of the item by IM to a maximum fifty (£50) pounds per article in respect of the contents of each Approved Container, or part thereof, so damaged.***
- 13.2 ***IM cannot reasonably know the value to the Customer of the information comprised in the Articles being stored, and cannot replace that information if Articles are lost or destroyed. IM therefore cannot reasonably obtain insurance for such eventualities and so, except as otherwise expressly provided for in Clause 13 and Clause 14.1, the Customer agrees to indemnify and hold harmless IM, its agents, employees, successors and assigns in relation to any loss or damage, whether direct or consequential arising out of the storage or delivery of the Articles, or the services provided hereunder by IM in relation to the Articles, or any failure on the part of the Customer to perform or comply with the terms hereof.***
- 13.3 ***IM's total liability is limited to five hundred thousand pounds (£500,00.00) in aggregate in any one calendar year in respect of liability arising under Clause 13.1.***

14. Default

14.1 If the Customer shall default or commit a breach of this Agreement or of any other of his warranties or obligations to IM, or if any distress or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Customer is a limited company and any resolution or petition to wind up the Customer's business (other than for the purposes only of amalgamation or reconstruction) shall be passed or presented, or if a receiver, administrator or administrative receiver of the undertaking, property or assets or any part thereof of the Customer shall be appointed, then without prejudice to any other rights or remedy available. IM may suspend or determine, or suspend and subsequently determine, this Agreement or any unfulfilled part thereof.

14.2 The granting by IM to the Customer of time or any other indulgence, forbearance or concession shall in no way prejudice or constitute a waiver of IM's entitlement to enforce any of its rights under this Agreement.

15. Confidentiality

As far as is reasonably practical, IM agrees to keep secret any trade secrets of the Customer and any other confidential information concerning the Customer's affairs which has come to IM's knowledge by reason only of its possession of any Article.

16. Force Majeure

IM shall not be liable in any way for any delay or failure or for the consequences of any delay or failure, in performing any of its obligations under this Agreement if such delay or failure is due to any cause whatsoever beyond the reasonable control of IM, and shall be entitled to a reasonable extension of the time for performing such obligations.

17. Notices

Any notices to be served hereunder may be personally delivered or sent by pre-paid first class post or facsimile transmission and may be sent, delivered or transmitted to either party at its registered office or such other address as is notified for this purpose from time to time by either party to the other. A notice shall be deemed to have been given immediately on personal delivery or facsimile transmission, or 48 hours after posting if sent by first class post, and in proving such service it shall be sufficient to show that the envelope was properly addressed and put into the post. The contract reference number should be quoted in all correspondence.

18. Miscellaneous

18.1 This Agreement and the Quotation embody the entire terms of agreement between the parties and the Customer acknowledges that there are no warranties, representations, promises, terms, conditions or obligations, written, express or implied other than those contained herein.

18.2 No variation of this Agreement shall be effective unless made in writing and signed by a director of IM and a duly authorised signatory of the Customer or effected under the terms of Clause 6.2 of this Agreement.

18.3 Clause headings are for information only and shall not affect (nor be treated or interpreted so as to affect) construction of the conditions set out in this Agreement.

18.4 The masculine includes the feminine gender and the singular shall include the plural and vice versa and a reference to a statutory provision will be interpreted as a reference to the provision as amended or re-enacted from time to time including any regulation or statutory instrument issued pursuant to such provision at any time.

18.5 This Agreement shall be governed and construed in accordance with the laws of England and each party hereto agrees to the non-exclusive jurisdiction of the Courts of England.

SIGNED by: *Paul Hickmott*
Name: *Paul Hickmott*
Signature: *[Signature]*
(Authorised on behalf of Iron Mountain Off-Site Data Protection)
Date: *17-4-02*

SIGNED by: *Karen Elizaga*
Name: *Karen Elizaga*
Signature: *[Signature]*
(Duly Authorised Signatory of the Customer)
Date: *May 1, 2002*

