

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the Trade
Practices Act by Peregrine Corporation
Pty Ltd

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1. Person giving the Undertaking

This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Peregrine Corporation Pty Ltd ACN 101 751 400, on behalf of itself and its Subsidiaries (**Peregrine**). For the purposes of this Undertaking, Peregrine includes Shahin Enterprises Pty Ltd ACN 008 150 543 and its Subsidiaries.

2. Background

The parties and the transaction

- (a) 7-Eleven is a privately owned franchisor of over 400 retail convenience stores, 195 of which also operate as retail service stations. The majority of 7-Eleven's retail sites are operated under franchise arrangements. However, 7-Eleven sets the price of fuel at all sites which sell fuel. 7-Eleven sources fuel from Shell nationally and is a subscriber to the Informed Sources Oil Pricewatch service.
- (b) Peregrine is a privately owned operator of 44 retail service stations in Adelaide. Two of Peregrine's sites are operated under its company brand 'On the Run'. The remaining sites are operated under the BP brand, with 'On the Run' branded convenience stores on site. Peregrine currently has a supply contract for fuel with BP and is a subscriber to the Informed Sources Oil Pricewatch service.
- (c) Mobil Oil Australia Pty Ltd (**Mobil**) and its parent company ExxonMobil Australia Pty Ltd is one of the four refiner-marketers of petrol, diesel and LPG in Australia. The ultimate holding company of Mobil is Exxon Mobil Corporation (**Exxon Mobil**), a US based corporation. Mobil owns a refinery in Altona, Melbourne, and the 'mothballed' Port Stanvac refinery in SA. Mobil has recently announced the Port Stanvac refinery will be demolished and the site rehabilitated. Mobil also owns or operates five fuel terminals located across Australia.
- (d) Mobil sells petrol, diesel and LPG on a wholesale basis to its own retail sites as well as independent fuel retailers (including United and Mobil branded independent retailers in regional areas).
- (e) On 27 May 2010, 7-Eleven announced that it would acquire the retail fuel business of Mobil which comprises 295 Mobil retail fuel sites throughout Victoria, New South Wales, Queensland, and South Australia (**7-Eleven Proposed Acquisition**). 7-Eleven does not currently operate in South Australia. Therefore all of the Mobil retail fuel sites (i.e. 29 sites) and associated assets in South Australia will

be divested by 7-Eleven to Peregrine (**Peregrine Proposed Acquisition**).

The ACCC's review

- (f) On 27 May 2010, the ACCC commenced its informal review of the 7-Eleven Proposed Acquisition and the Peregrine Proposed Acquisition.
- (g) The ACCC undertook market inquiries and considered information provided by 7-Eleven, Peregrine, industry participants, motoring organisations and others. The ACCC's inquiries were aimed at assessing whether the Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in a market in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

The ACCC's competition concerns

- (h) The ACCC considered that the Peregrine Proposed Acquisition raised competition concerns in markets for the retail supply of petrol, diesel and automotive LPG in the area of Christies Beach/Noarlunga Downs in South Australia (the **Relevant Retail Fuel Market**).
- (i) The ACCC considered that the Peregrine Proposed Acquisition, in the absence of this Undertaking, would remove a significant competitor in the Relevant Retail Fuel Market. As a result, the ACCC considered that in the absence of this Undertaking, the Peregrine Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in the Relevant Retail Fuel Market.
- (j) Peregrine does not consider that the Peregrine Proposed Acquisition would be likely to substantially lessen competition in the Relevant Retail Fuel Market. However, in order to address the ACCC's competition concerns, Peregrine has, without admission, provided this Undertaking pursuant to section 87B of the Act.

Proposed divestiture

- (k) The objective of this Undertaking is to address the ACCC's competition concerns which would otherwise arise as a consequence of the Peregrine Proposed Acquisition.
- (l) This Undertaking aims to maintain competition through:
 - (i) the creation of a viable, effective, stand-alone independent and long term competitor for the retail

- supply of petrol, diesel and automotive LPG in the Relevant Retail Fuel Market;
- (ii) ensuring that the Approved Purchaser of the Divestiture Business has the necessary assets, rights and obligations to compete effectively in the Relevant Retail Fuel Market.

Related undertaking by 7-Eleven

- (m) This Undertaking is related to an undertaking given to the ACCC by 7-Eleven (the **7-Eleven Undertaking**).
- (n) The ACCC also considered that the 7-Eleven Proposed Acquisition raised competition concerns in markets for the retail supply of petrol, diesel and automotive LPG in the following areas:
 - (i) Mount Druitt (NSW);
 - (ii) Ashmore (Queensland); and
 - (iii) Riverhills (Queensland).
 (collectively, the **7-Eleven Retail Fuel Markets**)
- (o) The ACCC considered that the 7-Eleven Proposed Acquisition, in the absence of the 7-Eleven Undertaking, would remove a significant competitor in the 7-Eleven Retail Fuel Markets. As a result, the ACCC considered that in the absence of the 7-Eleven Undertaking, the 7-Eleven Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in the 7-Eleven Retail Fuel Markets.
- (p) 7-Eleven has, without admission, provided the 7-Eleven Undertaking pursuant to section 87B of the Act.

3. Defined terms and interpretation

3.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 2 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

3.2 Interpretation

The interpretation clause in Schedule 2 sets out rules of interpretation for this Undertaking.

4. Commencement and termination of Undertaking

4.1 Commencement

This Undertaking comes into effect when:

- (a) the Undertaking is executed by Peregrine; and
- (b) the Undertaking so executed is accepted by the ACCC.

4.2 Termination

- (a) This Undertaking will terminate on the date the ACCC confirms to Peregrine in writing that the sale of the Divestiture Business has been completed; and any transfer, grant, or provision of licences, agreements and transitional services necessary for the operation of the Divestiture Business have been fulfilled.
- (b) Notwithstanding clause 4.2(a), this Undertaking terminates on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

5 Sale of Divestiture Business

5.1 Sale of Divestiture Business

- (a) Peregrine must divest, or cause the divestiture of, the Divestiture Business to an Approved Purchaser of the Divestiture Business before the end of the Divestiture Period in accordance with this Undertaking.
- (b) The Divestiture Business specifically consists of:
 - (i) the leasehold interest in the property located at the Noarlunga Downs site or the freehold interest in the property located at the Christies Beach site;
 - (ii) the assets of the Divestiture Business, which include the plant and equipment, dry stock; and wet stock,as described more fully in the Business Sale Agreement.

- (c) At the option of the Approved Purchaser, the Divestiture Business must include the transfer to the Approved Purchaser of:
 - (i) all employees employed in the operation of the Divestiture Business at the Control Date;
 - (ii) any other employees; and
 - (iii) any service provider under a service contract;

who are, in each case, necessary for the Approved Purchaser to maintain, operate and conduct effectively the Divestiture Business and who consent to the transfer of their employment to the Approved Purchaser.
- (d) Peregrine must do everything in its power or control to enforce the terms of any agreement with the Approved Purchaser under which the Approved Purchaser is obliged to acquire the Divestiture Business.
- (e) At the option of the Approved Purchaser, Peregrine must provide services that the Approved Purchaser requires for the operation of the Divestiture Business, subject to the services being:
 - (i) provided on a transitional basis;
 - (ii) provided on arm's length terms; and
 - (iii) notified to the ACCC.

5.2 Licences, permits, regulatory approvals and Third Party Consents

- (a) Peregrine must, before the Divestiture Date effect or obtain the transfer to the Approved Purchaser of or assist the Approved Purchaser with the transfer of, as applicable and subject to law, all licences, permits and/or other regulatory approvals that are required for the operation of the Divestiture Business to the extent required by the Approved Purchaser.
- (b) Peregrine must:
 - (i) obtain or assist the Approved Purchaser to obtain all Third Party Consents before the Divestiture Date;
 - (ii) comply with all requirements necessary to obtain any Third Party Consents, including by promptly providing information to the third party; and
 - (iii) act in good faith in its negotiations with the Approved Purchaser in relation to gaining any Third Party Consents.

- (c) If, seven days before the Divestiture Date, the Approved Purchaser fails to obtain or is unable to obtain any licence, permit or other regulatory approval referred to in clause 5.2(a) above or the Approved Purchaser fails to obtain or is unable to obtain any Third Party Consents, then:
 - (i) Peregrine must within two Business Days provide the ACCC with details of those licences, permits, approvals or Third Party Consents and including reasons why those licences, permits, approvals or Third Party Consents could not be given prior to that date, and identify the information required to obtain the licences, permits, approvals or Third Party Consents, and
 - (ii) Peregrine must continue to do everything in its power to satisfy clause 5.2(a) and 5.2(b) above as soon as possible after the Divestiture Date (and until such time as clause 5.2(a) and 5.2(b) is satisfied).
 - (d) Notwithstanding that Peregrine has complied with clauses 5.2(a), 5.2(b) and 5.2(c) of this Undertaking, it remains a breach of this Undertaking if Peregrine is unable to effect the divestiture of the Divestiture Business to an Approved Purchaser within the Divestiture Period by reason of a failure to obtain any licences, permits, approvals or Third Party Consents.
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6. Purchaser approval process

6.1 Approved Purchaser

The ACCC has approved Caltex Australia Petroleum Pty Ltd (**Caltex**) as the Approved Purchaser for the Divestiture Business in accordance with the Proposed Purchaser criteria set out in clause 6.2..

6.2 Proposed Purchaser Notice

If Peregrine seeks to have a purchaser approved by the ACCC for the purposes of clause 6.3(a) (**Proposed Purchaser**) other than the Approved Purchaser provided in clause 6.1, Peregrine must give the ACCC a written notice (**Proposed Purchaser Notice**) containing:

- (a) the name, address, telephone number and any other available contact details of the Proposed Purchaser;
- (b) a copy of the Business Sale Agreement;
- (c) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;

- (d) details of the Proposed Purchaser's experience in the relevant markets;
- (e) the names of the owner and the directors of the Proposed Purchaser; and
- (f) a submission from Peregrine addressing the factors set out in clause 6.3(b) below.

6.3 Approval Notice

- (a) The ACCC may, within 15 Business Days after receipt by the ACCC of the Proposed Purchaser Notice, or such further period as is required by the ACCC, provide Peregrine with a written notice (**Approval Notice**) stating that the Proposed Purchaser is an Approved Purchaser.
- (b) Without limiting the ACCC's discretion, in making a decision to provide an Approval Notice, the factors the ACCC will have regard to include whether:
 - (i) the Proposed Purchaser will complete the transaction as contemplated by the ACCC approved Business Sale Agreement pursuant to which the Proposed Purchaser will acquire from Peregrine the relevant Divestiture Business;
 - (ii) the Proposed Purchaser is independent of, and has no direct or indirect interest in, Peregrine;
 - (iii) the Proposed Purchaser is of good financial standing and has an intention to maintain and operate the Divestiture Business as a going concern;
 - (iv) the Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (v) the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- (c) The ACCC may revoke its:
 - (i) acceptance of an Approved Purchaser; and/or
 - (ii) acceptance of this Undertaking,

if the ACCC becomes aware that the information provided to it was incorrect, inaccurate or misleading.

7. Preservation of the Divestiture Business

7.1 Divestiture Business – Peregrine’s maintenance obligations

- (a) Subject to 7.1(c), from the Control Date Peregrine must not sell (other than dry stock and wet stock in the ordinary course of business) or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business to a person other than an Approved Purchaser or make any Material Change (excluding branding or signage changes), except in accordance with this Undertaking.
- (b) Subject to 7.1(c), without limiting this clause 7, Peregrine must, from the Control Date until the Divestiture Date take all steps to ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the value in and goodwill of the Divestiture Business as at the Control Date.
- (c) Notwithstanding 7.1(a) and (b) above, Peregrine may temporarily cease trading activities being carried on the subject site for a reasonable duration (but in any event no longer than five Business Days) in order to effect signage and branding changes reasonably required in order to comply with its obligations to either of Mobil, Caltex or an Approved Purchaser.

7.2 Direction to personnel

As soon as practicable after the Control Date, Peregrine must direct its personnel, including directors, contractors, managers, officers, employees and agents, not to do anything inconsistent with Peregrine's obligations under this Undertaking.

7.3 Confidential Information

- (a) Subject to clause 7.3(b), Peregrine must not, at any time from the Control Date and for a period of 12 months after the termination of this Undertaking, use or disclose any confidential information about the Divestiture Business gained through:
 - (i) the ownership and/or management of the Divestiture Business; or
 - (ii) the provision of any services or technical assistance to the Approved Purchaser of the Divestiture Business.

- (b) Clause 7.3(a) does not apply to information that Peregrine requires to comply with legal and regulatory obligations.

8. Management of Divestiture Business and Approved Independent Manager

8.1 Approved Purchaser to manage the Divestiture Business

- (a) Where an Approved Purchaser for a Divestiture Business has entered into an interim agreement or arrangement with Peregrine to lease or license the relevant site and manage the Divestiture Business from the Control Date (or shortly thereafter) until the Divestiture Date, Peregrine is not required to comply with this clause 8.
- (b) If however the Divestiture Business becomes an Unsold Business Peregrine must comply with this clause 8.

8.2 Obligation to appoint an Approved Independent Manager

Pursuant to clause 8.1, Peregrine must appoint, and maintain, an Approved Independent Manager to manage the Divestiture Business, from the date the Divestiture Business becomes an Unsold Business until the Divestiture Date in accordance with this Undertaking. If required, the Approved Independent Manager will also effect the sale of an Unsold Business pursuant to clause 10 of this Undertaking.

8.3 Proposed Independent Manager

- (a) Within five Business Days of clause 8.1 coming into effect, Peregrine must identify a prospective Approved Independent Manager (the **Proposed Independent Manager**) and provide the ACCC with written notice of the identity of the Proposed Independent Manager.
- (b) The written notice referred to in clause 8.3(a) is to include such information and documents as the ACCC requires to assess whether to object to the appointment of the Proposed Independent Manager, including the proposed terms of appointment.
- (c) The Proposed Independent Manager must be a person who has the qualifications and experience necessary to manage the Divestiture Business; and the qualifications and experience necessary to, if required, effect the sale of an Unsold Business pursuant to clause 10 of this Undertaking.
- (d) The Proposed Independent Manager must be a person who is independent of Peregrine. The criteria by which the independence of the Proposed Independent Manager will be determined include whether the person is:

- (i) a current employee or officer of Peregrine;
- (ii) a person who has been an employee or officer of Peregrine in the past three years;
- (iii) a person who, in the opinion of the ACCC, holds a material interest in Peregrine;
- (iv) a professional adviser of Peregrine whether current or in the past three years;
- (v) a person who has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with Peregrine, but for the terms of any Approved Independent Manager agreement with Peregrine;
- (vi) a supplier, or a person who is an employee or contractor of a firm or company that is a supplier, of Peregrine; or
- (vii) a customer of, or a person who is an employee or contractor of a firm or company that is a customer of Peregrine.

8.4 Appointment of the Approved Independent Manager

If:

- (a) within five Business Days of receipt by the ACCC of the written notice referred to in clause 8.3(a); or
- (b) such further period as is required by the ACCC and notified to Peregrine in writing prior to the expiration of the five Business Day period,

the ACCC informs Peregrine that it:

- (c) does not object to the appointment of the Proposed Independent Manager as the Approved Independent Manager and if required the Approved Divestiture Agent, Peregrine will:
 - (i) appoint the Proposed Independent Manager as the Approved Independent Manager as soon as practicable, and within two Business Days of the date on which the ACCC informs Peregrine that it does not object to the appointment of the Proposed Independent Manager as the Approved Independent Manager, on terms approved by the ACCC and consistent with the performance by the Approved Independent Manager of his or her functions under this Undertaking; and
 - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution; or

- (d) does object to the appointment of the Proposed Independent Manager as the Approved Independent Manager and if required the Approved Divestiture Agent, Peregrine will:
 - (i) appoint a person identified by the ACCC at its absolute discretion as the Approved Independent Manager, within two Business Days of the ACCC nominating the alternative person, on terms approved by the ACCC and consistent with the performance by the Approved Independent Manager of his or her functions under this Undertaking; and
 - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution.

8.5 Obligations relating to the Approved Independent Manager

- (a) Peregrine must procure that the terms of appointment of the Approved Independent Manager include obligations on the Approved Independent Manager to:
 - (i) continue to satisfy the independence criteria in clause 8.3(d) for the period of his or her appointment;
 - (ii) manage and operate the Divestiture Business lawfully in the ordinary course of business, having regard to the nature of the Divestiture Business;
 - (iii) make only those Material Changes to the Divestiture Business which have been approved by the ACCC;
 - (iv) to the maximum extent practicable, operate the Divestiture Business in a manner which is financially and operationally separate from Peregrine;
 - (v) keep the books and records of the Divestiture Business separate from those of Peregrine;
 - (vi) implement specific measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business;
 - (vii) use best endeavours to renew or replace upon expiry material contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
 - (viii) maintain appropriate personnel levels and ensure that the Divestiture Business have access to a sufficient number of personnel to operate as viable going

- concerns, and may engage personnel (including professional advisers) as the Approved Independent Manager determines necessary;
- (ix) until the Divestiture Date, approve any redeployment of employees employed in the Divestiture Business, to any other business operated by Peregrine;
 - (x) not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;
 - (xi) from the date of appointment, provide a written report each month to the ACCC in relation to the operation of the Divestiture Business and this Undertaking and carry out the ACCC's directions in relation to matters arising from the report;
 - (xii) review and report to the ACCC regarding any changes made to the Divestiture Business by Peregrine to ensure the separation of the Divestiture Business, and make any recommendation considered appropriate including, if necessary, steps to reverse such changes made by Peregrine;
 - (xiii) provide any information or documents requested by the ACCC about the Divestiture Business directly to the ACCC;
 - (xiv) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Approved Independent Manager or in relation to any matter that may arise in connection with this Undertaking;
 - (xv) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager under this Undertaking;
 - (xvi) co-operate with Peregrine in relation to the sale of the Divestiture Business, including by providing reasonable information required by prospective purchasers, facilitating reasonable site visits to the location of the Divestiture Business and making personnel available as required for interview by prospective purchasers.

- (xvii) if the Divestiture Business becomes the Unsold Business pursuant to clause 10.1, satisfy the obligations in clause 10.5.
- (b) Without limiting the obligations in this Undertaking, Peregrine must:
- (i) provide a copy of the executed terms of appointment for the Approved Independent Manager to the ACCC within one Business Day of their execution;
 - (ii) comply with and enforce the terms of appointment for the Approved Independent Manager;
 - (iii) maintain and fund the Approved Independent Manager to carry out his or her functions;
 - (iv) indemnify the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (v) not interfere with, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her functions as the Approved Independent Manager;
 - (vi) ensure that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Business;
 - (vii) accept (and direct its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (viii) provide and pay for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager;

- (ix) provide access to the facilities, sites or operations of the Divestiture Business reasonably required by the Approved Independent Manager and/or the ACCC;
- (x) provide to the Approved Independent Manager any information or documents requested by the Approved Independent Manager that he or she considers necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC;
- (xi) request any information relating to the Divestiture Business which it requires in order to comply with any obligation under this Undertaking, and which obligation is notified to the Approved Independent Manager, from the Approved Independent Manager, who may decide whether or not to provide access to that information;
- (xii) ensure that the Approved Independent Manager will provide information or documents requested by the ACCC directly to the ACCC; and
- (xiii) take any steps directed by the ACCC in relation to the matters arising from a report of the Approved Independent Manager referred to in clauses 8.5(a)(xi), 8.5(a)(xii), or 8.5(a)(xiv) within 10 Business Days of being so directed (or such longer period agreed with the ACCC).

8.6 Resignation or termination of an Approved Independent Manager

- (a) Peregrine must immediately notify the ACCC in the event that an Approved Independent Manager resigns or otherwise stops acting as an Approved Independent Manager before the Divestiture Date.
- (b) The ACCC may approve any proposal by, or alternatively may direct, Peregrine to terminate an Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking.
- (c) If either clause 8.6(a) or 8.6(b) applies, the ACCC may nominate an alternative Approved Independent Manager.
- (d) Peregrine must, within two Business Days of the ACCC nominating an alternative Approved Independent Manager:
 - (i) appoint the Approved Independent Manager nominated by the ACCC on terms approved by the ACCC and consistent with the performance by the Approved Independent

Manager of his or her functions under this Undertaking;
and

- (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution.

9. Peregrine compliance reporting

9.1 Compliance Audit

- (a) Peregrine must provide the ACCC with a detailed report certifying compliance with this Undertaking and detailing the steps Peregrine has taken to comply with this Undertaking (**Compliance Report**).
- (b) Peregrine must provide its first compliance report to the ACCC within 10 Business Days of the Control Date and every month thereafter until the termination of this Undertaking.
- (c) in each compliance report, Peregrine must include details of any failure or anticipated failure by Peregrine to comply with its obligations in this Undertaking and the steps undertaken or proposed to be undertaken by Peregrine to remedy the failure or anticipated failure.
- (d) Peregrine must comply with any direction of the ACCC in relation to matters arising from a compliance report within 10 Business Days of being so directed (or such longer period as agreed with the ACCC).

10. Sale of the Unsold Business

10.1 The Unsold Business

In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Divestiture Period the ACCC may declare, by written notice, that the Divestiture Business has become an Unsold Business and the provisions of clause 10 of this Undertaking shall apply.

10.2 Approved Divestiture Agent to manage and effect the sale of Unsold Business

- (a) If the Divestiture Business becomes the Unsold Business pursuant to clause 10.1:
 - (i) the Approved Independent Manager may act as the Approved Divestiture Agent to manage and effect the sale of the Unsold Business in accordance with this Undertaking; or

- (ii) if the Approved Independent Manager does not act as the Approved Divestiture Agent, Peregrine must within five Business Days of the Divestiture Business becoming an Unsold Business, identify a prospective Approved Divestiture Agent (the **Proposed Divestiture Agent**) and provide the ACCC with written notice of the identity of the Proposed Divestiture Agent.
- (b) The written notice referred to in clause 10.2(a) is to include such information and documents as the ACCC requires to assess whether to object to the appointment of the Proposed Divestiture Agent, including the proposed terms of appointment.
- (c) The Proposed Divestiture Agent must be a person who has the qualifications and experience necessary to manage the Unsold Business and effect the sale of the Unsold Business.
- (d) The Proposed Divestiture Agent must be a person who is independent of Peregrine. The criteria by which the independence of the Proposed Divestiture Agent will be determined include whether the person is:
 - (i) a current employee or officer of Peregrine;
 - (ii) a person who has been an employee or officer of Peregrine in the past three years;
 - (iii) a person who, in the opinion of the ACCC, holds a material interest in Peregrine;
 - (iv) a professional adviser of Peregrine whether current or in the past three years;
 - (v) a person who has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with Peregrine, but for the terms of any Approved Divestiture Agent agreement with Peregrine;
 - (vi) a supplier, or a person who is an employee or contractor of a firm or company that is a supplier, of Peregrine; or
 - (vii) a customer of, or a person who is an employee or contractor of a firm or company.

10.3 Appointment of the Approved Divestiture Agent

If:

- (a) within five Business Days of receipt by the ACCC of the written notice referred to in clause 10.2(a); or
- (b) such further period as is required by the ACCC and notified to Peregrine in writing prior to the expiration of the five Business Day period,

the ACCC informs Peregrine that it:

- (c) does not object to the appointment of the Proposed Divestiture Agent as the Approved Divestiture Agent, Peregrine will:
 - (i) appoint the Proposed Divestiture Agent as the Approved Divestiture Agent as soon as practicable, and within five Business Days of the date on which the ACCC informs Peregrine that it does not object to the appointment of the Proposed Divestiture Agent as the Approved Divestiture Agent, on terms approved by the ACCC and consistent with the performance by the Approved Divestiture Agent of his or her functions under this Undertaking; and
 - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution; or
- (d) does object to the appointment of the Proposed Divestiture Agent as the Approved Divestiture Agent, Peregrine will:
 - (i) appoint a person identified by the ACCC at its absolute discretion as the Approved Divestiture Agent, within five Business Days of the ACCC nominating the alternative person, on terms approved by the ACCC and consistent with the performance by the Approved Divestiture Agent of his or her functions under this Undertaking; and
 - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution.

10.4 Powers of the Approved Divestiture Agent

- (a) The Approved Divestiture Agent is the only person who may effect the divestiture of the Unsold Business.
- (b) Peregrine must grant the Approved Divestiture Agent an irrevocable power of attorney conferring all necessary power and authority to effect the divestiture of the Unsold Business on terms considered by

the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking.

- (c) Any irrevocable power of attorney granted pursuant to clause 10.4(b) will end upon resignation or termination of the Approved Divestiture Agent in accordance with clause 10.6 or in the event that the Unsold Business is divested in accordance with this Undertaking.

10.5 Obligations relating to the Appointment of the Approved Divestiture Agent

- (a) Peregrine must procure that the terms of appointment of the Approved Divestiture Agent include obligations to the effect that the Approved Divestiture Agent:
 - (i) must continue to satisfy the independence criteria in clause 10.2(d) for the period of his or her appointment;
 - (ii) must divest the Unsold Business to an Approved Purchaser, approved by the ACCC in accordance with clause 10.8 of this Undertaking. [The remainder of this clause is in Schedule 3.];
 - (iii) must immediately inform the ACCC of any offers for the Unsold Business;
 - (iv) must immediately accept any offer for the Unsold Business upon instruction from Peregrine given in accordance with clause 10.5(b);
 - (v) may charge such fees as are agreed between the Approved Divestiture Agent and Peregrine (but not fees contingent on the price to be obtained for the Unsold Business), and to be paid by Peregrine. If an agreement cannot be reached between the Approved Divestiture Agent and Peregrine within five Business Days from the date of:
 - A. the ACCC's notice that it does not object to the Proposed Divestiture Agent under clause 10.3(c); or
 - B. the ACCC notifying Peregrine of an alternative to the Proposed Divestiture Agent under clause 10.3(d) or 10.6(c),

Peregrine agrees to pay such fees as are directed by the ACCC;

- (vi) is the only person who may divest the Unsold Business after the Approved Divestiture Agent's appointment;
- (vii) may retain any lawyer or other adviser or agent required to manage and operate the Unsold Business or effect the sale of the Unsold Business, and the fees of that lawyer, adviser or agent must be paid by Peregrine;
- (viii) must use his or her best endeavours to enter into a binding agreement for the sale of the Unsold Business as quickly as possible adopting a standard form Business Sale Agreement prepared by Peregrine and previously approved by the ACCC;
- (ix) must account to Peregrine for:
 - A. any moneys derived from the divestiture of the Unsold Business;
 - B. all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his/her duties; and
 - C. all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.5(a)(vii));
- (x) must provide a written report to the ACCC and Peregrine on the first Business Day of each month until the Divestiture Date, concerning:
 - A. the efforts made to sell the Unsold Business;
 - B. costs and fees incurred;
 - C. the identity of any advisers engaged;
 - D. the identity of any persons expressing interest in the Unsold Business; and
 - E. any other information required by the ACCC;
- (xi) must use best endeavours to ensure that Peregrine complies with its obligations as set out in this clause 10 and report to the ACCC any material failure by Peregrine to do so;
- (xii) must follow any direction given to him or her by the ACCC in relation to the performance of his or her

functions as Approved Divestiture Agent under this Undertaking;

- (xiii) manage and operate the Unsold Business lawfully in the ordinary course of business, having regard to the nature of the Unsold Business;
- (xiv) make only those Material Changes to the Unsold Business which have been approved by the ACCC;
- (xv) to the maximum extent practicable, operate the Unsold Business in a manner which is financially and operationally separate from Peregrine;
- (xvi) keep the books and records of the Unsold Business separate from those of Peregrine;
- (xvii) implement specific measures to maintain the confidentiality of any competitively sensitive information of the Unsold Business;
- (xviii) use best endeavours to renew or replace upon expiry material contracts for the provision of goods or services to the Unsold Business on commercial terms favourable to the Unsold Business;
- (xix) maintain appropriate personnel levels and ensure that the Unsold Business has access to a sufficient number of personnel to operate as a viable going concern, and may engage personnel (including professional advisers) as the Approved Divestiture Agent determines necessary;
- (xx) until the Divestiture Date, approve any redeployment of employees employed in the Unsold Business to any other business operated by Peregrine;
- (xxi) not use any confidential information gained through the management of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent; and
- (xxii) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Approved Divestiture Agent or in relation to any matter that may arise in connection with this Undertaking.

- (b) The ACCC may direct Peregrine to instruct the Approved Divestiture Agent to accept any offer for an Unsold Business from an Approved Purchaser previously notified to the ACCC under clause 10.7 of this Undertaking.
- (c) Peregrine must comply with any direction made under clause 10.5(b) within five Business Days.
- (d) Without limiting the obligations in this Undertaking, Peregrine must:
 - (i) comply with and enforce the terms upon which the Approved Divestiture Agent is appointed in clause 10.5(a) and elsewhere in the Peregrine Undertaking;
 - (ii) indemnify the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
 - (iii) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as Approved Divestiture Agent;
 - (iv) ensure that the Approved Divestiture Agent will provide information or documents requested by the ACCC directly to the ACCC;
 - (v) ensure that the Approved Divestiture Agent undertakes to report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Approved Divestiture Agent or in relation to any matter that may arise in connection with this Undertaking;
 - (vi) provide to the Approved Divestiture Agent any information or documents requested by the Approved Divestiture Agent that he or she considers necessary to effect the sale of the Unsold Business, or for reporting to or otherwise advising the ACCC;
 - (vii) assist the Approved Divestiture Agent to effect the sale of the Unsold Business as quickly as possible;

- (viii) not authorise the Approved Divestiture Agent to sell the Unsold Business to a purchaser other than an Approved Purchaser;
- (ix) not contract to sell the Unsold Business on terms which would be inconsistent with the Approved Divestiture Agent's role, the granting of authority to the Approved Divestiture Agent under clause 10.4, or any other obligation in this Undertaking;
- (x) take any steps directed by the ACCC in relation to matters arising from a report of the Approved Divestiture Agent referred to in clauses 10.5(a)(x), 10.5(a)(xi) or 10.5(a)(xxii) within 10 Business Days of being so directed (or such longer period agreed with the ACCC);
- (xi) maintain and fund the Approved Divestiture Agent to carry out his or her functions;
- (xii) ensure that the Approved Divestiture Agent is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Divestiture Agent considers are required by the Unsold Business;
- (xiii) accept (and direct its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Divestiture Agent as to the control, management, financing and operations of the Unsold Business, and for the Unsold Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
- (xiv) provide and pay for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent; and
- (xv) provide access to the facilities, sites or operations of the Unsold Business reasonably required by the Approved Divestiture Agent and/or the ACCC.

10.6 Resignation or termination of the Approved Divestiture Agent

- (a) Peregrine must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the Divestiture Date.

- (b) The ACCC may approve any proposal by, or alternatively may direct, Peregrine to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking.
- (c) If either clause 10.6(a) or 10.6(b) applies, the ACCC may nominate an alternative Approved Divestiture Agent.
- (d) Peregrine must, within two Business Days of the ACCC nominating an alternative Approved Divestiture Agent pursuant to clause 10.6(c):
 - i. appoint the Approved Divestiture Agent nominated by the ACCC on terms approved by the ACCC and consistent with the performance by the Approved Divestiture Agent of his or her functions under this Undertaking; and
 - ii. forward to the ACCC a copy of the executed terms of appointment.

10.7 Proposed Purchaser Notice

If the Approved Divestiture Agent seeks to have a purchaser approved by the ACCC for the purposes of clause 10.5(a)(ii) above (**Proposed Purchaser**), the Approved Divestiture Agent must give the ACCC a written notice (**Proposed Purchaser Notice**), containing:

- (a) the name, address, telephone number and any other available contact details of the Proposed Purchaser;
- (b) a copy of the standard form Business Sale Agreement prepared by Peregrine and previously approved by the ACCC;
- (c) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (d) details of the Proposed Purchaser's experience in the relevant markets;
- (e) the names of the owner and the directors of the Proposed Purchaser; and
- (f) a submission from Peregrine addressing the factors set out in clause 10.8(b) below.

10.8 Approval Notice

- (a) The ACCC may, within 15 Business Days after receipt by the ACCC of the Proposed Purchaser Notice, or such further period as is required by the ACCC, provide the Approved Divestiture Agent with a written notice (**Approval Notice**) stating that the Proposed Purchaser is an Approved Purchaser.
- (b) Without limiting the ACCC's discretion, in making a decision to provide an Approval Notice, the factors the ACCC will have regard to include whether:
 - (i) the Proposed Purchaser will complete the transaction contemplated by the standard form Business Sale Agreement prepared by Peregrine and previously approved by the ACCC pursuant to which the Proposed Purchaser will acquire from Peregrine the Unsold Business;
 - (ii) the Proposed Purchaser is and will remain independent of, and has no direct or indirect interest in, Peregrine;
 - (iii) the Proposed Purchaser is of good financial standing and has an intention to maintain and operate the Unsold Business as a going concern;
 - (iv) the Proposed Purchaser is able to conduct the Unsold Business effectively; and
 - (v) the divestiture of the Unsold Business to the Proposed Purchaser will address any competition concerns of the ACCC, including the likely long-term viability and competitiveness of the Unsold Business under the ownership of the Proposed Purchaser.
- (c) The ACCC may revoke its acceptance of an Approved Purchaser approved pursuant to clause 10.8(a) if the ACCC becomes aware that the information provided to it was incorrect, inaccurate or misleading.

11. Information

- (a) Peregrine must notify the ACCC in writing of the date of the proposed Control Date at least one week before the proposed Control Date.
- (b) Peregrine must notify the ACCC in writing of the occurrence of:
 - (i) the completion of the Proposed Acquisition within one Business Day of the Control Date; and

- (ii) the divestiture of the Divestiture Business within one Business Day of the Divestiture Date.
- (c) Peregrine must provide the ACCC with a copy of the executed Business Sale Agreement, related license or lease agreements, and any agreements relating to the sale of the Divestiture Business within two Business Days of any such agreement being executed.
- (d) Peregrine must respond in a timely manner to any queries or requests for information or documents made by the ACCC.
- (e) The ACCC may direct Peregrine in respect of its compliance with this Undertaking to, and Peregrine must:
 - (i) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC;
 - (ii) produce information, documents and materials to the ACCC within Peregrine's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (iii) direct its personnel, including its directors, contractors, managers, officers, employees and agents, to attend the ACCC at a reasonable time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- (f) In respect to Peregrine's compliance with this Undertaking, the ACCC may request the Approved Divestiture Agent to:
 - (i) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC;
 - (ii) produce information, documents and materials to the ACCC within the Approved Divestiture Agent's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- (g) Peregrine will use its best endeavours to ensure that the Approved Divestiture Agent complies with any request from the ACCC in accordance with clause 11(f).

- (h) Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
 - (i) Any direction made by the ACCC under clause 11(e) will be notified to Peregrine, in accordance with clause 16.1.
 - (j) The ACCC may, in its discretion:
 - (i) advise any Approved Divestiture Agent of any request made by it under this clause 11; and/or
 - (ii) provide copies to any Approved Divestiture Agent of any information furnished, documents and material produced or information given to it under this clause 11.
 - (k) Nothing in this clause 11 requires the provision of information or documents in respect of which Peregrine has a claim of legal professional or other privilege.
-

12. Disclosure of the Undertaking

- (a) Peregrine and the ACCC agree that:
 - (i) Schedule 1 and clause 2 of Schedule 3 will remain confidential at all times;
 - (ii) Clause 1 of Schedule 3 will remain confidential until after the Divestiture Date when the Divestiture Business has been divested.
- (b) Peregrine acknowledges that the ACCC may, subject to clause 12(a):
 - (i) make this Undertaking publicly available;
 - (ii) publish this Undertaking on its Public Section 87B Undertakings Register; and
 - (iii) from time to time publicly refer to this Undertaking.
- (c) Nothing in the confidential parts of this Undertaking referred to in clause 12(a) prevents the ACCC from disclosing such information as:
 - (i) is required by law;
 - (ii) is permitted by s 155AAA of the Act;
 - (iii) is necessary for the purpose of enforcement action under section 87B of the Act; or

- (iv) is necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- (d) Nothing in the confidential parts of this Undertaking prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Peregrine to take or refrain from taking some action, Peregrine will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

14. No Derogation

- (a) This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Peregrine of any term of the Undertaking.
- (b) Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Peregrine does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

15. Costs

Peregrine must pay all of its own costs incurred in relation to this Undertaking.

16. Notices

16.1 Giving Notices

- (a) Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Name:	Australian Competition and Consumer Commission
Address:	23 Marcus Clarke Street CANBERRA ACT 2601
Fax number:	(02) 6243 1212

Attention: Executive General Manager - Mergers and
Acquisitions Group

- (b) Any notice or communication to Peregrine pursuant to this
Undertaking must be sent to;

Name: Legal Department, Peregrine Corporation

Address: 270 The Parade, Kensington Park

Fax number: (08) 8 333 9711

Attention: Peter Piliouras

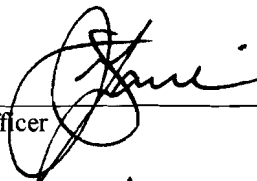
Email: legal@perecorp.com.au

16.2 Change of address of fax number

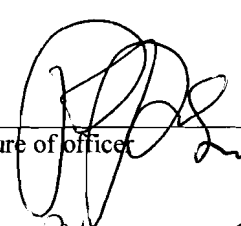
If Peregrine or the ACCC gives the other three Business Days notice of a change to its address or fax number, any notice or communication is only given to the relevant entity if it is delivered, posted or faxed to the most recently advised address or fax number.

Signed by Peregrine by its authorised signatory:

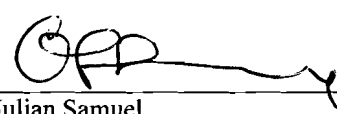
Signature of officer


Yasser Shalun - Director
Full name of officer and office held

Signature of officer


Pete Pilioukas - Company Legal Officer
Full name of officer and office held

Accepted by The Australian Competition and Consumer Commission pursuant to section 87B of the Trade Practices Act 1974 (Cth):


Graeme Julian Samuel
Chairman

Date:

1st October 2010

Schedule 1 – Confidential Clause

Undertaking to the Australian Competition and Consumer Commission given under section 87B of the *Trade Practices Act 1974* by Peregrine Corporation Pty Ltd

Schedule 2 – Dictionary and Interpretation

1. Dictionary

In this Undertaking:

7-Eleven means 7-Eleven Stores Pty Ltd ACN 005 299 427, together with its subsidiaries.

7-Eleven Proposed Acquisition means 7-Eleven's proposed acquisition of the retail fuel business of Mobil.

Act means the *Trade Practices Act 1974* (Cth).

Approved Purchaser means a purchaser of the Divestiture Business approved by the ACCC pursuant to clause 5.1 or clause 10.8 of this Undertaking or as previously approved by the ACCC as provided in clause 6.1 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Business Sale Agreement means the agreement whereby Caltex or an alternative Approved Purchaser is to acquire the Divestiture Business from Peregrine, a copy of which is provided in Schedule 1.

Commencement Date means the date on which the Undertaking comes into effect under clause 4.1 of this Undertaking.

Control Date means the date on which the Peregrine Proposed Acquisition is completed.

Corporations Act means *Corporations Act 2001* (Cth).

Divestiture Business means the business engaged in retail supply of petrol, diesel and automotive LPG and owned by Peregrine as of the Control Date at either:

(a) Mobil Noarlunga Downs, corner of Dyson Road and Goldsmith Drive Noarlunga Downs 5168 SA 5165, Certificate of Title 5218/29 (**Noarlunga Downs site**); or

(b) Christies Beach, located at:

(i) BP "On The Run" Christies Beach, 124 Beach Rd, Christies Beach, SA 5165, Certificate of Titles 5321/272, 5897/364; or

(ii) BP "On The Run" Coastline, 35 Gulfview Rd, Christies Beach, SA 5165, Certificate of Titles 5517/558, 5517/559; or

(iii) Mobil Christies Beach, 159 Dyson Road, Christies Beach, SA 5165, Certificate of Title 5809/744.

(the **Christies Beach site**)

and described in clause 5 and Schedule 1 of this Undertaking.

Divestiture Date means the date on which Peregrine no longer has ownership or control of the Divestiture Business.

Divestiture Period [the remainder of this clause is in Schedule 3].

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Business that may affect, or impact on, the Divestiture Business's competitiveness, independence from Peregrine and its viability.

Mobil means Mobil Oil Australia Pty Ltd. The ultimate holding company of Mobil is Exxon Mobil Corporation (**Exxon Mobil**).

Peregrine means Peregrine Corporation Pty Ltd ACN 101 751 400, together with its Subsidiaries. For the purposes of this Undertaking, Peregrine includes Shahin Enterprises Pty Ltd ACN 008 150 543 and its Subsidiaries.

Peregrine Proposed Acquisition means Peregrine's proposed acquisition of 29 retail fuel sites located in South Australia from 7-Eleven, which were formerly owned by Mobil.

Public Section 87B Undertakings Register means the ACCC's public register of s 87B undertakings, available at www.accc.gov.au.

Related Body Corporate has the meaning set out in section 50 of the Corporations Act.

Subsidiary has the meaning given to it in section 4A of the *Trade Practices Act 1974*.

Third Party Consents means any consents (excluding by a governmental agency or authority) required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, material contracts, permits or approvals used in the Divestiture Business.

Undertakings is a reference to this Undertaking and the 7-Eleven Undertaking.

2. Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

Undertaking to the Australian Competition and Consumer Commission given under section 87B of the *Trade Practices Act 1974* by Peregrine Corporation Pty Ltd

- (i) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (ii) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (iii) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (iv) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (v) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (vi) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (vii) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (viii) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (ix) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (x) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (xi) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (xii) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (xiii) material not forming part of this Undertaking may be considered to:
 - A. confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its

context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or

- B. determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (xiv) in determining whether consideration should be given to any material in accordance with paragraph (xiii), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to:
- A. the effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - B. the need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (xv) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (xvi) in performing its obligations under this Undertaking, Peregrine will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking.
- (xvii) a reference to:
- A. a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - B. a party includes its successors and permitted assigns; and
 - C. a monetary amount is in Australian dollars.

Schedule 3 – Confidential Clause

Undertaking to the Australian Competition and Consumer Commission given under section 87B of the *Trade Practices Act 1974* by Peregrine Corporation Pty Ltd