

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the acquisition by Parkland Industries Ltd., a wholly-owned subsidiary of Parkland Fuel Corporation, of substantially all of the assets of Pioneer Petroleum Holding Limited Partnership, Pioneer Energy LP, Pioneer Petroleum Transport Inc., Pioneer Energy Inc., Pioneer Fuels Inc., Pioneer Petroleum Holding Inc., Pioneer Energy Management Inc., 668086 N.B. Limited, 3269344 Nova Scotia Limited and 1796745 Ontario Ltd.;

AND IN THE MATTER OF applications by the Commissioner of Competition pursuant to sections 92 and 104 of the *Competition Act*;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 92 and 105 of the *Competition Act*.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT March 29, 2016 CT-2015-003 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 113

THE COMMISSIONER OF COMPETITION

Applicant

- and -

PARKLAND INDUSTRIES LTD. and PARKLAND FUEL CORPORATION

Respondents

CONSENT AGREEMENT

RECITALS:

A. Respondents have acquired substantially all of the assets of Pioneer Petroleum Holding Limited Partnership, Pioneer Energy LP, Pioneer Petroleum Transport Inc., Pioneer Energy Inc., Pioneer Fuels Inc., Pioneer Petroleum Holding Inc., Pioneer Energy Management Inc., 668086 N.B. Limited, 3269344 Nova Scotia Limited and 1796745 Ontario Ltd. (the "Transaction"), subject to an order of the Tribunal pursuant to section 104 of the Act.

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening of competition in the retail supply of gasoline in the 8 Affected Areas (defined below) in Ontario and Manitoba, and that the implementation of this Agreement is necessary and sufficient to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction in the Affected Areas. The Commissioner has therefore concluded that following the Divestiture (defined below) and while Part IX of this Agreement is in effect in respect of particular dealers, the Respondents, as independent fuel marketers, will not have the ability and incentive to influence the retail pricing of those dealers in the Affected Areas.

C. Respondents do not admit but, exclusively for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission hereof, will not contest the Commissioner's conclusions described in Recital B above.

D. Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 92 or 104 of the Act in respect of the Transaction.

THEREFORE Respondents and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **"Act"** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **"Affected Areas"** means the Divestiture Areas and the Affected Dealer Areas;
- (c) **"Affected Dealer Areas"** means, for the purpose of this Agreement and subject to the acknowledgement that the Parties have not agreed on the delineation of relevant geographic markets, the areas within a radius of 10 kilometres from each dealer station in the areas of Lundar and Warren, Manitoba, identified in Schedule E to this Agreement;
- (d) **"Affiliate"** means, in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and **"control"** means directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;
- (e) **"Agreement"** means this Consent Agreement, including the schedules hereto, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;

PUBLIC VERSION

- (f) **“Auditor”** has the meaning set out in Section 31 of this Agreement, and includes any employees, agents or other Persons acting for or on behalf of the Auditor;
- (g) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (h) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;
- (i) **“Confidential Information”** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is owned by or pertains to a Person or a Person’s business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;
- (j) **“Divested Business”** means (i) in Kapuskasing, Ontario, the business of Parkland at a corporate station of its choice and (ii) in each of the other Divestiture Areas, the business of Parkland at one corporate station or in relation to one fuel supply contract of its choice, in each case listed in Confidential Schedule D;
- (k) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to one or more Purchasers pursuant to this Agreement and with the prior approval of the Commissioner, or, in the case of one Divestiture Area, the termination of a fuel supply agreement as contemplated in Schedule D to this Agreement, such that Respondents will have no direct or indirect interest in the Divestiture Assets;
- (l) **“Divestiture Agreement”** means a binding and definitive agreement between Respondents and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (m) **“Divestiture Applicant”** means Respondents during the Initial Sale Period or the Divestiture Trustee during the Divestiture Trustee Sale Period;
- (n) **“Divestiture Areas”** means, for the purpose of this Agreement and subject to the acknowledgement that the Parties have not agreed on the delineation of relevant geographic markets, the areas within a radius of 10 kilometres from each corporate and dealer station in the areas of Neepawa, Manitoba and Bancroft, Hanover, Innisfil, Kapuskasing and Tillsonburg, Ontario, identified in Schedule E to this Agreement;
- (o) **“Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used

PUBLIC VERSION

by Respondents or held by Respondents for use in, or relating to, the Divested Business;

- (p) **“Divestiture Process Agreement”** means the agreement described in Section 6 of this Agreement;
- (q) **“Divestiture Trustee”** means the Person appointed pursuant to Part III of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (r) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part III of this Agreement;
- (s) **“Divestiture Trustee Sale Period”** means the 6 month period commencing upon expiry of the Initial Sale Period;
- (t) **“First Reference Date”** shall have the meaning set out in Paragraph 22(d) of this Agreement;
- (u) **“Hold Separate Order”** means the order of the Tribunal pursuant to section 104 of the Act made May 29, 2015;
- (v) **“Initial Sale Period”** means the period that commences on the date of registration of this Agreement and ends at the time set out in Confidential Schedule A to this Agreement;
- (w) **“Monitor”** means the Person appointed pursuant to Part X of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor, provided that if no Monitor is appointed, in this Agreement other than in Part X Monitor means the Commissioner;
- (x) **“Monitor Agreement”** means the agreement described in Section 34 of this Agreement;
- (y) **“Parties”** means the Commissioner and Respondents collectively, and **“Party”** means any one of them;
- (z) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (aa) **“Purchaser”** means a Person that acquires some or all of the Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (bb) **“Records”** means records within the meaning of subsection 2(1) of the Act;

- (cc) **“Respondents”** means Parkland Industries Ltd., Parkland Fuel Corporation, Persons controlled by them, and their directors, officers, employees, agents, representatives, successors and assigns;
- (dd) **“Second Reference Date”** shall have the meaning set out in Paragraph 22(e) of this Agreement;
- (ee) **“Third Party”** means any Person other than the Commissioner, Respondents or the Purchaser;
- (ff) **“Transaction”** means the transaction described in the first recital to this Agreement; and
- (gg) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. OBLIGATION TO COMPLETE DIVESTITURE

- [2] Respondents shall use commercially reasonable efforts to complete the Divestiture.
- [3] During the Initial Sale Period, Respondents shall use commercially reasonable efforts to complete the Divestiture in accordance with the provisions of this Part and Confidential Schedule A and subject to Part IV of this Agreement.
- [4] During the Initial Sale Period, Respondents shall provide to the Commissioner and to the Monitor every 21 days a written report describing the progress of their efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Respondents shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Respondents’ efforts to complete the Divestiture. An officer or other duly authorized representative of Respondents shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

III. DIVESTITURE TRUSTEE SALE PROCESS

- [5] In the event that Respondents fail to complete the Divestiture during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of the Initial Sale Period or on such later date as the Commissioner determines.
- [6] Within 5 Business Days after the appointment of the Divestiture Trustee, Respondents shall submit to the Commissioner for approval the terms of a

proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that confers on the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.

- [7] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 6, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Respondents shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [8] Without limiting the Commissioner's discretion to require additional terms, Respondents consent to the following terms and conditions regarding the Divestiture Trustee's rights, powers and duties, and shall include such terms in the Divestiture Process Agreement:
- (a) The Divestiture Trustee shall complete the Divestiture as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.
 - (b) The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to Respondents as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and approval by the Commissioner.
 - (c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:
 - (i) to complete the Divestiture in accordance with the provisions of this Part;
 - (ii) to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Divestiture Assets, and for greater certainty, in determining whether to pursue negotiations with a prospective Purchaser, may have regard to the approval criteria in Section 23;
 - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Respondents;

PUBLIC VERSION

- (iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
 - (v) to employ, at the expense of Respondents, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Section 60 of this Agreement.
- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
- (i) promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
 - (ii) permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
 - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.
- (f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
- (g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the later of the Divestiture Trustee's appointment and the commencement of the Divestiture Trustee Sales Period and thereafter every 21 days, a written report describing the progress of the Divestiture Trustee's efforts to complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within 3 Business

PUBLIC VERSION

Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.

- (h) The Divestiture Trustee shall notify Respondents and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Respondents a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [9] Respondents shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Respondents have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [10] Subject to any legally recognized privilege, Respondents shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.
- [11] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [12] Respondents shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Respondents.
- [13] Respondents will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Respondents.
- [14] Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt and, without limiting this obligation, Respondents shall comply with any agreement it reaches with the Divestiture Trustee regarding interest on late payments. In the event of

PUBLIC VERSION

any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by Respondents shall be paid out of the proceeds of the Divestiture.

- [15] Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- [16] Respondents shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.
- [17] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [18] Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [19] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.
- [20] Notwithstanding any term of this Agreement, the rights, powers and duties of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

IV. COMMISSIONER APPROVAL OF DIVESTITURE

- [21] The Divestiture may proceed only with the prior approval of the Commissioner in accordance with this Part. For greater certainty, if a Divestiture is a notifiable transaction nothing in this Agreement affects the operation of Part IX of the Act.
- [22] The Divestiture Applicant shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:
- (a) The Divestiture Applicant shall promptly:
 - (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and
 - (ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
 - (b) The Divestiture Applicant shall immediately notify the Commissioner that it intends to enter a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. If the Divestiture Applicant has entered into or intends to enter into more than one agreement in respect of the same Divestiture Assets, the Divestiture Applicant shall identify the agreement in respect of which it seeks the Commissioner's approval and the remainder of this Part shall apply only to that agreement unless the Divestiture Applicant designates a substitute agreement.
 - (c) The notice described in Paragraph 22(b) shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of the Divestiture Applicant, likely satisfy the terms of this Agreement.
 - (d) Within 14 days following receipt of the notice described in Paragraph 22(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Respondents, the Monitor, the prospective Purchaser and, in the Divestiture Trustee Sale Period, the Divestiture Trustee. These Persons shall each provide any additional information requested from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:
 - (i) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the

PUBLIC VERSION

Commissioner all additional information requested from the Divestiture Trustee;

- (ii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
- (iii) an officer or other duly authorized representative of Respondents shall certify that he or she has examined the additional information provided by Respondents in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and
- (iv) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined the additional information provided by the prospective Purchaser in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Divestiture Trustee, Respondents, the Monitor, and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"First Reference Date"**.

- (e) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of the Persons identified in Paragraph 22(d). These Persons shall each provide any further additional information requested from them. When they have provided a complete response to the Commissioner's request, if any, these Persons shall comply with the procedures outlined in Paragraph 22(d) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Respondents, the Monitor and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"Second Reference Date"**.
- (f) The Commissioner shall notify the Divestiture Applicant of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 14 days after the date on which the Commissioner receives that notice described in Paragraph 22(b) or, if he requests any additional information under Paragraph 22(d) or further additional information under Paragraph 22(e), within 14 days after the later of:
 - (i) the First Reference Date; and
 - (ii) the Second Reference Date, if any.

- (g) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

[23] In exercising his discretion to determine whether to approve a proposed Divestiture, the Commissioner shall take into account the likely impact of the Divestiture on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:

- (a) the proposed Purchaser is fully independent of and operates at arm's length from Respondents;
- (b) Respondents will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 48 below;
- (c) the proposed Purchaser is committed to carrying on the Divested Business;
- (d) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the retail supply of gasoline in the Divestiture Area(s); and
- (e) the proposed Purchaser will (i) if the Commissioner grants his approval during the Initial Sale Period, complete the Divestiture prior to the expiry of the Initial Sale Period; or (ii) if the Commissioner grants his approval during the Divestiture Trustee Sale Period, complete the Divestiture during the Divestiture Trustee Sale Period.

V. HOLD SEPARATE

[24] Notwithstanding Section 59 of this Agreement, upon the registration of this Agreement the Hold Separate Order shall immediately terminate, however, the provisions of the Hold Separate Order as they relate to each Divestiture Area are incorporated into this Agreement and shall continue until the Divestiture is completed in such Divestiture Area.

VI. THIRD PARTY CONSENTS

[25] It shall be a condition in any Divestiture Agreement (whether negotiated by Respondents or by the Divestiture Trustee) that Respondents shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all material contracts, approvals and authorizations relating to the Divestiture Assets; provided, however, that Respondents may satisfy this requirement by certifying that the Purchaser has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

VII. EMPLOYEES

[26] Respondents (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall provide to any prospective Purchaser, the Commissioner and the Monitor information relating to the employees whose responsibilities involve the operation of the Divestiture Assets, to enable such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions.

[27] Respondents shall:

- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any employees whose responsibilities involve the operation of the Divestiture Assets;
- (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Respondents;
- (c) remove any impediment that may deter such employees from accepting employment with the Purchaser;
- (d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by the Purchaser; and
- (e) pay or transfer to the employees subsequently employed by the Purchaser all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Respondents.

[28] For a period of one year following completion of the Divestiture, Respondents shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons employed in connection with the Divestiture Assets who has accepted an offer of employment with the Purchaser unless such Person's employment has been terminated by the Purchaser.

VIII. FAILURE OF DIVESTITURE TRUSTEE SALE

[29] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either (i) such order as is necessary to complete the Divestiture; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially.

IX. AFFECTED DEALER AREA REMEDY

- [30] In respect of any current fuel supply agreement with a dealer in an Affected Dealer Area listed in Confidential Schedule C to this Agreement and any subsequent fuel supply agreement in respect of the same station, during the 6 year period following registration of this Agreement:
- (a) Respondents' gasoline and diesel prices to dealers shall not consist of any amounts other than the refiner rack price, the refiner brand fee (if any), the rack forward margin, delivery fees and applicable taxes;
 - (b) Respondents shall not charge dealers a rack forward margin in excess of that charged as of the date of this Agreement, as listed in Confidential Schedule C to this Agreement, provided that any subsequent fuel supply agreement may specify a different maximum rack forward margin;
 - (c) Respondents shall not charge dealers delivery fees in excess of those charged as of the date of this Agreement, as listed in Confidential Schedule C to this Agreement, provided that Respondents may increase such delivery fees (i) up to the amount of any increase in costs paid by Respondents in respect of fuel delivery to a dealer, and/or (ii) by the amount of any Province-wide increase in delivery fees implemented by Respondents. For greater certainty, if a Province-wide increase in delivery fees is implemented in response to an increase in costs, Respondents shall not impose both the Province-wide increase and an additional cost-recovery increase in an Affected Dealer Area in respect of the same cost increase; and
 - (d) Parkland shall provide to its dealers and the Auditor monthly confirmation of compliance with this Section of the Agreement.
- [31] The Commissioner shall appoint a professional accounting firm (the "Auditor"), responsible for auditing compliance by Respondents with this Part IX of the Agreement. Subject to any legally recognized privilege, Respondents shall provide to the Auditor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to auditing Respondents' compliance with this Part.
- [32] Respondents consent to the following terms and conditions regarding the Auditor's rights, powers and duties, and shall include such terms in an agreement with the Auditor:
- (a) the Auditor shall conduct, in accordance with applicable accounting standards, a review of Respondents' compliance with this Part IX of the Agreement on a quarterly basis and a full audit of Respondents' compliance with this Part IX of the Agreement on an annual basis, for a term of 6 years from the date of registration of this Agreement;

- (b) Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Auditor in the course of carrying out the Auditor's duties under this Agreement. The Auditor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, legal counsel and other representatives and assistants as the Auditor believes are necessary to carry out the Auditor's duties and responsibilities;
- (c) at the Commissioner's request, the Auditor shall provide to the Commissioner a written report concerning performance by Respondents of their obligations under Part IX of this Agreement; and
- (d) if the Auditor finds that Respondents have not complied with Part IX of this Agreement, the Auditor shall notify Respondents, the Commissioner and the affected dealer(s). On receipt of such notice, an affected dealer shall have the right to terminate the relevant fuel supply agreement with Parkland without penalty by providing written notice to Respondents of such termination. Within 3 Business Days after receipt of such notice of termination, Respondents shall notify the Commissioner.

X. MONITOR

- [33] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Respondents with Parts II to VIII of this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the Monitor's general right, power and duty to monitor all aspects of Respondents' compliance with this Agreement.
- [34] Within 5 Business Days after the appointment of the Monitor, Respondents shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that confers on the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Respondents with Parts II to VIII of this Agreement.
- [35] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 34, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Respondents shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.
- [36] Respondents consent to the following terms and conditions regarding the Monitor's rights, powers and duties, and shall include such terms in the Monitor Agreement:

PUBLIC VERSION

- (a) The Monitor shall have the power and authority to monitor Respondents' compliance with Parts II to VIII of this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
 - (b) The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
 - (c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.
 - (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.
 - (e) The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to Respondents.
 - (f) The Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment until the Divestiture is complete, a written report concerning performance by Respondents of their obligations under Parts II to VIII of this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Respondents' compliance.
- [37] Subject to any legally recognized privilege, Respondents shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Respondents' compliance with Parts II to VIII of this Agreement.
- [38] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Respondents' compliance with Parts II to VIII of this Agreement.
- [39] Respondents shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Respondents.
- [40] Respondents may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.

- [41] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [42] Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt and, without limiting this obligation, Respondents shall comply with any agreement it reaches with the Monitor regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by Respondents shall be paid out of the proceeds of the Divestiture.
- [43] Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [44] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.
- [45] The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with Parts II to VIII of this Agreement.

XI. COMPLIANCE

- [46] Respondents shall provide a copy of this Agreement to each of their own and their Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Respondents shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Respondents' responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

PUBLIC VERSION

- [47] Within 3 Business Days after the date of registration of this Agreement, Respondents shall provide a copy of the public version of this Agreement to each of its dealers in the Affected Dealer Areas.
- [48] Respondents shall not, for a period of 10 years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.
- [49] For a period of 2 years after the date when the Divestiture is completed, Respondents shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:
- (a) acquire any retail gasoline business in an Affected Area; or
 - (b) consummate any merger or other combination relating to the (wholesale or retail) supply of gasoline in an Affected Area.

If a transaction described above is one for which notice is not required under section 114 of the Act, Respondents shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Respondents shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may accept a competitive impact brief from Respondents instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that Respondents supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Respondents shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Respondents have supplied all such requested information in the form specified by the Commissioner.

- [50] Six months after the date of registration of this Agreement and annually thereafter on the six month anniversary of the date of registration, and at such other times as the Commissioner may require, Respondents shall file an affidavit or certificate, substantially in the form of Schedule B to this Agreement, certifying its compliance with Parts VII, IX and XI of this Agreement and setting out the following information in detail:
- (a) the steps taken to ensure compliance;
 - (b) the controls in place to verify compliance; and
 - (c) the names and titles of employees who have oversight of compliance.
- [51] If any of Respondents, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or

possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, provided that notification of a possible breach is not required if such Person determines within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this Agreement. Respondents shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 50 of this Agreement.

- [52] Respondents shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of a Respondent;
 - (b) any other change in Respondents if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Respondents' incorporating statute.
- [53] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Respondents shall, upon written request given at least 5 Business Days in advance to Respondents, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of Respondents on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Respondents related to compliance with this Agreement, which copying services shall be provided by Respondents at its expense; and
 - (b) to interview such officers, directors or employees of Respondents as the Commissioner requests regarding such matters.

XII. DURATION

- [54] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years following the Divestiture, except that (a) Parts II, III, IV, V and VI of this Agreement shall be effective only until the Divestiture is completed; and (b) Part IX of this Agreement shall be effective only until the date that is 6 years from the date of registration of this Agreement.

XIII. NOTICES

- [55] A notice or other communication required or permitted to be given under this Agreement is valid if it is:

PUBLIC VERSION

- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and
- (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: MergerNotification@canada.ca

with a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: jonathan.chaplan@canada.ca

if to Respondents:

Parkland Fuel Corporation
5101, 333 – 96th Avenue N.E.
Calgary, AB T3K 0S3
Attention: General Counsel
Facsimile: (403) 567-2569
Email: pierre.magnan@parkland.ca

with a copy to:

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X1A4
Tel: (416) 863-1200
Fax: (416) 863-1716

Attention: John Rook
email: rookj@bennettjones.com

- [56] A notice or other communication under this Agreement is effective on the day that it is received by the receiving Party and is deemed to have been received as follows:
- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
 - (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
 - (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

- [57] Notwithstanding Sections 55 and 56, a notice or other communication that is not communicated in accordance with Sections 55 and 56 is valid if a representative of the Party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

XIV. GENERAL

- [58] In this Agreement:
- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
 - (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.
- [59] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Respondents hereby consent to such registration. Upon registration, the proceedings pursuant to sections 92 and 104 in respect of the Transaction are terminated without costs.

PUBLIC VERSION

- [60] Information in Confidential Schedule A shall be made public upon the expiry of the Initial Sale Period. Information in Confidential Schedules C and D shall be made public upon the expiry of this Agreement.
- [61] The Commissioner may, after informing Respondents, extend any of the time periods contemplated by this Agreement other than Sections 30, 32, 48, 49 and 54. If any time period is extended, the Commissioner shall promptly notify Respondents of the revised time period.
- [62] Nothing in this Agreement precludes Respondents or the Commissioner from bringing an application under section 106 of the Act. Respondents will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions described in Recital B of this Agreement.
- [63] Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [64] This Agreement constitutes the entire agreement between the Commissioner and Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [65] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [66] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Respondents may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Divestiture Trustee Sale Period.
- [67] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

PUBLIC VERSION

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 29th day of March, 2016

COMMISSIONER OF COMPETITION

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

PARKLAND INDUSTRIES LTD.

[Original signed by Pierre Magnan]

I/We have authority to bind the corporation

Name: Pierre Magnan

Title: VP, General Counsel and Corporate Secretary

PARKLAND FUEL CORPORATION

[Original signed by Pierre Magnan]

I/We have authority to bind the corporation

Name: Pierre Magnan

Title: VP, General Counsel and Corporate Secretary

CONFIDENTIAL SCHEDULE A

INITIAL SALE PERIOD

[CONFIDENTIAL]

SCHEDULE B

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, [name], of [place], hereby certify¹ in accordance with the terms of the registered Consent Agreement dated • between Parkland Industries Ltd., Parkland Fuel Corporation (“Respondents”) and the Commissioner of Competition, that:

1. I am the [title] of [Respondent], and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On [date], Respondents entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with the Respondents’ acquisition of substantially all of the assets of Pioneer Petroleum Holding Limited Partnership, Pioneer Energy LP, Pioneer Petroleum Transport Inc., Pioneer Energy Inc., Pioneer Fuels Inc., Pioneer Petroleum Holding Inc., Pioneer Energy Management Inc., 668086 N.B. Limited, 3269344 Nova Scotia Limited and 1796745 Ontario Ltd. (the “Transaction”).
3. The Divestiture (as defined in the Consent Agreement) to [Purchaser] was completed on [date].²
4. Pursuant to Section 50 of the Consent Agreement, Respondents are required to file annual reports certifying its compliance with Parts VII, IX and XI of the Consent Agreement.

Oversight of Compliance

5. [Names/titles] have primary responsibility for overseeing compliance with this Agreement.

Circulation of Consent Agreement

6. Pursuant to Sections 46 and 47 of the Consent Agreement, Respondents are required to provide a copy of the Consent Agreement to each of its own and its Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, and to all of its dealers in the Affected Dealer Areas, within 3 Business Days after the date of registration of the Consent Agreement. The Consent Agreement was circulated by [whom] to [provide list] on [dates].

¹ If this is drafted as an affidavit, the words “hereby certify” should be removed and should be replaced with “make oath and say”. An affidavit should be sworn under oath. A certification should be certified by a Commissioner for taking affidavits.

² Paragraphs 3, 5 and 6 need only be included in the first certification/affidavit.

7. Pursuant to Section 46 of the Consent Agreement, Respondents are required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Respondents' responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

Affected Dealer Area Remedy

8. Pursuant to Section 30 of the Consent Agreement, Respondents are required to comply with certain obligations in respect of Affected Dealer Area contracts. Respondents have fully complied with that Section.

Employees

9. Sections 26 and 27 of the Consent Agreement require Respondents to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Respondents has fully complied with those Sections and, more particularly:

[Note: Describe steps taken to facilitate employee transfer to Purchaser, having regard to the terms of Sections 26 and 27; provide data on the # of employees who have transferred to the Purchaser.]

Notification of Breach

10. Based on my personal knowledge and my inquiries of **[provide names]**, I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of Section 51 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer

CONFIDENTIAL SCHEDULE C

MAXIMUM RACK FORWARD MARGINS AND DELIVERY FEES

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE D

DIVESTED BUSINESS OPTIONS (EXCLUDING KAPUSKASING)

[CONFIDENTIAL]

SCHEDULE E
AFFECTED AREAS

Local Market	Station Number	Location	Corporate Station
Bancroft, ON	259	132 Hastings St. N., Po Box 247 Bancroft, Ontario, K0L 1C0	Y
Hanover, ON	241	857 10th Street Hanover, Ontario, N4N 1S1	Y
Innisfil, ON	127	7364 Yonge St., Unit 3 Innisfil, Ontario, L9S 2M6	Y
	822	5479 Yonge St. Gilford, Ontario, L0L 1R0	N
Kapuskasing, ON	251	48 Government Rd. Kapuskasing, Ontario, P5N 2W6	Y
Tillsonburg, ON	213	115 - 123 Simcoe St. Tillsonburg, Ontario, N4G 2J2	Y
	243	680 Broadway St. Tillsonburg, Ontario, N4G 3S9	Y
Lundar, MB	776	104 Main Street Lundar, Manitoba, R0C 1Y0	N
Neepawa, MB	779	10 Main St. W. Neepawa, Manitoba, R0J 1H0	N
Warren, MB	764	HWY 6, Warren, Manitoba, R0C 3E0	N
	788	241 Second Ave. North and 4th Street E., Stonewall, Manitoba, R0C 2Z0	N