

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**



THE HONOURABLE MR.

JUSTICE DUNPHY

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THURSDAY, THE 22<sup>nd</sup>

DAY OF MARCH, 2018

IN THE MATTER OF AN APPLICATION UNDER SECTION 182  
OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, Ch.  
B.16 AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF  
CIVIL PROCEDURE

AND IN THE MATTER OF a proposed arrangement of  
NUUVERA INC. involving APHRIA INC.

NUUVERA INC.

Applicant

**FINAL ORDER**

**THIS APPLICATION** made by the Applicant Nuuvera Inc. (**Nuuvera**) pursuant to section 182 of the Ontario *Business Corporations Act*, R.S.C. 1990, Ch. B. 16 (the **OBCA**) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application issued on February 7, 2018, the affidavit of Ronald Schmeichel sworn February 14, 2018, the affidavit of Jordan Greenberg sworn February 20, 2018, the supplementary affidavit of Jordan Greenberg sworn March 20, 2018 and the Interim Order of the Honourable Justice Hailey dated February 20, 2018, and

**ON HEARING** the submissions of counsel for Nuuvera and counsel for Aphria Inc., no-one appearing for any other person, including any shareholder of Nuuvera, and having been

advised that this Order will serve as a basis of a claim to an exemption, pursuant to section 3(a)(10) of the United States *Securities Act of 1933*, as amended, from the registration requirements otherwise imposed by that act, regarding the distribution of securities of the Purchaser pursuant to the Plan of Arrangement, and having determined that the Arrangement, as described in the Plan of Arrangement attached as **Schedule A** to this order is an arrangement for the purposes of section 182 of the OBCA and is fair and reasonable in accordance with the requirements of that section (including to all persons entitled to receive securities under the Arrangement),

1 **THIS COURT ORDERS** that the Arrangement, as described in the Plan of Arrangement attached as **Schedule A** to this order, shall be and is hereby approved.

2 **THIS COURT ORDERS** that the Applicant shall be entitled to seek leave to vary this order upon such terms upon giving such notice as this court may direct, to seek the advice and directions of this court as to the implementation of this order, and to apply for such further order or orders as may be appropriate.

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PER / PAR:

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**SCHEDULE A**  
**PLAN OF ARRANGEMENT**  
**UNDER SECTION 182 OF**  
***ONTARIO BUSINESS CORPORATIONS ACT***

**APPENDIX "C"**  
**PLAN OF ARRANGEMENT**

**PLAN OF ARRANGEMENT UNDER SECTION 182**  
**OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)**

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings ascribed thereto in the Arrangement Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

**"Arrangement"** means an arrangement under Section 182(1) of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations to the Plan of Arrangement made in accordance with the terms of the Arrangement Agreement or Section 6.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

**"Arrangement Agreement"** means the arrangement agreement dated as of January 28, 2018, as amended on February 19, 2018, between the Purchaser and the Company, as same may be amended, supplemented or restated in accordance therewith, prior to the Effective Time, providing for, among other things, the Arrangement.

**"Arrangement Resolution"** means the special resolution approving this Plan of Arrangement presented to the Company Common Shareholders at the Company Meeting.

**"Articles of Arrangement"** means the articles of arrangement of the Company in respect of the Arrangement, required by the OBCA to be sent to the Director after the Final Order is made, which shall include this Plan of Arrangement and otherwise be in a form and content satisfactory to the Company and the Purchaser, each acting reasonably.

**"Business Day"** means a day of the year, other than a Saturday, Sunday or any day on which major banks are generally closed for business in Toronto, Ontario.

**"Cash Consideration"** means \$0.60 per Common Share.

**"Certificate of Arrangement"** means the certificate of arrangement issued by the Director pursuant to subsection 183(2) of the OBCA in respect of the Articles of Arrangement.

**"Common Shares"** means the common shares in the capital of the Company.

**"Company"** means Nuuvera Inc.

**"Company Circular"** means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits to, and information incorporated by reference in, such management information circular, to be sent to the Company Common Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of the Arrangement Agreement.

**"Company Common Shareholders"** means the registered or beneficial holders of the Common Shares, as the context requires.

**"Company Meeting"** means the special meeting of Company Common Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of the Arrangement Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution;

**"Company Options"** means the outstanding options to purchase Common Shares issued pursuant to the Stock Option Plan, and which are outstanding as of the Effective Time.

**"Company Optionholders"** means holders of Company Options.

**"Company Securityholders"** means, collectively, the Company Common Shareholders, the Company Optionholders and the Company Warrantholders.

**"Company Warrantholders"** means the registered or beneficial holders of Company Warrants.

**"Company Warrants"** means the warrants of the Company, each of which will entitle the holder thereof to acquire one Common Share at a price of \$7.20 per Common Share, to be issued pursuant to the "bought deal" prospectus offering of units of the Company as announced on January 24, 2018 and as reflected in the Company Filings.

**"Consideration"** means the consideration to be received by non-dissenting Company Common Shareholders pursuant to the Plan of Arrangement in respect of each Common Share that is issued and outstanding immediately prior to the Effective Time, consisting of the Cash Consideration and the Share Consideration.

**"Court"** means the Ontario Superior Court of Justice (Commercial List).

**"Depository"** means TSX Trust Company, or any other depository or trust company, bank or financial institution as the Purchaser may appoint to act as depository with the approval of the Company, acting reasonably.

**"Director"** means the Director appointed pursuant to Section 278 of the OBCA.

**"Dissent Rights"** has the meaning specified in Section 3.1.

**"Dissenting Holder"** means a registered holder of Common Shares who has properly exercised its Dissent Rights in accordance with Section 3.1 and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Right and who is ultimately determined to be entitled to be paid the fair value of its Common Shares.

**"Effective Date"** means the date shown on the Certificate of Arrangement, giving effect to the Arrangement.

**"Effective Time"** means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date.

**"Eligible Holder"** means a beneficial holder of Common Shares that is: (i) a resident of Canada for purposes of the Tax Act and not exempt from tax under Part I of the Tax Act; or (ii) a partnership, any member of which is a resident of Canada for purposes of the Tax Act and not exempt from tax under Part I of the Tax Act.

**"Exchange Ratio"** means the sum of (i) 0.3546, plus (ii) the fraction resulting from dividing an amount equal to the Cash Consideration by the volume weighted average trading price of the Purchaser Shares on the TSX for the 10 day period immediately preceding the Effective Date.

**"Final Order"** means the final order of the Court in a form acceptable to the Company and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal.

**"Governmental Entity"** means (i) any international, multinational, national, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry, agency or instrumentality, domestic or foreign, (ii) any subdivision, agent or authority of any of the above, (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing or (iv) any stock exchange.

**"Interim Order"** means the interim order of the Court in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably.

**"Law"** means, with respect to any Person, any and all applicable law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity, as amended.

**"Lien"** means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachments, option, right of first refusal or first offer, occupancy right, covenant, assignment, lien (statutory or otherwise), defect of title, or restriction or adverse right or claim, or other third party interest or encumbrance of any kind, in each case, whether contingent or absolute.



**"Letter of Transmittal"** means the letter of transmittal to be sent by the Company to Company Common Shareholders in connection with the Arrangement.

**"Loan Amount"** means an amount of cash on hand of the Company as determined in accordance with Section 4.6(7) of the Arrangement Agreement, to be lent to the Purchaser by the Company and deposited with the Depositary by the Company in accordance with Section 2.3(a) hereof and at the time provided for in Section 2.9 of the Arrangement Agreement.

**"OBICA"** means the *Business Corporations Act* (Ontario).

**"Parties"** means the Company and the Purchaser and **"Party"** means any one of them.

**"Person"** includes any individual, partnership, association, body corporate, organization, trust, estate, trustee, executor, administrator, legal representative, government (including Governmental Entity), syndicate or other entity, whether or not having legal status.

**"Plan of Arrangement"** means this plan of arrangement proposed under Section 182 of the OBICA, and any amendments or variations made in accordance with Section 8.1 of the Arrangement Agreement or Section 6.1 of this plan of arrangement or made at the direction of the Court in the Final Order with the consent of the Company and the Purchaser, each acting reasonably.

**"Purchaser"** means Aphria Inc.

**"Purchaser Shares"** means the common shares in the capital of the Purchaser.

**"Replacement Option"** means an option or right to purchase Purchaser Shares granted by the Purchaser in replacement of Company Options on the basis set forth in Section 2.3(d).

**"Share Consideration"** means 0.3546 of a Purchaser Share for each Common Share.

**"Stock Option Plan"** means the Company's incentive stock option plan, adopted as of December 29, 2017, as amended.

**"Tax Act"** means the *Income Tax Act* (Canada) and the regulations made thereunder, as now in effect and as they may be promulgated or amended from time to time.

**"TSX"** means the Toronto Stock Exchange.

**"Warrant Indenture"** means the indenture governing the Company Warrants.

## **1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to dollars or to \$ are references to Canadian dollars.

- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** Wherever the word "including," "includes" or "include" is used in this Plan of Arrangement, it shall be deemed to be followed by the words "without limitation." the word "or" shall be disjunctive but not exclusive. The phrase "the aggregate of," "the total of," "the sum of" or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of." References herein to a Person in a particular capacity or capacities shall exclude such Person in any other capacity.
- (5) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (6) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 4:30 p.m. on the last day of the period, if the last day of the period is a Business Day, or at 4:30 p.m. on the next Business Day if the last day of the period is not a Business Day. If the date on which any action is required or permitted to be taken under this Plan of Arrangement by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which is a Business Day.
- (7) **Time References.** References to time are to local time, Toronto, Ontario.

## ARTICLE 2 THE ARRANGEMENT

### 2.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to and subject to the provisions of the Arrangement Agreement.

### 2.2 Binding Effect

This Plan of Arrangement and the Arrangement will become effective at, and be binding at and after, the times referred to in Section 2.3 on: (i) the Company, (ii) the Purchaser, (iii) all registered and beneficial Company Common Shareholders (including Dissenting Shareholders), and (iv) all holders of Company Options and Company Warrants or participants in the Stock Option Plan, in each case without any further act or formality required on the part of any Person.

### 2.3 Arrangement

Commencing at the Effective Time, the following shall occur and shall be deemed to occur as set out below without any further authorization, act or formality, in each case effective as at two minute intervals starting at the Effective Time:

- (a) the Company shall lend an amount equal to the Loan Amount to the Purchaser, and the Purchaser shall deliver to the Company a duly issued and executed



demand promissory note to evidence such loan and the full amount of such loan shall be immediately deposited by the Company at the direction of the Purchaser with the Depositary to be held in a segregated trust account by the Depositary for the purpose of paying the Cash Consideration for the Common Shares;

- (b) each of the Common Shares held by a Dissenting Holder in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality to the Purchaser in consideration for a debt claim against the Purchaser for the amount determined under Article 3, and:
  - (i) such Dissenting Holder shall cease to be the holder of such Common Shares and to have any rights as a Company Common Shareholder other than the right to be paid fair value for such Common Shares as set out in Section 3.1;
  - (ii) such Dissenting Holder's name shall be removed as the holder of such Common Shares from the register of Common Shares maintained by or on behalf of the Company; and
  - (iii) the Purchaser shall be deemed to be the transferee of such Common Shares free and clear of all Liens (other than the right to be paid fair value for such Common Shares as set out in Section 3.1), and shall be entered in the register of Common Shares maintained by or on behalf of the Company; and
- (c) each Common Share outstanding immediately prior to the Effective Time (other than Common Shares held by a Dissenting Holder in respect of which Dissent Rights have been validly exercised under Section 2.3(b) and any Common Shares held by the Purchaser or any affiliates thereof) shall, without any further action by or on behalf of any Company Common Shareholder, be deemed to be assigned and transferred by the holder thereof to the Purchaser in exchange for the Consideration, and
  - (i) each holder of such Common Shares shall cease to be the holder thereof and to have any rights as a Company Common Shareholder other than the right to be paid the Consideration per Common Share in accordance with this Plan of Arrangement;
  - (ii) the name of each such holder shall be removed from the register of the Common Shares maintained by or on behalf of the Company; and
  - (iii) the Purchaser shall be deemed to be the transferee of such Common Shares free and clear of all Liens and shall be entered in the register of the Common Shares maintained by or on behalf of the Company.
- (d) each Company Option outstanding at the Effective Time (whether vested or unvested) will be exchanged for a Replacement Option to acquire such number of Purchaser Shares as is equal to: (A) that number of Common Shares that were

issuable upon exercise of such Company Option immediately prior to the Effective Time, multiplied by (B) the Exchange Ratio, rounded down to the nearest whole number of Purchaser Shares, at an exercise price per Purchaser Share equal to the greater of (i) the quotient determined by dividing: (X) the exercise price per Common Share at which such Company Option was exercisable immediately prior to the Effective Time, by (Y) the Exchange Ratio, rounded up to the nearest whole cent, and (ii) such minimum amount that meets the requirements of paragraph 7(1.4)(c) of the Tax Act. All terms and conditions of a Replacement Option, including the term to expiry, vesting, conditions to and manner of exercising, shall be the same as the Company Option for which it was exchanged, and any certificate or option agreement previously evidencing the Company Option shall thereafter evidence and be deemed to evidence such Replacement Option;

## **2.4 Tax Elections**

An Eligible Holder who receives Purchaser Shares under the Arrangement shall be entitled to make an income tax election pursuant to subsection 85(1) of the Tax Act, or subsection 85(2) of the Tax Act if such beneficial owner is a partnership, (and in each case, where applicable, the analogous provisions of provincial income tax law) with respect to the transfer of its Common Shares to the Purchaser and receipt of the Purchaser Shares by providing two signed copies of the necessary prescribed election form(s) to the Depositary within 90 days following the Effective Date, duly completed with the details of the number of Common Shares transferred and the applicable agreed amounts for the purposes of such elections. Thereafter, subject to the election forms being correct and complete and complying with the provisions of the Tax Act (and applicable provincial income tax law), the forms will be signed by the Purchaser and returned to such Eligible Holder within 90 days after the receipt thereof by the Depositary for filing with the Canada Revenue Agency (or the applicable provincial taxing authority) by such Eligible Holder. The Purchaser will not be responsible for the proper completion of any election form and, except for the Purchaser's obligation to return (within 90 days after the receipt thereof by the Depositary) duly completed election forms which are received by the Depositary within 90 days of the Effective Date, the Purchaser will not be responsible for any taxes, interest or penalties resulting from the failure by an Eligible Holder to properly complete or file the election forms in the form and manner and within the time prescribed by the Tax Act (or any applicable provincial legislation). In its sole discretion, the Purchaser may choose to sign and return an election form received by the Depositary more than 90 days following the Effective Date, but the Purchaser will have no obligation to do so.

## **2.5 No Fractional Purchaser Shares and Rounding of Cash Consideration**

- (a) In no event shall any fractional Purchaser Shares be issued under this Plan of Arrangement. Where the aggregate number of Purchaser Shares to be issued to a Company Common Shareholder as consideration under this Plan of Arrangement would result in a fraction of a Purchaser Share being issuable, then the number of Purchaser Shares to be issued to such Company Common Shareholder shall be rounded down to the closest whole number and, in lieu of the issuance of a fractional Purchaser Share thereof, the Purchaser will pay to each such holder a cash payment (rounded up to the nearest cent) determined by reference to the volume weighted average trading price

of Purchaser Shares on the TSX for the five trading days on which such Purchaser Shares trade on the TSX immediately preceding the Effective Date.

- (b) If the aggregate cash amount which an Company Common Shareholder is entitled to receive pursuant to Section 2.1(c) and Section 5.1(b)(i) would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Company Common Shareholder shall be entitled to receive shall be rounded up to the nearest whole \$0.01.

### **ARTICLE 3 RIGHTS OF DISSENT**

#### **3.1 Rights of Dissent**

Each registered holder of Common Shares may exercise dissent rights with respect to any Common Shares held by such holder ("**Dissent Rights**") in connection with the Arrangement pursuant to and in the manner set forth in Section 185 of the OBCA, as modified by the Interim Order and this Section 3.1, provided that, notwithstanding subsection 185(6) of the OBCA, the written objection to the Arrangement Resolution referred to in subsection 185(6) of the OBCA must be received by the Company not later than 5:00 p.m. (Toronto time) two Business Days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Each Dissenting Holder that duly exercises such holder's Dissent Rights shall be deemed to have transferred the Common Shares held by such holder and in respect of which Dissent Rights have been validly exercised to the Purchaser free and clear of all Liens (other than the right to be paid fair value for such Common Shares as set out in this Section 3.1), as provided in Section 2.3(b) and if they:

- (a) ultimately are entitled to be paid fair value for such Common Shares: (i) shall be deemed not to have participated in the transactions in Article 2 (other than Section 2.3(b)); (ii) will be entitled to be paid the fair value of such Common Shares by the Purchaser, which fair value, notwithstanding anything to the contrary contained in Part XIV of the OBCA, shall be determined as of the close of business on the Business Day before the Arrangement Resolution was adopted; and (iii) will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holder not exercised their Dissent Rights in respect of such Common Shares; or
- (b) ultimately are not entitled, for any reason, to be paid fair value for such Common Shares, shall be deemed to have participated in the Arrangement on the same basis as a Company Common Shareholder that is not a Dissenting Holder and shall be entitled to receive only the Consideration contemplated by Section 2.3(c) hereof that such Dissenting Holder would have received pursuant to the Arrangement if such Dissenting Holder had not exercised its Dissent Rights.

#### **3.2 Recognition of Dissenting Holders**

- (a) In no circumstances shall the Purchaser, the Company or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is the registered holder of those Common Shares in respect of which such rights are sought to be exercised.

- (b) For greater certainty, in no case shall the Purchaser, the Company or any other Person be required to recognize Dissenting Holders as holders of Common Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfer under Section 2.3(b), and the names of such Dissenting Holders shall be removed from the registers of holders of Common Shares in respect of which Dissent Rights have been validly exercised at the same time as the event described in Section 2.3(b) occurs. In addition to any other restrictions under Section 185 of the OBCA, none of the following shall be entitled to exercise Dissent Rights: (i) Company Optionholders; (ii) Company Warrantholders; and (iii) Company Common Shareholders who vote or have instructed a proxyholder to vote such Common Shares in favour of the Arrangement Resolution (but only in respect of such Common Shares).

#### **ARTICLE 4 COMPANY WARRANTS**

##### **4.1 Company Warrants**

In accordance with the terms of the Warrant Indenture, each holder of a Company Warrant shall be entitled to receive (and such holder shall accept) upon the exercise of such holder's Company Warrant, in lieu of Company Common Shares to which such holder was theretofore entitled upon such exercise and for the same aggregate consideration payable therefor, the number of Purchaser Shares and the amount of cash which the holder would have been entitled to receive as a result of the transactions contemplated by this Arrangement if, immediately prior to the Effective Date, such holder had been the registered holder of the number of Company Common Shares to which such holder would have been entitled if such holder had exercised such holder's Company Warrants immediately prior to the Effective Time. Each Company Warrant shall continue to be governed by and be subject to the terms of the applicable Warrant Indenture.

##### **4.2 Exercise of Company Warrants Post-Effective Time**

Upon any exercise of a Company Warrant following the Effective Time, the Company shall: (i) deliver, or cause to be delivered, the cash and Purchaser Shares needed to settle such exercise, and (ii) cause the Purchaser to issue the necessary number of Purchaser Shares needed to settle such exercise.

##### **4.3 Idem**

This Article 4 is subject to adjustment in accordance with the terms of the Company Warrant Indenture.

#### **ARTICLE 5 CERTIFICATES AND PAYMENTS**

##### **5.1 Payment and Delivery of Consideration**

- (a) Prior to the sending by the Company of the Articles of Arrangement to the Director:



- (i) the Company shall deposit, or cause to be deposited, for the benefit of the Company Common Shareholders, cash with the Depositary in the aggregate amount equal to the payments in respect of the Common Shares required by Section 2.3(c) of this Plan of Arrangement in accordance with Section 2.9(2) of the Arrangement Agreement; and
  - (ii) the Purchaser shall deliver, or cause to be delivered, the Purchaser Shares to the Depositary to satisfy the Share Consideration issuable and/or payable to the Company Common Shareholders pursuant to this Plan of Arrangement (other than Company Common Shareholders who have validly exercising Dissent Rights and who have not withdrawn their notice of objection).
- (b) Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Common Shares that were transferred pursuant to Section 2.3(c), together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the Company Common Shareholder(s) represented by such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such Company Common Shareholder(s):
  - (i) a cheque, wire or other form of immediately available funds representing the Cash Consideration which such Company Common Shareholder(s) has the right to receive under this Plan of Arrangement for such Common Shares, less any amounts withheld pursuant to Section 5.3; and
  - (ii) a certificate representing the number of Purchaser Shares to which such holder is entitled to receive under the Arrangement, which Purchaser Shares will be registered in such name or names and either (A) delivered to the address or addresses as such Company Common Shareholder directed in their Letter of Transmittal; or (B) made available for pick up at the offices of the Depositary in accordance with the instructions of the Company Common Shareholder in the Letter of Transmittal,

and any certificate representing Common Shares so surrendered shall forthwith thereafter be cancelled.

- (c) Until surrendered as contemplated by this Section 5.1, each certificate that immediately prior to the Effective Time represented Common Shares (other than Common Shares in respect of which Dissent Rights have been validly exercised and not withdrawn), shall be deemed after the Effective Time to represent only the right to receive upon such surrender the Consideration in lieu of such certificate as contemplated in this Section 5.1, less any amounts withheld pursuant to Section 5.3. Any such certificate formerly representing Common Shares not duly surrendered on or before the second anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder of Common Shares of any kind or nature against or in the Company or the

Purchaser. On such date, all Consideration to which such former holder was entitled shall be deemed to have been surrendered to the Purchaser and shall be paid over by the Depositary to the Purchaser or as directed by the Purchaser.

- (d) Any payment made by way of cheque by the Depositary pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depositary or that otherwise remains unclaimed, in each case, on or before the second anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the second anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable Consideration pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser for no consideration.

## **5.2 Lost Certificates**

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Common Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, the Consideration that such Shareholder has the right to receive in accordance with Section 2.3 and such Shareholder's Letter of Transmittal. When authorizing such exchange for any lost, stolen or destroyed certificate, the Person to whom such Consideration is to be delivered shall as a condition precedent to the delivery of such Consideration, give a bond satisfactory to the Purchaser and the Depositary (each acting reasonably) in such sum as the Purchaser may direct (acting reasonably), or otherwise indemnify the Purchaser and the Company in a manner satisfactory to the Purchaser (acting reasonably) against any claim that may be made against the Purchaser and the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

## **5.3 Withholding Rights**

The Purchaser, the Company or the Depositary shall be entitled to deduct and withhold from any amount payable to any Person under the Plan of Arrangement (including, without limitation, any amounts payable pursuant to Section 3.1), such amounts as the Purchaser, the Company or the Depositary determines, acting reasonably, are required or permitted to be deducted and withheld with respect to such payment under the Tax Act, the United States *Internal Revenue Code of 1986* or any provision of any other Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made, provided that such amounts are actually remitted to the appropriate taxing authority.



#### **5.4 No Liens**

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

### **ARTICLE 6 AMENDMENTS**

#### **6.1 Amendments to Plan of Arrangement**

- (a) The Company and the Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by the Purchaser and the Company (subject to the Arrangement Agreement), each acting reasonably, (iii) filed with the Court and, if made following the Company Meeting, approved by the Court, and (iv) communicated to holders of Common Shares if and as required by the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company or the Purchaser at any time prior to the Company Meeting (provided that the Purchaser or the Company (subject to the Arrangement Agreement), as applicable, shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (i) it is consented to in writing by each of the Company and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by some or all of the Company Common Shareholders voting in the manner directed by the Court.
- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Company Common Shareholder.
- (e) If the Closing Cash Amount exceeds the Restricted Cash Amount (each as defined in the Arrangement Agreement), then the aggregate Cash Consideration shall be increased by an amount equal to the difference between the Closing Cash Amount and the Restricted Cash Amount, and in such event the Cash Consideration will be proportionately adjusted.

**ARTICLE 7**  
**FURTHER ASSURANCES**

**7.1 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order further to document or evidence any of the transactions or events set out in this Plan of Arrangement.

IN THE MATTER OF AN APPLICATION UNDER SECTION 182 OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, Ch. B.16 AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF a proposed arrangement of NUVERA INC. involving APHRIA INC.

Court File No.: CV-18-591684-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FINAL ORDER**

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