

Certificate of Arrangement

Certificat d'arrangement

Business Corporations Act

Loi sur les sociétés par actions

NUVO PHARMACEUTICALS INC.

Corporation Name / Dénomination sociale

1721599

Ontario Corporation Number / Numéro de société de l'Ontario

This is to certify that these articles are effective on

La présente vise à attester que ces statuts entreront en
vigueur le

March 14, 2023 / 14 mars 2023

V. Quintanilla W.

Director / Directeur

Business Corporations Act / Loi sur les sociétés par actions

The Certificate of Arrangement is not complete
without the Articles of Arrangement

Certified a true copy of the record of the
Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar



Le certificat d'arrangement n'est pas complet s'il
ne contient pas les statuts d'arrangement

Copie certifiée conforme du dossier du
ministère des Services au public et aux
entreprises.

V. Quintanilla W.

Directeur ou registrateur



Articles of Arrangement

Business Corporations Act

Corporation Name (Date of Incorporation/Amalgamation)

NUVO PHARMACEUTICALS INC. (January 01, 2007)

1. The arrangement has been approved by the shareholders of the corporation in accordance with section 182 of the Business Corporations Act
2. A copy of the plan of arrangement is attached to these articles as Exhibit "A"
3. The arrangement was approved by the court and a certified copy of the Order of the court is attached to these articles as Exhibit "B"
4. The terms and conditions of the arrangement, if any, have been complied with in accordance with the order.

The articles have been properly executed by the required person(s).

Supporting Document -Exhibit "A" - Copy of the plan of Arrangement

Supporting Document -Exhibit "B" - A certified copy of the Order of the court

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):

“**Amalco**” has the meaning specified in Section 2.3(a);

“**Arrangement Agreement**” means the Arrangement Agreement made as of December 22, 2022 between the Purchaser and the Company (including the Schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms;

“**Canadian Subsidiary**” means Aralez Pharmaceuticals Canada Inc.;

“**Cash Consideration**” means \$1.35;

“**Company**” means Nuvo Pharmaceuticals Inc. d/b/a Miravo Healthcare and, after the amalgamation in Section 2.3(a), Amalco;

“**Company Shares**” means the common shares in the capital of the Company and, after the amalgamation in Section 2.3(a), of Amalco;

“**Court**” means the Ontario Superior Court of Justice (Commercial List), or other court as applicable;

“**Depository**” means TSX Trust Company, as depository, or such other Person as the Company and the Purchaser mutually agree on, each acting reasonably;

“**Dissenting Shareholder**” means a holder of Company Shares as of the record date of the Company Meeting who: (a) has validly exercised its Dissent Rights in strict compliance with the Dissent Right provisions of this Plan of Arrangement; (b) has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights; and (c) is ultimately entitled to be paid the fair value for his, her or its Company Shares, but only in respect of the Company Shares in respect of which Dissent Rights are validly exercised by such holder of Company Shares;

“**Dissent Rights**” has the meaning specified in Section 3.1;

“**Effective Date**” means the date shown on the Certificate of Arrangement giving effect to the Arrangement;

“**Effective Time**” means 1:01 a.m. on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date;

“**Equity Awards**” means the Company Options, Company SARs and Company DSUs;

“Final Order” means the final order of the Court pursuant to section 182(5) of the OBCA in a form acceptable to the Company and Purchaser, each acting reasonably, as contemplated by Section 2.5 of the Arrangement Agreement, approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of 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, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Company and the Purchaser, each acting reasonably) on appeal;

“holders” means: (a) when used with reference to the Company Shares, except where the context otherwise requires, the holders of the Company Shares shown from time to time in the registers maintained by or on behalf of the Company in respect of the Company Shares; and (b) when used with reference to Equity Awards, the holders of Equity Awards shown from time to time in the respective registers or accounts maintained by or on behalf of the Company;

“Interim Order” means the interim order of the Court pursuant to section 182(5) of the OBCA in a form acceptable to the Company and the Purchaser, each acting reasonably, as contemplated by Section 2.2 of the Arrangement Agreement, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified, supplemented or varied by the Court with the consent of the Company and the Purchaser, each acting reasonably;

“Letter of Transmittal” means the letter of transmittal to be sent by the Company to holders of Company Shares for use in connection with the Arrangement;

“Liens” means any mortgage, charge, pledge, hypothec, security interest, lien (statutory or otherwise), or adverse right or claim, or other third party interest or encumbrance of any kind;

“Plan of Arrangement” means this plan of arrangement proposed under Section 182 of the OBCA, and any amendments or variations thereto made in accordance with the Arrangement Agreement or this Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and Purchaser, each acting reasonably;

“Purchaser” means Searchlight Pharma Inc.; and

“Purchaser Loan” means one or more loans from the Purchaser to the Company denominated in Canadian or United States dollars in an aggregate principal amount not exceeding the aggregate amount of cash required by the Company to make the payments in Sections 2.3(d) and 2.3(e), which amount shall be provided by the Company to the Purchaser in writing prior to the Effective Time, and which shall be evidenced by way of one or more promissory notes granted by the Company in favour of the Purchaser.

1.2 Headings, References, etc.

The division of this Plan of Arrangement into Articles, sections, and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement. Unless otherwise indicated, all references to an “Article” or “section” followed by a number and/or a letter refer to the specified Article or section of this Plan of Arrangement. The terms “hereof”, “herein” and “hereunder” and similar expressions refer to this Plan of Arrangement and not to any particular Article, section or other portion hereof.

1.3 Rules of Construction

In this Plan of Arrangement, unless the context otherwise requires: (a) words importing the singular number include the plural and vice versa; (b) words importing any gender include all genders; and (c) “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation”.

1.4 Currency

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in lawful money of Canada and “\$” refers to Canadian dollars. All references to US\$ are references to United States dollars.

1.5 Date for Any Action

If the date on which any action is required or permitted to be taken hereunder 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. In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively.

1.6 References to Dates, Statutes, etc.

In this Plan of Arrangement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute, regulation, direction or instrument is to that statute, regulation, direction or instrument as now enacted or as the same may from time to time be amended, re-enacted or replaced, and in the case of a reference to a statute, includes any regulations, rules, policies or directions made thereunder. Any reference in this Plan of Arrangement to a Person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns. References to any contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with its terms.

1.7 Time

Time shall be of the essence in every matter or action contemplated in this Plan of Arrangement. All times expressed herein are local time (Toronto, Ontario) unless otherwise stipulated herein.

ARTICLE 2 **THE ARRANGEMENT**

2.1 Arrangement Agreement

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

2.2 Binding Effect

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Company, the Purchaser, all holders and beneficial owners of Company Shares, Company Options, Company SARs and Company DSUs, including Dissenting Holders, the registrar and transfer agent of the

Company, the Depositary and all other Persons, at and after the Effective Time without any further act or formality required on the part of any Person.

2.3 Arrangement

At the Effective Time, each of the following events shall occur and shall be deemed to occur sequentially as set out below, without further authorization, act or formality, in each case, in accordance with the transfer mechanics set out in Section 2.4 and unless stated otherwise, effective as at five minute intervals starting at the Effective Time:

- (a) the stated capital of the issued and outstanding share of the Canadian Subsidiary shall be reduced to \$1.00 without any distribution;
- (b) the Company and the Canadian Subsidiary shall be amalgamated and continued as one corporation (“**Amalco**”) under the OBCA in accordance with the following:
 - (i) **Name**. The name of Amalco shall be “Nuvo Pharmaceuticals Inc.”;
 - (ii) **Registered Office**. The registered office of Amalco shall be located at the same registered office as the Company. The address of the registered office of Amalco shall be 6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5;
 - (iii) **Restrictions on Business and Powers**. There shall be no restrictions on the business Amalco may carry on or the powers Amalco may exercise;
 - (iv) **Authorized Capital**. The authorized capital of Amalco shall be the authorized capital of the Company and for greater certainty shall be comprised of an unlimited number of common shares, an unlimited number of first preference shares, issuable in series, and an unlimited number of second preference shares, issuable in series, and the rights, privileges, restrictions, and conditions attaching thereto shall be as set forth in Appendix A hereto;
 - (v) **Restrictions on Transfer**. There shall be no restrictions on the transfer of shares in the capital of Amalco;
 - (vi) **Other Provisions**. None;
 - (vii) **Number of Directors**. Amalco shall have a minimum of one (1) director and a maximum of twelve (12) directors, until changed in accordance with the OBCA. Until changed by the shareholders of Amalco, the number of directors of Amalco shall be set at seven (7);
 - (viii) **Directors**. The initial directors of Amalco shall be:

Name	Address	Resident Canadian
Daniel N. Chicoine	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes

Name	Address	Resident Canadian
Anthony Dobranowski	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Robert Harris	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
John London	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Mary C. Ritchie	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Dale MacCandlish Weil	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Anthony Yung Snow	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	No

The aforementioned directors of Amalco shall hold office until the first annual meeting of shareholders of Amalco (or the signing of a written resolution in lieu thereof) or until their successors are elected or appointed;

(ix) **Securities.**

(A) The issued and outstanding Company Shares will not be redeemed, acquired or cancelled, in whole or in part, but shall continue to remain issued and outstanding as common shares of Amalco; and

(B) The issued and outstanding share of the Canadian Subsidiary, which shall be held by the Company immediately prior to the amalgamation, shall be, and shall be deemed to be, cancelled without any repayment of capital or any other consideration in respect thereof;

(x) **Stated Capital.** The stated capital in respect of the common shares of Amalco will be equal to the stated capital of the Company Shares immediately prior to the amalgamation;

(xi) **By-laws.** The by-laws of Amalco shall be the same as those of the Company, except that the references therein to the Company shall be changed to Amalco;

(xii) **Articles.** The Articles of Arrangement filed to give effect to the Arrangement shall be deemed to be the articles of amalgamation of Amalco and the Certificate of Arrangement issued in respect of such Articles of Arrangement by the Director under the OBCA shall be deemed to be the certificate of amalgamation of Amalco; and

(xiii) **Effect of Amalgamation.** The provisions of section 179 of the OBCA shall apply to the amalgamation with the result that, on the Effective Date:

- (A) the amalgamation of the Company and the Canadian Subsidiary and their continuance as one corporation become effective;
 - (B) the property of the Company and the Canadian Subsidiary continues to be the property of Amalco;
 - (C) Amalco continues to be liable for the obligations of the Company and the Canadian Subsidiary (other than any obligation owing by the Company to the Canadian Subsidiary, or by the Canadian Subsidiary to the Company, which shall be settled on the amalgamation);
 - (D) an existing cause of action, claim or liability to prosecution of the Company or the Canadian Subsidiary is unaffected;
 - (E) a civil, criminal or administrative action or proceeding pending by or against the Company or the Canadian Subsidiary may be continued to be prosecuted by or against Amalco; and
 - (F) a conviction against, or ruling, order or judgment in favour of or against, the Company or the Canadian Subsidiary may be enforced by or against Amalco.
- (c) the Purchaser shall make the Purchaser Loan to partially fund the payments in Sections 2.3(d) and 2.3(e);
- (d) five minutes after the completion of the Debt Repayment Steps, each Company Option outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Company Share Option Plan, shall be deemed to be unconditionally vested and exercisable, and such Company Option shall, without any further action by or on behalf of a holder of Company Options, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the amount (if any) by which the Cash Consideration exceeds the exercise price of such Company Option, in each case, less applicable withholdings in accordance with Section 4.3, and each such Company Option shall immediately be cancelled and, for greater certainty, where such amount is nil or negative, neither the Company nor the Purchaser shall be obligated to pay the holder of such Company Option any amount in respect of such Company Option;
- (e) each Company DSU outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Company DSU Plan, shall, without any further action by or on behalf of a holder of Company DSUs, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the Cash Consideration, less applicable withholdings in accordance with Section 4.3, and each such Company DSU shall immediately be cancelled;
- (f) each Company SAR outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Company SAR Plan, shall, without any further action by or on behalf of a holder of Company SARs, be deemed to be assigned and transferred by such holder to the Company for no consideration and each such Company SAR shall immediately be cancelled and, for greater certainty, neither the Company nor

the Purchaser shall be obligated to pay the holder of such Company SAR any amount in respect of such Company SAR;

- (g) each of the Company Shares held by Dissenting Shareholders in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred (free and clear of any Liens), 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 Shareholders shall cease to be the holders of such Company Shares and to have any rights as holders of such Company Shares other than the right to be paid fair value for such Company Shares as set out in Section 3.1;
 - (ii) the name of each such Dissenting Shareholder shall be removed as the holder of such Company Shares from the registers of Company Shares maintained by or on behalf of the Company; and
 - (iii) the Purchaser shall be deemed to be the transferee of such Company Shares (free and clear of any Liens) and shall be entered in the registers of Company Shares maintained by or on behalf of the Company;
- (h) contemporaneously with the step contemplated in Section 2.3(g), each outstanding Company Share (other than Company Shares held by Dissenting Shareholders) shall be transferred (free and clear of all Liens) to the Purchaser in consideration for the Cash Consideration.

2.4 Transfer Mechanics

- (a) With respect to each Company Option, Company DSU and Company SAR deemed to be transferred and assigned in accordance with Sections 2.3(d), 2.3(e) and 2.3(f), the following shall be deemed to have occurred as of the time of such applicable transfer and assignment:
 - (i) each holder thereof shall cease to be a holder of such applicable Equity Award;
 - (ii) each holder's name shall be removed from the register of the applicable Equity Award maintained by or on behalf of the Company;
 - (iii) the Company Share Option Plan, the Company DSU Plan and the Company SAR Plan, and all agreements relating to the applicable Equity Awards, shall be terminated and shall be of no further force and effect; and
 - (iv) each holder shall thereafter have only the right to receive the consideration to which they are entitled pursuant to Sections 2.3(d), 2.3(e) and 2.3(f), as applicable, at the time and in the manner specified in Section 4.1.

2.5 Rounding of Cash Consideration

If the aggregate cash amount which a holder of Company Shares is entitled to receive pursuant to this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such holder 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

Registered holders of Company Shares as of the record date for the Company Meeting may exercise dissent rights with respect to the Company Shares held by such holder as of such date (“**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 Section 185(6) of the OBCA, the written objection to the Arrangement Resolution referred to in Section 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). Dissenting Shareholders who duly exercise their Dissent Rights shall be deemed to have transferred the Company Shares held by them and in respect of which Dissent Rights have been validly exercised to the Company free and clear of all Liens, as provided in Section 2.3(g), and if they:

- (a) ultimately are entitled to be paid fair value for such Company Shares: (i) shall be deemed not to have participated in the transactions in Article 2 (other than Section 2.3(g)); (ii) will be entitled to be paid the fair value of such Company Shares, which fair value shall be determined as of the close of business on the day before the Arrangement Resolutions were 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 holders not exercised their Dissent Rights in respect of such Company Shares; or
- (b) ultimately are not entitled, for any reason, to be paid fair value for such Company Shares, shall be deemed to have participated in the Arrangement as of the Effective Time on the same basis as a non-dissenting holder of Company Shares and shall be entitled to receive only the consideration contemplated in Section 2.3 that such holder of Company Shares would have received pursuant to the Arrangement if such holder of Company Shares had not exercised Dissent Rights.

3.2 Recognition of Dissenting Shareholders

- (a) In no circumstances shall the Company, the Purchaser or any other Person be required to recognize a Person exercising Dissent Rights: (i) unless, as of the deadline for exercising Dissent Rights (as set forth in Section 3.1), such Person is a registered holder of the Company Shares in respect of which such Dissent Rights are sought to be exercised; (ii) if such Person has voted or instructed a proxyholder to vote such Company Shares in favour of the Arrangement Resolution; or (iii) unless such Person has strictly complied with the procedures for exercising Dissent Rights and does not withdraw such dissent prior to the Effective Time.
- (b) For greater certainty, in no case shall the Company, the Purchaser, the registrar and transfer agent of the Company, the Depositary or any other Person be required to recognize Dissenting Shareholders as holders of Company Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfer under Section 2.3(g), and the names of such Dissenting Shareholders shall be removed from the registers of holders of Company Shares in respect of which Dissent Rights have been validly exercised at the same time as the event described in Section 2.3(g) occurs.

- (c) In addition to any other restrictions under Section 185 of the OBCA, none of the following shall be entitled to exercise Dissent Rights: (i) holders of Equity Awards; (ii) holders of Company Shares who vote or have instructed a proxyholder to vote such holder's Company Shares in favour of the Arrangement Resolution; (iii) any Person (including any beneficial owner of Company Shares) who is not a registered holder of Company Shares; and (iv) the Purchaser and its affiliates (as defined in the Arrangement Agreement).

ARTICLE 4

PAYMENTS AND CERTIFICATES

4.1 Payment of Consideration

- (a) Following receipt of the Final Order and prior to the filing of the Articles of Arrangement the Purchaser shall deposit or cause to be deposited with the Depositary for the benefit of each holder of Company Shares entitled to receive cash pursuant to Section 2.3(h), with the amount per Company Share in respect of which Dissent Rights have been exercised being deemed to be the Cash Consideration, for the benefit of the holders of Company Shares. The cash deposited with the Depositary shall be held in an interest-bearing account, and any interest earned on such funds shall be for the account of the Purchaser.
- (b) Upon the surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Company Shares that were transferred pursuant to Section 2.3(h), together with a duly completed and executed Letter of Transmittal, and such additional documents and instruments as the Depositary may reasonably require, each Company Share represented by such surrendered certificate shall be exchanged by the Depositary, and the Depositary shall deliver to the applicable holder of such Company Share as soon as practicable and in accordance with Sections 2.3(h), 4.1 and Section 4.2: a cheque, wire transfer or other form of immediately available funds, representing the cash amount that such holder of Company Shares is entitled to receive under the Arrangement.
- (c) As soon as practicable after the Effective Time, the Company shall pay the amounts to be paid to holders of Equity Awards in accordance with Sections 2.3(d) and 2.3(e) either: (i) pursuant to the normal payroll practices and procedures of the Company; or (ii) in the event that payment pursuant to the normal payroll practices and procedures of the Company is not practicable for any such holder, by cheque, wire transfer or other form of immediately available funds (delivered to such holder of such Equity Awards, as applicable, as reflected on the register maintained by or on behalf of the Company in respect of such Equity Awards), or (iii) by such other means as the Company may elect or as otherwise may be reasonably requested by the Purchaser including with respect to the timing and manner of such delivery, in each case, less applicable withholdings in accordance with Section 4.3.
- (d) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented outstanding Company Shares shall be deemed, immediately after the completion of the transactions contemplated in Section 2.3(h), to represent only the right to receive upon such surrender cash in lieu of such certificate as contemplated in Section 2.3(h). Any such certificate formerly representing outstanding Company Shares not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder of Company Shares of any kind or nature against or in the Company or Purchaser. On such date, all cash or securities to which such former holder was entitled shall be deemed to have been

surrendered to the Purchaser or the Company, as applicable, and shall be paid over by the Depositary to the Purchaser or as directed by the Purchaser.

- (e) Any payment made by way of cheque by the Depositary (on behalf of the Purchaser) or the Company, if applicable, pursuant to the Arrangement that has not been deposited or has been returned to the Depositary (or the Company) or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Date, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Date shall cease to represent a right or claim of any kind or nature and the right of any holder of Company Shares or Equity Awards to receive the applicable consideration for any Company Shares or Equity Awards pursuant to the Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Company, as applicable, for no consideration.
- (f) No holder of Company Shares or Equity Awards shall be entitled to receive any consideration with respect to such Company Shares or Equity Awards, other than the consideration to which such holder entitled to receive in accordance with Sections 2.3(d), 2.3(e), 2.3(f), 2.3(g), 2.3(h) and this Section 4.1 and, for greater certainty, no such holder shall be entitled to receive any interest, dividends, premium or other payment in connection therewith. No dividend or other distribution declared or made after the Effective Time with respect to Company Shares or Equity Awards with a record date on or after the Effective Date shall be delivered to the holder of any unsurrendered certificate which, immediately prior to the Effective Date, represented outstanding Company Shares or Equity Awards.

4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Company Shares that were transferred pursuant to Section 2.3(h) 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, pay and deliver, in exchange for such lost, stolen or destroyed certificate, the cash amount which such holder is entitled to receive pursuant to this Plan of Arrangement. When authorizing such issuance, delivery or payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall as a condition precedent to the issuance, delivery or payment thereof, give a bond satisfactory to the Company, the Purchaser and the Depositary, each acting reasonably, in such sum as the Purchaser may direct, or otherwise indemnify the Purchaser and the Company in a manner satisfactory to the Purchaser and the Company, each 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.

4.3 Withholding Rights

The Purchaser, the Company and the Depositary, and any other Person that makes a payment hereunder, as applicable, shall be entitled to deduct or withhold (or cause to be deducted or withheld) from the amount payable or otherwise deliverable to any Person pursuant to the Arrangement or this Plan of Arrangement, including Company Shareholders exercising Dissent Rights, and from all dividends, other distributions or other amounts otherwise payable to any former Company Shareholders or holders of Company Options or Company DSUs, such Taxes or other amounts as the Purchaser, the Company, the Depositary or other Persons are or may be required or permitted to deduct or withhold with respect to such payment under the Tax Act, or any other provisions of any applicable Laws. To the extent that Taxes or other amounts are so deducted or withheld, such deducted or withheld Taxes or other amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which

such deduction or withholding was made, provided that such deducted or withheld Taxes or other amounts are actually remitted to the appropriate Governmental Entity.

4.4 No Liens

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

4.5 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Company Shares and Equity Awards issued or outstanding prior to the Effective Time; (b) the rights and obligations of the holders of Company Shares and Equity Awards, the Company, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement; and (c) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Company Shares and Equity Awards shall be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement.

ARTICLE 5 **AMENDMENTS**

5.1 Amendments to Plan of Arrangement

- (a) The Company and the Purchaser may amend, modify 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 or supplement must: (i) be set out in writing; (ii) be approved by the Company and the Purchaser, 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 Company Shares, if and as required by the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by either the Purchaser or the Company at any time prior to the Company Meeting (provided that the other Party 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 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 holders of some or all of the Company Shares in the manner directed by the Court. Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any holder of Company Shares or (ii) is an amendment contemplated in Section 5.1(d) made following the Effective Date.

- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, without communication to the holders of the Company Shares, 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 holder of Company Shares or Equity Awards.

5.2 Termination

This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

ARTICLE 6 FURTHER ASSURANCES

6.1 Notwithstanding

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 to the Arrangement Agreement 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 any of them in order further to document or evidence any of the transactions or events set out in this Plan of Arrangement.

APPENDIX A

SHARE PROVISIONS

ARTICLE 1

INTERPRETATION

- 1.01 References to “Act”: In this schedule, as from time to time amended, unless there is something in the context inconsistent herewith, “Act” means the *Business Corporations Act* (Ontario), or its successor, as amended from time to time.
- 1.02 Headings, Gender, Number: This schedule as from time to time amended, shall be read without regard to paragraph headings, which are included for ease of reference only, and with all changes in gender and number required by the context.

ARTICLE 2

COMMON SHARES

The Common Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- 2.01 Votes: The holders of Common Shares are entitled to receive notice of, and to attend, all meetings of shareholders of the Corporation, except meetings at which only holders of another specified class or series of shares are entitled to vote. The holders of Common Shares are entitled to one vote for each one Common Share held on all polls taken at such meetings.
- 2.02 Dividends: Subject to the prior rights, privileges, restrictions and conditions attaching to the First Preference Shares and the Second Preference Shares, or any series thereof, respectively, and the shares of any other class ranking senior to the Common Shares, the holders of Common Shares shall be entitled to receive dividends as and when declared by the directors of the Corporation.
- 2.03 Liquidation: In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the property and assets of the Corporation for the purpose of winding up the affairs of the Corporation, holders of Common Shares shall, after payment to the holders of First Preference Shares, Second Preference Shares and shares of any other class ranking senior to the Common Shares of the amount payable to them, be entitled to receive the remaining property and assets of the Corporation.
- 2.04 Limitation: Subject to the provisions of the Act, the holders of Common Shares shall not be entitled to vote separately on, or to dissent in respect of, any proposal to amend the articles of the Corporation to:
- (a) increase or decrease any maximum number of authorized Common Shares, or increase any maximum number of authorized shares of a class or series having rights or privileges equal or superior to the Common Shares;
 - (b) effect an exchange, reclassification or cancellation of all or part of the Common Shares; or
 - (c) create a new class of shares or series equal or superior to the Common Shares.

ARTICLE 3

FIRST PREFERENCE SHARES

The First Preference Shares shall have attached thereto, as a class, the following rights, privileges, restrictions and conditions:

3.01 Directors' Right to Issue in One or More Series: The First Preference Shares may at any time and from time to time be issued in one or more series. Prior to the issue of First Preference Shares of any series, the directors of the Corporation shall, subject to the rights, privileges, restrictions and conditions attached to the First Preference Shares as a class, the articles of the Corporation and the provisions of the Act, by resolution amend the articles of the Corporation to fix the number of First Preference Shares in such series and determine the designation of, and the rights, privileges, restrictions and conditions attached to, the First Preference Shares of such series including, without limitation:

- (a) the rate, amount or method of calculation of any dividends and whether any dividends are subject to adjustment;
- (b) whether any dividends are cumulative, partly cumulative or non-cumulative;
- (c) the dates, manner and currency of payments of any dividends and the date from which any dividends accrue or become payable;
- (d) if redeemable or purchasable (whether at the option of the Corporation or the holder or otherwise), the redemption or purchase prices and currency or currencies thereof and the terms and conditions of redemption or purchase, with or without any provision for sinking or similar funds;
- (e) the voting rights, if any;
- (f) any conversion, exchange or reclassification rights; and
- (g) any other terms not inconsistent with these provisions;

the whole subject to receipt by the Director appointed under the Act of articles of amendment designating and fixing the number of First Preference Shares in such series and setting forth the rights, privileges, restrictions and conditions attached thereto and the issue by the Director of a certificate of amendment with respect thereto.

3.02 Ranking of First Preference Shares of Each Series: The First Preference Shares of each series shall, with respect to the payment of dividends and the distribution of the assets of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation for the purpose of winding-up its affairs, rank (a) on a parity with the First Preference Shares of every other series and (b) senior to, and shall be entitled to a preference over, the Second Preference Shares, the Common Shares, and the shares of any other class ranking junior to the First Preference Shares. The First Preference Shares of any series shall also be entitled to such other preferences, not inconsistent with these provisions, over the Second Preference Shares, the Common Shares, and the shares of any other class ranking junior to the First Preference Shares as may be fixed in accordance with 3.01 hereof.

- 3.03 Voting Rights: Except as hereinafter specifically provided, as required by the Act or in accordance with any voting rights which may be attached to any series of First Preference Shares, the holders of First Preference Shares shall not be entitled as such to receive notice of, or to attend, any meeting of shareholders of the Corporation and shall not be entitled to vote at any such meeting; provided however that the holders of First Preference Shares shall be entitled to receive notice of meetings of shareholders of the Corporation called for the purpose of authorizing the dissolution of the Corporation or the sale, lease or exchange of all or substantially all of the property of the Corporation other than in the ordinary course of business of the Corporation.
- 3.04 Amendment with Approval of Holders of First Preference Shares: The rights, privileges, restrictions and conditions attached to the First Preference Shares as a class may be added to, removed or changed only with the approval of the holders of First Preference Shares given in accordance with the requirements of the Act and the minimum requirement provided in 3.05 hereof.
- 3.05 Approval of Holders of First Preference Shares: The approval of the holders of First Preference Shares as a class to any matters referred to in these provisions may be given as specified below:
- (a) Approval and Quorum: Any approval required to be given by the holders of First Preference Shares shall be deemed to have been sufficiently given if it shall have been given by a resolution signed by all of the holders of the then outstanding First Preference Shares or by a resolution passed by the affirmative vote of not less than two-thirds of the votes cast by holders of First Preference Shares who voted in respect of that resolution at a meeting of the holders of First Preference Shares called and held for such purpose in accordance with the by-laws of the Corporation at which holders of not less than one-tenth of the then outstanding First Preference Shares are present in person or represented by proxy; provided that, if at any such meeting a quorum is not present within one-half hour after the time appointed for such meeting, the meeting shall be adjourned to the same day in the next week at the same time and to such place as the chairman of the meeting may determine and, subject to the provisions of the Act, it shall not be necessary to give notice of such adjourned meeting. At such adjourned meeting the holders of First Preference Shares present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than two-thirds of the votes cast by holders of First Preference Shares at such meeting shall constitute the approval of the holders of First Preference Shares.
 - (b) Votes: On every poll taken at any meeting in respect of which only the holders of First Preference Shares of more than one series are entitled to vote, each holder of First Preference Shares shall be entitled to one vote in respect of the greater of (i) each \$1.00 of stated capital added to the appropriate stated capital account of the Corporation in respect of the issue of each such share and (ii) each \$1.00 of the liquidation preference or redemption preference (excluding any amount payable in respect of declared but unpaid or accrued but unpaid dividends) attached to each such share (and if the liquidation preference and redemption preference are not the same at the applicable time, then the greater of the two).

Subject to the foregoing, the formalities to be observed with respect to proxies, the giving or waiving of notice of any such meeting and the conduct thereof shall be those from time to time prescribed in the Act and the by-laws of the Corporation with respect to meetings of shareholders.

- 3.06 Shares Issued in Series with Identical Rights: Where First Preference Shares are issued in more than one series with identical rights, privileges, restrictions, conditions and designations attached thereto, all such series of First Preference Shares shall rank *pari passu* and participate equally and proportionately without discrimination or preference as if all such series of First Preference Shares had been issued simultaneously and all such series of First Preference Shares may be designated as one series.
- 3.07 Limitation: Subject to the provisions of the Act, the holders of First Preference Shares or any series thereof shall not, unless the rights, privileges, restrictions and conditions attached to the First Preference Shares as a class or to any particular series thereof provide to the contrary, be entitled to vote separately as a class or series on, or to dissent in respect of, any proposal to amend the articles of the Corporation to:
- (a) increase or decrease any maximum number of authorized First Preference Shares or any series thereof, or increase any maximum number of authorized shares of a class or series having rights or privileges equal or superior to the First Preference Shares or any series thereof;
 - (b) effect an exchange, reclassification or cancellation of all or part of the First Preference Shares or any series thereof; or
 - (c) create a new class or series of shares equal or superior to the First Preference Shares or any series thereof.

ARTICLE 4

SECOND PREFERENCE SHARES

The Second Preference Shares shall have attached thereto, as a class, the following rights, privileges, restrictions and conditions:

- 4.01 Directors' Right to Issue in One or More Series: The Second Preference Shares may at any time and from time to time be issued in one or more series. Prior to the issue of Second Preference Shares of any series, the directors of the Corporation shall, subject to the rights, privileges, restrictions and conditions attached to the Second Preference Shares as a class, the articles of the Corporation and the provisions of the Act, by resolution amend the articles of the Corporation to fix the number of Second Preference Shares in such series and determine the designation of, and the rights, privileges, restrictions and conditions attached to, the Second Preference Shares of such series including, without limitation:
- (a) the rate, amount or method of calculation of any dividends and whether any dividends are subject to adjustment;
 - (b) whether any dividends are cumulative, partly cumulative or non-cumulative;
 - (c) the dates, manner and currency of any payments of dividends and the date from which any dividends accrue or become payable;
 - (d) if redeemable or purchasable (whether at the option of the Corporation or the holder or otherwise), the redemption or purchase prices and currency or currencies thereof and the terms and conditions of redemption or purchase, with or without any provision for sinking or similar funds;

- (e) the voting rights, if any;
- (f) any conversion, exchange or reclassification rights; and
- (g) any other terms not inconsistent with these provisions;

the whole subject to receipt by the Director appointed under the Act of articles of amendment designating and fixing the number of Second Preference Shares in such series and setting forth the rights, privileges, restrictions and conditions attached thereto and the issue by the Director of a certificate of amendment with respect thereto.

- 4.02 Ranking of Second Preference Shares of Each Series: The Second Preference Shares of each series shall, with respect to the payment of dividends and the distribution of the assets of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation for the purpose of winding-up its affairs, rank (a) junior and subordinate to the First Preference Shares, (b) on a parity with the Second Preference Shares of every other series and (c) senior to, and shall be entitled to a preference over, the Common Shares and the shares of any other class ranking junior to the Second Preference Shares. The Second Preference Shares of any series shall also be entitled to such other preferences, not inconsistent with these provisions, over the Common Shares, and the shares of any other class ranking junior to the Second Preference Shares as may be fixed in accordance with 4.01 hereof.
- 4.03 Voting Rights: Except as hereinafter specifically provided, as required by the Act or in accordance with any voting rights which may be attached to any series of Second Preference Shares, the holders of Second Preference Shares shall not be entitled as such to receive notice of, or to attend, any meeting of shareholders of the Corporation and shall not be entitled to vote at any such meeting; provided however that the holders of Second Preference Shares shall be entitled to receive notice of meetings of shareholders of the Corporation called for the purpose of authorizing the dissolution of the Corporation or the sale, lease or exchange of all or substantially all of the property of the Corporation other than in the ordinary course of business of the Corporation.
- 4.04 Amendment with Approval of Holders of Second Preference Shares: The rights, privileges, restrictions and conditions attached to the Second Preference Shares as a class may be added to, removed or changed only with the approval of the holders of Second Preference Shares given in accordance with the requirements of the Act and the minimum requirement provided in 4.05 hereof.
- 4.05 Approval of Holders of Second Preference Shares: The approval of the holders of Second Preference Shares as a class to any matters referred to in these provisions may be given as specified below:
- (a) Approval and Quorum: Any approval required to be given by the holders of Second Preference Shares shall be deemed to have been sufficiently given if it shall have been given by a resolution signed by all of the holders of the then outstanding Second Preference Shares or by a resolution passed by the affirmative vote of not less than two-thirds of the votes cast by holders of Second Preference Shares who voted in respect of that resolution at a meeting of the holders of Second Preference Shares called and held for that purpose in accordance with the by-laws of the Corporation at which holders of not less than one-tenth of the then outstanding Second Preference Shares are present in person or represented by proxy; provided that, if at any such meeting a quorum is not present within one-half hour after the time appointed for such meeting, the meeting shall be adjourned to the same day in the next week at the same time and to such place as the chairman of the meeting may

determine and, subject to the provisions of the Act, it shall not be necessary to give notice of such adjourned meeting. At such adjourned meeting the holders of Second Preference Shares present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than two-thirds of the votes cast at such meeting shall constitute the approval of the holders of Second Preference Shares.

- (b) Votes: On every poll taken at any meeting in respect of which only the holders of the Second Preference Shares of more than one series are entitled to vote, each holder of Second Preference Shares shall be entitled to one vote in respect of the greater of (i) each \$1.00 of stated capital added to the appropriate stated capital account of the Corporation in respect of the issue of each such share and (ii) each \$1.00 of the liquidation preference or redemption preference (excluding any amount payable in respect of declared but unpaid or accrued but unpaid dividends) attached to each such share (and if the liquidation preference and redemption preference are not the same at the applicable time, then the greater of the two).

Subject to the foregoing, the formalities to be observed with respect to proxies, the giving or waiving of notice of any such meeting and the conduct thereof shall be those from time to time prescribed in the Act and the by-laws of the Corporation with respect to meetings of shareholders.

4.06 Shares Issued in Series with Identical Rights: Where Second Preference Shares are issued in more than one series with identical rights, privileges, restrictions, conditions and designations attached thereto, all such series of Second Preference Shares shall rank *pari passu* and participate equally and proportionately without discrimination or preference as if all such series of Second Preference Shares had been issued simultaneously and all such series of Second Preference Shares may be designated as one series.

4.07 Limitation: Subject to the provisions of the Act, the holders of Second Preference Shares or any series thereof shall not, unless the rights, privileges, restrictions and conditions attached to the Second Preference Shares as a class or to any particular series thereof provide to the contrary, be entitled to vote separately as a class or series on, or to dissent in respect of, any proposal to amend the articles of the Corporation to:

- (a) increase or decrease any maximum number of authorized Second Preference Shares or any series thereof, or increase any maximum number of authorized shares of a class or any series having rights or privileges equal or superior to the Second Preference Shares or any series thereof;
- (b) effect an exchange, reclassification or cancellation of all or part of the Second Preference Shares or any series thereof; or
- (c) create a new class or series of shares equal or superior to the Second Preference Shares or any series thereof.

A1233



Court File No.: CV-23-00693073-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
JUSTICE STEELE

) FRIDAY, THE 10TH
)
) DAY OF MARCH, 2023

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

AND IN THE MATTER OF A PROPOSED ARRANGEMENT
INVOLVING NUVO PHARMACEUTICALS INC. D/B/A MIRAVO
HEALTHCARE, ITS SHAREHOLDERS, OPTIONHOLDERS,
DEFERRED SHARE UNITHOLDERS, SHARE APPRECIATION
RIGHTSHOLDERS, ARALEZ PHARMACEUTICALS CANADA INC.
and SEARCHLIGHT PHARMA INC.

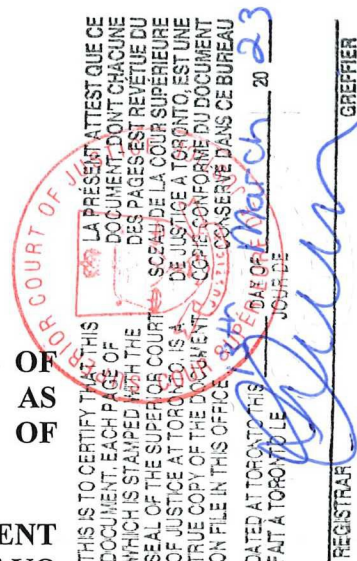
NUVO PHARMACEUTICALS INC. D/B/A MIRAVO HEALTHCARE and
ARALEZ PHARMACEUTICALS CANADA INC.

Applicants

ORDER
(March 10, 2023)

THIS APPLICATION made by the Applicants pursuant to section 182 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, (the "OBCA"), for an order approving a proposed arrangement (the "Arrangement"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application issued on January 17, 2023, the affidavit of Jesse Ledger sworn January 31, 2023, the affidavit of Jesse Ledger sworn March 7, 2023, the affidavit of mailing of Dirk Nicholson sworn February 14, 2023, the second affidavit of mailing



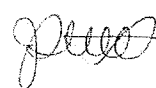
A697

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of Dirk Nicholson sworn February 14, 2023, and the Interim Order of the Honourable Justice Steele dated February 6, 2023, all filed, and

ON HEARING the submissions of counsel for the Applicants and counsel for Searchlight Pharma Inc., no one appearing for any other person, including any shareholder, optionholder, deferred share unitholder or share appreciation rightholder of the Applicant Nuvo Pharmaceuticals Inc. d/b/a Miravo Healthcare, 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,

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 Applicants shall be entitled to seek leave to vary this order upon such terms and 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.

 Digitally signed
by Jana Steele
Date: 2023.03.10
11:37:27 -05'00'

A698

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):

“**Amalco**” has the meaning specified in Section 2.3(a);

“**Arrangement Agreement**” means the Arrangement Agreement made as of December 22, 2022 between the Purchaser and the Company (including the Schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms;

“**Canadian Subsidiary**” means Aralez Pharmaceuticals Canada Inc.;

“**Cash Consideration**” means \$1.35;

“**Company**” means Nuvo Pharmaceuticals Inc. d/b/a Miravo Healthcare and, after the amalgamation in Section 2.3(a), Amalco;

“**Company Shares**” means the common shares in the capital of the Company and, after the amalgamation in Section 2.3(a), of Amalco;

“**Court**” means the Ontario Superior Court of Justice (Commercial List), or other court as applicable;

“**Depository**” means TSX Trust Company, as depository, or such other Person as the Company and the Purchaser mutually agree on, each acting reasonably;

“**Dissenting Shareholder**” means a holder of Company Shares as of the record date of the Company Meeting who: (a) has validly exercised its Dissent Rights in strict compliance with the Dissent Right provisions of this Plan of Arrangement; (b) has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights; and (c) is ultimately entitled to be paid the fair value for his, her or its Company Shares, but only in respect of the Company Shares in respect of which Dissent Rights are validly exercised by such holder of Company Shares;

“**Dissent Rights**” has the meaning specified in Section 3.1;

“**Effective Date**” means the date shown on the Certificate of Arrangement giving effect to the Arrangement;

“**Effective Time**” means 1:01 a.m. on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date;

“**Equity Awards**” means the Company Options, Company SARs and Company DSUs;

“Final Order” means the final order of the Court pursuant to section 182(5) of the OBCA in a form acceptable to the Company and Purchaser, each acting reasonably, as contemplated by Section 2.5 of the Arrangement Agreement, approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of 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, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Company and the Purchaser, each acting reasonably) on appeal;

“holders” means: (a) when used with reference to the Company Shares, except where the context otherwise requires, the holders of the Company Shares shown from time to time in the registers maintained by or on behalf of the Company in respect of the Company Shares; and (b) when used with reference to Equity Awards, the holders of Equity Awards shown from time to time in the respective registers or accounts maintained by or on behalf of the Company;

“Interim Order” means the interim order of the Court pursuant to section 182(5) of the OBCA in a form acceptable to the Company and the Purchaser, each acting reasonably, as contemplated by Section 2.2 of the Arrangement Agreement, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified, supplemented or varied by the Court with the consent of the Company and the Purchaser, each acting reasonably;

“Letter of Transmittal” means the letter of transmittal to be sent by the Company to holders of Company Shares for use in connection with the Arrangement;

“Liens” means any mortgage, charge, pledge, hypothec, security interest, lien (statutory or otherwise), or adverse right or claim, or other third party interest or encumbrance of any kind;

“Plan of Arrangement” means this plan of arrangement proposed under Section 182 of the OBCA, and any amendments or variations thereto made in accordance with the Arrangement Agreement or this Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and Purchaser, each acting reasonably;

“Purchaser” means Searchlight Pharma Inc.; and

“Purchaser Loan” means one or more loans from the Purchaser to the Company denominated in Canadian or United States dollars in an aggregate principal amount not exceeding the aggregate amount of cash required by the Company to make the payments in Sections 2.3(d) and 2.3(e), which amount shall be provided by the Company to the Purchaser in writing prior to the Effective Time, and which shall be evidenced by way of one or more promissory notes granted by the Company in favour of the Purchaser.

1.2 Headings, References, etc.

The division of this Plan of Arrangement into Articles, sections, and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement. Unless otherwise indicated, all references to an “Article” or “section” followed by a number and/or a letter refer to the specified Article or section of this Plan of Arrangement. The terms “hereof”, “herein” and “hereunder” and similar expressions refer to this Plan of Arrangement and not to any particular Article, section or other portion hereof.

1.3 Rules of Construction

In this Plan of Arrangement, unless the context otherwise requires: (a) words importing the singular number include the plural and vice versa; (b) words importing any gender include all genders; and (c) “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation”.

1.4 Currency

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in lawful money of Canada and “\$” refers to Canadian dollars. All references to US\$ are references to United States dollars.

1.5 Date for Any Action

If the date on which any action is required or permitted to be taken hereunder 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. In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively.

1.6 References to Dates, Statutes, etc.

In this Plan of Arrangement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute, regulation, direction or instrument is to that statute, regulation, direction or instrument as now enacted or as the same may from time to time be amended, re-enacted or replaced, and in the case of a reference to a statute, includes any regulations, rules, policies or directions made thereunder. Any reference in this Plan of Arrangement to a Person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns. References to any contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with its terms.

1.7 Time

Time shall be of the essence in every matter or action contemplated in this Plan of Arrangement. All times expressed herein are local time (Toronto, Ontario) unless otherwise stipulated herein.

**ARTICLE 2
THE ARRANGEMENT**

2.1 Arrangement Agreement

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

2.2 Binding Effect

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Company, the Purchaser, all holders and beneficial owners of Company Shares, Company Options, Company SARs and Company DSUs, including Dissenting Holders, the registrar and transfer agent of the

Company, the Depositary and all other Persons, at and after the Effective Time without any further act or formality required on the part of any Person.

2.3 Arrangement

At the Effective Time, each of the following events shall occur and shall be deemed to occur sequentially as set out below, without further authorization, act or formality, in each case, in accordance with the transfer mechanics set out in Section 2.4 and unless stated otherwise, effective as at five minute intervals starting at the Effective Time:

- (a) the stated capital of the issued and outstanding share of the Canadian Subsidiary shall be reduced to \$1.00 without any distribution;
- (b) the Company and the Canadian Subsidiary shall be amalgamated and continued as one corporation (“**Amalco**”) under the OBCA in accordance with the following:
 - (i) **Name.** The name of Amalco shall be “Nuvo Pharmaceuticals Inc.”;
 - (ii) **Registered Office.** The registered office of Amalco shall be located at the same registered office as the Company. The address of the registered office of Amalco shall be 6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5;
 - (iii) **Restrictions on Business and Powers.** There shall be no restrictions on the business Amalco may carry on or the powers Amalco may exercise;
 - (iv) **Authorized Capital.** The authorized capital of Amalco shall be the authorized capital of the Company and for greater certainty shall be comprised of an unlimited number of common shares, an unlimited number of first preference shares, issuable in series, and an unlimited number of second preference shares, issuable in series, and the rights, privileges, restrictions, and conditions attaching thereto shall be as set forth in Appendix A hereto;
 - (v) **Restrictions on Transfer.** There shall be no restrictions on the transfer of shares in the capital of Amalco;
 - (vi) **Other Provisions.** None;
 - (vii) **Number of Directors.** Amalco shall have a minimum of one (1) director and a maximum of twelve (12) directors, until changed in accordance with the OBCA. Until changed by the shareholders of Amalco, the number of directors of Amalco shall be set at seven (7);
 - (viii) **Directors.** The initial directors of Amalco shall be:

Name	Address	Resident Canadian
Daniel N. Chicoine	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes

Name	Address	Resident Canadian
Anthony Dobranowski	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Robert Harris	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
John London	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Mary C. Ritchie	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Dale MacCandlish Weil	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	Yes
Anthony Yung Snow	6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5	No

The aforementioned directors of Amalco shall hold office until the first annual meeting of shareholders of Amalco (or the signing of a written resolution in lieu thereof) or until their successors are elected or appointed;

(ix) **Securities.**

- (A) The issued and outstanding Company Shares will not be redeemed, acquired or cancelled, in whole or in part, but shall continue to remain issued and outstanding as common shares of Amalco; and
- (B) The issued and outstanding share of the Canadian Subsidiary, which shall be held by the Company immediately prior to the amalgamation, shall be, and shall be deemed to be, cancelled without any repayment of capital or any other consideration in respect thereof;

- (x) **Stated Capital.** The stated capital in respect of the common shares of Amalco will be equal to the stated capital of the Company Shares immediately prior to the amalgamation;

- (xi) **By-laws.** The by-laws of Amalco shall be the same as those of the Company, except that the references therein to the Company shall be changed to Amalco;

- (xii) **Articles.** The Articles of Arrangement filed to give effect to the Arrangement shall be deemed to be the articles of amalgamation of Amalco and the Certificate of Arrangement issued in respect of such Articles of Arrangement by the Director under the OBCA shall be deemed to be the certificate of amalgamation of Amalco; and

- (xiii) **Effect of Amalgamation.** The provisions of section 179 of the OBCA shall apply to the amalgamation with the result that, on the Effective Date:

- (A) the amalgamation of the Company and the Canadian Subsidiary and their continuance as one corporation become effective;
 - (B) the property of the Company and the Canadian Subsidiary continues to be the property of Amalco;
 - (C) Amalco continues to be liable for the obligations of the Company and the Canadian Subsidiary (other than any obligation owing by the Company to the Canadian Subsidiary, or by the Canadian Subsidiary to the Company, which shall be settled on the amalgamation);
 - (D) an existing cause of action, claim or liability to prosecution of the Company or the Canadian Subsidiary is unaffected;
 - (E) a civil, criminal or administrative action or proceeding pending by or against the Company or the Canadian Subsidiary may be continued to be prosecuted by or against Amalco; and
 - (F) a conviction against, or ruling, order or judgment in favour of or against, the Company or the Canadian Subsidiary may be enforced by or against Amalco.
- (c) the Purchaser shall make the Purchaser Loan to partially fund the payments in Sections 2.3(d) and 2.3(e);
- (d) five minutes after the completion of the Debt Repayment Steps, each Company Option outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Company Share Option Plan, shall be deemed to be unconditionally vested and exercisable, and such Company Option shall, without any further action by or on behalf of a holder of Company Options, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the amount (if any) by which the Cash Consideration exceeds the exercise price of such Company Option, in each case, less applicable withholdings in accordance with Section 4.3, and each such Company Option shall immediately be cancelled and, for greater certainty, where such amount is nil or negative, neither the Company nor the Purchaser shall be obligated to pay the holder of such Company Option any amount in respect of such Company Option;
- (e) each Company DSU outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Company DSU Plan, shall, without any further action by or on behalf of a holder of Company DSUs, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the Cash Consideration, less applicable withholdings in accordance with Section 4.3, and each such Company DSU shall immediately be cancelled;
- (f) each Company SAR outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Company SAR Plan, shall, without any further action by or on behalf of a holder of Company SARs, be deemed to be assigned and transferred by such holder to the Company for no consideration and each such Company SAR shall immediately be cancelled and, for greater certainty, neither the Company nor

the Purchaser shall be obligated to pay the holder of such Company SAR any amount in respect of such Company SAR;

- (g) each of the Company Shares held by Dissenting Shareholders in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred (free and clear of any Liens), 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 Shareholders shall cease to be the holders of such Company Shares and to have any rights as holders of such Company Shares other than the right to be paid fair value for such Company Shares as set out in Section 3.1;
 - (ii) the name of each such Dissenting Shareholder shall be removed as the holder of such Company Shares from the registers of Company Shares maintained by or on behalf of the Company; and
 - (iii) the Purchaser shall be deemed to be the transferee of such Company Shares (free and clear of any Liens) and shall be entered in the registers of Company Shares maintained by or on behalf of the Company;
- (h) contemporaneously with the step contemplated in Section 2.3(g), each outstanding Company Share (other than Company Shares held by Dissenting Shareholders) shall be transferred (free and clear of all Liens) to the Purchaser in consideration for the Cash Consideration.

2.4 Transfer Mechanics

- (a) With respect to each Company Option, Company DSU and Company SAR deemed to be transferred and assigned in accordance with Sections 2.3(d), 2.3(e) and 2.3(f), the following shall be deemed to have occurred as of the time of such applicable transfer and assignment:
 - (i) each holder thereof shall cease to be a holder of such applicable Equity Award;
 - (ii) each holder's name shall be removed from the register of the applicable Equity Award maintained by or on behalf of the Company;
 - (iii) the Company Share Option Plan, the Company DSU Plan and the Company SAR Plan, and all agreements relating to the applicable Equity Awards, shall be terminated and shall be of no further force and effect; and
 - (iv) each holder shall thereafter have only the right to receive the consideration to which they are entitled pursuant to Sections 2.3(d), 2.3(e) and 2.3(f), as applicable, at the time and in the manner specified in Section 4.1.

2.5 Rounding of Cash Consideration

If the aggregate cash amount which a holder of Company Shares is entitled to receive pursuant to this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such holder shall be entitled to receive shall be rounded up to the nearest whole \$0.01.

the Purchaser shall be obligated to pay the holder of such Company SAR any amount in respect of such Company SAR;

- (g) each of the Company Shares held by Dissenting Shareholders in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred (free and clear of any Liens), 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 Shareholders shall cease to be the holders of such Company Shares and to have any rights as holders of such Company Shares other than the right to be paid fair value for such Company Shares as set out in Section 3.1;
 - (ii) the name of each such Dissenting Shareholder shall be removed as the holder of such Company Shares from the registers of Company Shares maintained by or on behalf of the Company; and
 - (iii) the Purchaser shall be deemed to be the transferee of such Company Shares (free and clear of any Liens) and shall be entered in the registers of Company Shares maintained by or on behalf of the Company;
- (h) contemporaneously with the step contemplated in Section 2.3(g), each outstanding Company Share (other than Company Shares held by Dissenting Shareholders) shall be transferred (free and clear of all Liens) to the Purchaser in consideration for the Cash Consideration.

2.4 Transfer Mechanics

- (a) With respect to each Company Option, Company DSU and Company SAR deemed to be transferred and assigned in accordance with Sections 2.3(d), 2.3(e) and 2.3(f), the following shall be deemed to have occurred as of the time of such applicable transfer and assignment:
 - (i) each holder thereof shall cease to be a holder of such applicable Equity Award;
 - (ii) each holder's name shall be removed from the register of the applicable Equity Award maintained by or on behalf of the Company;
 - (iii) the Company Share Option Plan, the Company DSU Plan and the Company SAR Plan, and all agreements relating to the applicable Equity Awards, shall be terminated and shall be of no further force and effect; and
 - (iv) each holder shall thereafter have only the right to receive the consideration to which they are entitled pursuant to Sections 2.3(d), 2.3(e) and 2.3(f), as applicable, at the time and in the manner specified in Section 4.1.

2.5 Rounding of Cash Consideration

If the aggregate cash amount which a holder of Company Shares is entitled to receive pursuant to this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such holder 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

Registered holders of Company Shares as of the record date for the Company Meeting may exercise dissent rights with respect to the Company Shares held by such holder as of such date (“**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 Section 185(6) of the OBCA, the written objection to the Arrangement Resolution referred to in Section 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). Dissenting Shareholders who duly exercise their Dissent Rights shall be deemed to have transferred the Company Shares held by them and in respect of which Dissent Rights have been validly exercised to the Company free and clear of all Liens, as provided in Section 2.3(g), and if they:

- (a) ultimately are entitled to be paid fair value for such Company Shares: (i) shall be deemed not to have participated in the transactions in Article 2 (other than Section 2.3(g)); (ii) will be entitled to be paid the fair value of such Company Shares, which fair value shall be determined as of the close of business on the day before the Arrangement Resolutions were 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 holders not exercised their Dissent Rights in respect of such Company Shares; or
- (b) ultimately are not entitled, for any reason, to be paid fair value for such Company Shares, shall be deemed to have participated in the Arrangement as of the Effective Time on the same basis as a non-dissenting holder of Company Shares and shall be entitled to receive only the consideration contemplated in Section 2.3 that such holder of Company Shares would have received pursuant to the Arrangement if such holder of Company Shares had not exercised Dissent Rights.

3.2 Recognition of Dissenting Shareholders

- (a) In no circumstances shall the Company, the Purchaser or any other Person be required to recognize a Person exercising Dissent Rights: (i) unless, as of the deadline for exercising Dissent Rights (as set forth in Section 3.1), such Person is a registered holder of the Company Shares in respect of which such Dissent Rights are sought to be exercised; (ii) if such Person has voted or instructed a proxyholder to vote such Company Shares in favour of the Arrangement Resolution; or (iii) unless such Person has strictly complied with the procedures for exercising Dissent Rights and does not withdraw such dissent prior to the Effective Time.
- (b) For greater certainty, in no case shall the Company, the Purchaser, the registrar and transfer agent of the Company, the Depositary or any other Person be required to recognize Dissenting Shareholders as holders of Company Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfer under Section 2.3(g), and the names of such Dissenting Shareholders shall be removed from the registers of holders of Company Shares in respect of which Dissent Rights have been validly exercised at the same time as the event described in Section 2.3(g) occurs.

- (c) In addition to any other restrictions under Section 185 of the OBCA, none of the following shall be entitled to exercise Dissent Rights: (i) holders of Equity Awards; (ii) holders of Company Shares who vote or have instructed a proxyholder to vote such holder's Company Shares in favour of the Arrangement Resolution; (iii) any Person (including any beneficial owner of Company Shares) who is not a registered holder of Company Shares; and (iv) the Purchaser and its affiliates (as defined in the Arrangement Agreement).

ARTICLE 4

PAYMENTS AND CERTIFICATES

4.1 Payment of Consideration

- (a) Following receipt of the Final Order and prior to the filing of the Articles of Arrangement the Purchaser shall deposit or cause to be deposited with the Depositary for the benefit of each holder of Company Shares entitled to receive cash pursuant to Section 2.3(h), with the amount per Company Share in respect of which Dissent Rights have been exercised being deemed to be the Cash Consideration, for the benefit of the holders of Company Shares. The cash deposited with the Depositary shall be held in an interest-bearing account, and any interest earned on such funds shall be for the account of the Purchaser.
- (b) Upon the surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Company Shares that were transferred pursuant to Section 2.3(h), together with a duly completed and executed Letter of Transmittal, and such additional documents and instruments as the Depositary may reasonably require, each Company Share represented by such surrendered certificate shall be exchanged by the Depositary, and the Depositary shall deliver to the applicable holder of such Company Share as soon as practicable and in accordance with Sections 2.3(h), 4.1 and Section 4.2: a cheque, wire transfer or other form of immediately available funds, representing the cash amount that such holder of Company Shares is entitled to receive under the Arrangement.
- (c) As soon as practicable after the Effective Time, the Company shall pay the amounts to be paid to holders of Equity Awards in accordance with Sections 2.3(d) and 2.3(e) either: (i) pursuant to the normal payroll practices and procedures of the Company; or (ii) in the event that payment pursuant to the normal payroll practices and procedures of the Company is not practicable for any such holder, by cheque, wire transfer or other form of immediately available funds (delivered to such holder of such Equity Awards, as applicable, as reflected on the register maintained by or on behalf of the Company in respect of such Equity Awards), or (iii) by such other means as the Company may elect or as otherwise may be reasonably requested by the Purchaser including with respect to the timing and manner of such delivery, in each case, less applicable withholdings in accordance with Section 4.3.
- (d) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented outstanding Company Shares shall be deemed, immediately after the completion of the transactions contemplated in Section 2.3(h), to represent only the right to receive upon such surrender cash in lieu of such certificate as contemplated in Section 2.3(h). Any such certificate formerly representing outstanding Company Shares not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder of Company Shares of any kind or nature against or in the Company or Purchaser. On such date, all cash or securities to which such former holder was entitled shall be deemed to have been

surrendered to the Purchaser or the Company, as applicable, and shall be paid over by the Depositary to the Purchaser or as directed by the Purchaser.

- (e) Any payment made by way of cheque by the Depositary (on behalf of the Purchaser) or the Company, if applicable, pursuant to the Arrangement that has not been deposited or has been returned to the Depositary (or the Company) or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Date, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Date shall cease to represent a right or claim of any kind or nature and the right of any holder of Company Shares or Equity Awards to receive the applicable consideration for any Company Shares or Equity Awards pursuant to the Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Company, as applicable, for no consideration.
- (f) No holder of Company Shares or Equity Awards shall be entitled to receive any consideration with respect to such Company Shares or Equity Awards, other than the consideration to which such holder entitled to receive in accordance with Sections 2.3(d), 2.3(e), 2.3(f), 2.3(g), 2.3(h) and this Section 4.1 and, for greater certainty, no such holder shall be entitled to receive any interest, dividends, premium or other payment in connection therewith. No dividend or other distribution declared or made after the Effective Time with respect to Company Shares or Equity Awards with a record date on or after the Effective Date shall be delivered to the holder of any unsurrendered certificate which, immediately prior to the Effective Date, represented outstanding Company Shares or Equity Awards.

4.2

Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Company Shares that were transferred pursuant to Section 2.3(h) 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, pay and deliver, in exchange for such lost, stolen or destroyed certificate, the cash amount which such holder is entitled to receive pursuant to this Plan of Arrangement. When authorizing such issuance, delivery or payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall as a condition precedent to the issuance, delivery or payment thereof, give a bond satisfactory to the Company, the Purchaser and the Depositary, each acting reasonably, in such sum as the Purchaser may direct, or otherwise indemnify the Purchaser and the Company in a manner satisfactory to the Purchaser and the Company, each 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.

4.3

Withholding Rights

The Purchaser, the Company and the Depositary, and any other Person that makes a payment hereunder, as applicable, shall be entitled to deduct or withhold (or cause to be deducted or withheld) from the amount payable or otherwise deliverable to any Person pursuant to the Arrangement or this Plan of Arrangement, including Company Shareholders exercising Dissent Rights, and from all dividends, other distributions or other amounts otherwise payable to any former Company Shareholders or holders of Company Options or Company DSUs, such Taxes or other amounts as the Purchaser, the Company, the Depositary or other Persons are or may be required or permitted to deduct or withhold with respect to such payment under the Tax Act, or any other provisions of any applicable Laws. To the extent that Taxes or other amounts are so deducted or withheld, such deducted or withheld Taxes or other amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which

such deduction or withholding was made, provided that such deducted or withheld Taxes or other amounts are actually remitted to the appropriate Governmental Entity.

4.4 No Liens

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

4.5 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Company Shares and Equity Awards issued or outstanding prior to the Effective Time; (b) the rights and obligations of the holders of Company Shares and Equity Awards, the Company, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement; and (c) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Company Shares and Equity Awards shall be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement.

**ARTICLE 5
AMENDMENTS**

5.1 Amendments to Plan of Arrangement

- (a) The Company and the Purchaser may amend, modify 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 or supplement must: (i) be set out in writing; (ii) be approved by the Company and the Purchaser, 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 Company Shares, if and as required by the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by either the Purchaser or the Company at any time prior to the Company Meeting (provided that the other Party 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 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 holders of some or all of the Company Shares in the manner directed by the Court. Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any holder of Company Shares or (ii) is an amendment contemplated in Section 5.1(d) made following the Effective Date.

- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, without communication to the holders of the Company Shares, 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 holder of Company Shares or Equity Awards.

5.2 Termination

This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

**ARTICLE 6
FURTHER ASSURANCES**

6.1 Notwithstanding

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 to the Arrangement Agreement 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 any of them in order further to document or evidence any of the transactions or events set out in this Plan of Arrangement.

APPENDIX A
SHARE PROVISIONS

ARTICLE 1
INTERPRETATION

- 1.01 References to "Act": In this schedule, as from time to time amended, unless there is something in the context inconsistent herewith, "Act" means the *Business Corporations Act* (Ontario), or its successor, as amended from time to time.
- 1.02 Headings, Gender, Number: This schedule as from time to time amended, shall be read without regard to paragraph headings, which are included for ease of reference only, and with all changes in gender and number required by the context.

ARTICLE 2
COMMON SHARES

The Common Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- 2.01 Votes: The holders of Common Shares are entitled to receive notice of, and to attend, all meetings of shareholders of the Corporation, except meetings at which only holders of another specified class or series of shares are entitled to vote. The holders of Common Shares are entitled to one vote for each one Common Share held on all polls taken at such meetings.
- 2.02 Dividends: Subject to the prior rights, privileges, restrictions and conditions attaching to the First Preference Shares and the Second Preference Shares, or any series thereof, respectively, and the shares of any other class ranking senior to the Common Shares, the holders of Common Shares shall be entitled to receive dividends as and when declared by the directors of the Corporation.
- 2.03 Liquidation: In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the property and assets of the Corporation for the purpose of winding up the affairs of the Corporation, holders of Common Shares shall, after payment to the holders of First Preference Shares, Second Preference Shares and shares of any other class ranking senior to the Common Shares of the amount payable to them, be entitled to receive the remaining property and assets of the Corporation.
- 2.04 Limitation: Subject to the provisions of the Act, the holders of Common Shares shall not be entitled to vote separately on, or to dissent in respect of, any proposal to amend the articles of the Corporation to:
- (a) increase or decrease any maximum number of authorized Common Shares, or increase any maximum number of authorized shares of a class or series having rights or privileges equal or superior to the Common Shares;
 - (b) effect an exchange, reclassification or cancellation of all or part of the Common Shares; or
 - (c) create a new class of shares or series equal or superior to the Common Shares.

- 3.06 Shares Issued in Series with Identical Rights: Where First Preference Shares are issued in more than one series with identical rights, privileges, restrictions, conditions and designations attached thereto, all such series of First Preference Shares shall rank *pari passu* and participate equally and proportionately without discrimination or preference as if all such series of First Preference Shares had been issued simultaneously and all such series of First Preference Shares may be designated as one series.
- 3.07 Limitation: Subject to the provisions of the Act, the holders of First Preference Shares or any series thereof shall not, unless the rights, privileges, restrictions and conditions attached to the First Preference Shares as a class or to any particular series thereof provide to the contrary, be entitled to vote separately as a class or series on, or to dissent in respect of, any proposal to amend the articles of the Corporation to:
- (a) increase or decrease any maximum number of authorized First Preference Shares or any series thereof, or increase any maximum number of authorized shares of a class or series having rights or privileges equal or superior to the First Preference Shares or any series thereof;
 - (b) effect an exchange, reclassification or cancellation of all or part of the First Preference Shares or any series thereof; or
 - (c) create a new class or series of shares equal or superior to the First Preference Shares or any series thereof.

ARTICLE 4 SECOND PREFERENCE SHARES

The Second Preference Shares shall have attached thereto, as a class, the following rights, privileges, restrictions and conditions:

- 4.01 Directors' Right to Issue in One or More Series: The Second Preference Shares may at any time and from time to time be issued in one or more series. Prior to the issue of Second Preference Shares of any series, the directors of the Corporation shall, subject to the rights, privileges, restrictions and conditions attached to the Second Preference Shares as a class, the articles of the Corporation and the provisions of the Act, by resolution amend the articles of the Corporation to fix the number of Second Preference Shares in such series and determine the designation of, and the rights, privileges, restrictions and conditions attached to, the Second Preference Shares of such series including, without limitation:
- (a) the rate, amount or method of calculation of any dividends and whether any dividends are subject to adjustment;
 - (b) whether any dividends are cumulative, partly cumulative or non-cumulative;
 - (c) the dates, manner and currency of any payments of dividends and the date from which any dividends accrue or become payable;
 - (d) if redeemable or purchasable (whether at the option of the Corporation or the holder or otherwise), the redemption or purchase prices and currency or currencies thereof and the terms and conditions of redemption or purchase, with or without any provision for sinking or similar funds;

- (e) the voting rights, if any;
- (f) any conversion, exchange or reclassification rights; and
- (g) any other terms not inconsistent with these provisions;

the whole subject to receipt by the Director appointed under the Act of articles of amendment designating and fixing the number of Second Preference Shares in such series and setting forth the rights, privileges, restrictions and conditions attached thereto and the issue by the Director of a certificate of amendment with respect thereto.

- 4.02 Ranking of Second Preference Shares of Each Series: The Second Preference Shares of each series shall, with respect to the payment of dividends and the distribution of the assets of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation for the purpose of winding-up its affairs, rank (a) junior and subordinate to the First Preference Shares, (b) on a parity with the Second Preference Shares of every other series and (c) senior to, and shall be entitled to a preference over, the Common Shares and the shares of any other class ranking junior to the Second Preference Shares. The Second Preference Shares of any series shall also be entitled to such other preferences, not inconsistent with these provisions, over the Common Shares, and the shares of any other class ranking junior to the Second Preference Shares as may be fixed in accordance with 4.01 hereof.
- 4.03 Voting Rights: Except as hereinafter specifically provided, as required by the Act or in accordance with any voting rights which may be attached to any series of Second Preference Shares, the holders of Second Preference Shares shall not be entitled as such to receive notice of, or to attend, any meeting of shareholders of the Corporation and shall not be entitled to vote at any such meeting; provided however that the holders of Second Preference Shares shall be entitled to receive notice of meetings of shareholders of the Corporation called for the purpose of authorizing the dissolution of the Corporation or the sale, lease or exchange of all or substantially all of the property of the Corporation other than in the ordinary course of business of the Corporation.
- 4.04 Amendment with Approval of Holders of Second Preference Shares: The rights, privileges, restrictions and conditions attached to the Second Preference Shares as a class may be added to, removed or changed only with the approval of the holders of Second Preference Shares given in accordance with the requirements of the Act and the minimum requirement provided in 4.05 hereof.
- 4.05 Approval of Holders of Second Preference Shares: The approval of the holders of Second Preference Shares as a class to any matters referred to in these provisions may be given as specified below:
- (a) Approval and Quorum: Any approval required to be given by the holders of Second Preference Shares shall be deemed to have been sufficiently given if it shall have been given by a resolution signed by all of the holders of the then outstanding Second Preference Shares or by a resolution passed by the affirmative vote of not less than two-thirds of the votes cast by holders of Second Preference Shares who voted in respect of that resolution at a meeting of the holders of Second Preference Shares called and held for that purpose in accordance with the by-laws of the Corporation at which holders of not less than one-tenth of the then outstanding Second Preference Shares are present in person or represented by proxy; provided that, if at any such meeting a quorum is not present within one-half hour after the time appointed for such meeting, the meeting shall be adjourned to the same day in the next week at the same time and to such place as the chairman of the meeting may

determine and, subject to the provisions of the Act, it shall not be necessary to give notice of such adjourned meeting. At such adjourned meeting the holders of Second Preference Shares present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than two-thirds of the votes cast at such meeting shall constitute the approval of the holders of Second Preference Shares.

- (b) Votes: On every poll taken at any meeting in respect of which only the holders of the Second Preference Shares of more than one series are entitled to vote, each holder of Second Preference Shares shall be entitled to one vote in respect of the greater of (i) each \$1.00 of stated capital added to the appropriate stated capital account of the Corporation in respect of the issue of each such share and (ii) each \$1.00 of the liquidation preference or redemption preference (excluding any amount payable in respect of declared but unpaid or accrued but unpaid dividends) attached to each such share (and if the liquidation preference and redemption preference are not the same at the applicable time, then the greater of the two).

Subject to the foregoing, the formalities to be observed with respect to proxies, the giving or waiving of notice of any such meeting and the conduct thereof shall be those from time to time prescribed in the Act and the by-laws of the Corporation with respect to meetings of shareholders.

4.06 Shares Issued in Series with Identical Rights: Where Second Preference Shares are issued in more than one series with identical rights, privileges, restrictions, conditions and designations attached thereto, all such series of Second Preference Shares shall rank *pari passu* and participate equally and proportionately without discrimination or preference as if all such series of Second Preference Shares had been issued simultaneously and all such series of Second Preference Shares may be designated as one series.

4.07 Limitation: Subject to the provisions of the Act, the holders of Second Preference Shares or any series thereof shall not, unless the rights, privileges, restrictions and conditions attached to the Second Preference Shares as a class or to any particular series thereof provide to the contrary, be entitled to vote separately as a class or series on, or to dissent in respect of, any proposal to amend the articles of the Corporation to:

- (a) increase or decrease any maximum number of authorized Second Preference Shares or any series thereof, or increase any maximum number of authorized shares of a class or any series having rights or privileges equal or superior to the Second Preference Shares or any series thereof;
- (b) effect an exchange, reclassification or cancellation of all or part of the Second Preference Shares or any series thereof; or
- (c) create a new class or series of shares equal or superior to the Second Preference Shares or any series thereof.

A1213

**IN THE MATTER OF AN APPLICATION UNDER SECTION 182, BUSINESS
CORPORATIONS ACT, R.S.O. 1990, c. B.16, AS AMENDED**

Court File No.: CV-23-00693073-00CL

**NUVO PHARMACEUTICALS INC. D/B/A MIRAVO HEALTHCARE and ARALEZ
PHARMACEUTICALS CANADA INC.**

Applicants

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

Proceeding commenced at Toronto

**ORDER
(March 10, 2023)**

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