

No. S-2010103  
Vancouver Registry

ENTERED IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44  
AND THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 11111035 CANADA INC.  
AND 1167025 B.C. LTD.

PETITIONERS

**ORDER MADE AFTER APPLICATION**

(PLAN SANCTION ORDER)

BEFORE THE HONOURABLE  
MADAM JUSTICE FITZPATRICK

)  
)  
)

February 12, 2021

ON THE APPLICATION of the Petitioners coming on for hearing by Microsoft Teams at Vancouver, British Columbia, on the 12<sup>th</sup> day of February, 2021; AND ON HEARING Lisa Hiebert, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA"), the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

**DEFINITIONS**

1. Any capitalized terms used, but not otherwise defined in this Order (the "**Sanction Order**") shall have the meanings ascribed to them in the Amended Consolidated Plan of Arrangement and Compromise dated January 14, 2021 among the Petitioners (the "**Plan**"), a copy of which is attached hereto as **Schedule "B"**.

## **EXTENSION OF THE STAY OF PROCEEDINGS**

2. The relief provided for in the Amended and Restated Initial Order made in these proceedings on October 19, 2020 be and is hereby confirmed and the Stay Period and all other relief as provided for therein, is hereby extended to July 30, 2021.

## **THE MEETING**

3. There has been good and sufficient service and delivery to all Affected Creditors of the Meeting Order granted by this Court on January 15, 2021 (the "**Meeting Order**") in relation to the Petitioners, and all documents referred to in the Meeting Order, including the Meeting Materials (as defined in the Meeting Order).
4. The Meeting was duly convened and held in conformity with the CCAA and all applicable Orders of the Court pronounced in these proceedings, including the Meeting Order.
5. The Plan has been agreed to and approved by the Required Majority of the Affected Creditors in conformity with the CCAA.

## **SANCTION OF THE PLAN**

6. The Petitioners have complied with the provisions of the CCAA and the Orders of the Court in these proceedings.
7. The Petitioners have not done or purported to do anything that is not authorized by the CCAA.
8. The Plan, and the transactions contemplated thereby, is procedurally and substantively fair and reasonable, not oppressive, and is in the best interests of the Petitioners and the Persons affected by the Plan.
9. The Plan is hereby finally and absolutely sanctioned and approved pursuant to the provisions of Section 6 of the CCAA and, upon the Monitor filing a certificate in the form attached as **Schedule "C"** hereto (the "**Plan Implementation Certificate**") confirming that:
  - (a) all Conditions Precedent of this Plan have been satisfied or waived in accordance with the Plan;
  - (b) the Petitioners have paid all amounts secured by the CCAA Charges;
  - (c) the Monitor has received sufficient funds to pay the Priority Claims and Restricted Distributions;
  - (d) the Plan has been implemented ("**Plan Implementation**"),

all terms, steps, compromises, transactions, arrangements, releases and reorganizations set out in the Plan are binding and effective on all Persons or parties named or referred to in, affected by or subject to the Plan. As of the Effective Date, the Plan shall enure to the benefit of the Petitioners, the Released Parties, all Affected Creditors, existing shareholders of any Petitioner, the past and present Directors and Officers of the Petitioners (including any de facto directors or officers, if any), and all other Persons named or referred to in, affected by, or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors or assigns.

#### **PLAN IMPLEMENTATION**

10. The Petitioners are each, as applicable, hereby authorized and directed to take all actions necessary or appropriate, in each case consistent with and in accordance with the terms of the Plan, to enter into, adopt, execute, deliver, implement and consummate the contracts, instruments, releases, and all other agreements or documents to be created or which are to come into effect in connection with the Plan, and all matters contemplated under the Plan involving any corporate action of any Petitioner or on behalf of any Petitioner, and such actions are hereby approved and will occur and be effective in accordance with the Plan and this Sanction Order, in all respects and for all purposes, without any further requirement or further action by shareholders, directors or officers of any Petitioner. Further, to the extent not previously given, all necessary approvals to take such action shall be and are hereby deemed to have been obtained from the directors or shareholders of each Petitioner, including the deemed passing by any class of shareholders or any resolution or special resolution, and no shareholders' agreement or agreement between a shareholder and another Person (if any) limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated in the Plan shall be effective or have any force or effect. Without limiting the generality of the foregoing, to the extent the Petitioners consider it necessary or desirable, the directors of the Petitioners are directed to pass any resolutions to implement the Plan and the transactions contemplated thereby. Without limiting the generality of the foregoing, the Petitioners, together with their officers and directors, are hereby released from the restrictions imposed by paragraph 2(c) of the stay extension Order granted by the Court on December 11, 2020 and are permitted to take such steps as are necessary to advance the Petitioners' interest or assets in the United States, including without limitation, permitting any US subsidiary to borrow money or grant security interests over its assets.
11. The Monitor is hereby authorized and directed to take all steps and actions, and to do all things, required by the Monitor to facilitate the implementation of the Plan, in each case consistent with

and in accordance with its terms, and, where necessary or appropriate to do so, to enter into, execute, deliver, implement and consummate all of the steps, transactions, certificates and agreements contemplated by the Plan. Without limiting the generality of the foregoing, the Monitor is hereby authorized and directed to pay to Sunniva all funds that it holds in trust on behalf of the Petitioners pursuant to the stay extension Orders of the Court granted on November 27, 2020 and December 11, 2020, other than such funds held by the Monitor in respect of the: (a) Restricted Distribution Reserve; or (b) Priority Claims, which in each case shall be retained and distributed by the Monitor in accordance with the terms and conditions of the Plan.

12. Maynbridge Industries Canada Ltd. ("Maynards") is hereby authorized and directed to pay to Sunniva Inc. or Sunniva Medical Inc. all sale proceeds from the surplus equipment pursuant to the Auction and Liquidation Services Agreement approved by the Court in the approval and vesting Order granted by the Court on December 11, 2020, and the restrictions imposed by the Court on Maynards pursuant to paragraph 2(b) of the stay extension Order granted by the Court on December 11, 2020 are hereby released.

#### **COMPROMISE OF CLAIMS AND EFFECT OF PLAN**

13. Pursuant to and in accordance with the Plan, with effect as of the Effective Date, any and all Affected Claims of any nature shall be forever compromised, discharged and released, and the ability of any Person to proceed against any Petitioner in respect of or relating to any Affected Claims shall be forever barred, discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or related to such Affected Claims are hereby permanently stayed, subject only to the rights of the Affected Creditors to receive distributions in respect of their Affected Claims pursuant to, and in accordance with, the Plan and this Sanction Order.
14. Notwithstanding: (i) the pendency of the CCAA Proceedings and the declaration of insolvency made therein; (ii) any applications for a bankruptcy order pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA") in respect of any Petitioner and any bankruptcy order issued pursuant to any such application; (iii) any assignment in bankruptcy made in respect of any Petitioner; or (iv) the provisions of any federal or provincial statute, the transactions payments, steps, and releases or compromises made during the CCAA Proceedings contemplated to be performed or effected pursuant to the Plan and this Sanction Order shall:
  - (a) be binding on any licensed insolvency trustee that may be appointed in respect of the estate of any Petitioner;

- (b) not be void or voidable;
  - (c) not constitute or be deemed to be a fraudulent preference or assignment, fraudulent conveyance, transfer at undervalue, preference or any other challengeable or voidable transaction under the BIA or any other applicable federal or provincial legislation; and
  - (d) not constitute or be deemed to be oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
15. The determination of Proven Claims and Affected Claims in accordance with the Claims Process Order, the Meeting Order and the Plan shall be final and binding on the Petitioners, the Directors and Officers, the Affected Creditors, and all other Persons affected by the Claims Process Order, the Meeting Order, and the Plan.
16. Without limiting the provisions of the Claims Process Order, the Meeting Order or the Plan, a creditor of the Petitioners that did not file a Proof of Claim by the Claims Bar Date or otherwise in accordance with the provisions of the Claims Process Order, the Meeting Order or the Plan, whether or not such creditor received direct notice of the Claims Process Order, shall be and is hereby forever barred from making any Claim against any Petitioner and shall not be entitled to any distribution under the Plan, and such creditor's claim shall be and is hereby forever barred and extinguished. Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date, or gives or shall be interested as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Process Order, the Meeting Order, the Plan, or this Sanction Order.
17. Each Affected Creditor is hereby deemed to have consented and agreed to all of the provisions of the Plan in its entirety, and each Affected Creditor is hereby deemed to have executed and delivered to the Petitioners all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.
18. As of the Effective Date, all equity plans, outstanding warrants or options for unissued shares, restricted share units or other equity-based instruments issued by any Petitioner and outstanding as of the Effective Date shall be terminated and cancelled.
19. As of and from the filing of the Plan Implementation Certificate:
- (a) all compromises, waivers, releases and injunctions effect by the Plan (including without limitation those in Article 7 of the Plan) are hereby approved, binding and effective as set out

in the Plan on all Affected Creditors and any and all other Persons or parties named or referred to in, affected by, or subject to the Plan; and

- (b) any and all Persons shall be and are hereby stayed from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of any and all Affected Claims, Released Claims, and any other matter which is released pursuant to this Sanction Order and the Plan.

#### **DISTRIBUTIONS UNDER THE PLAN**

20. On or before the Effective Date:

- (a) each of the Petitioners and the Monitor are hereby authorized and directed to complete the distributions and transactions contemplated pursuant to the Plan, without any need for further approvals or actions on the part of the Directors or Officers or any other Person;
- (b) Sunniva is hereby authorized and directed to issue and distribute the Conversion Shares to the applicable Affected Creditors in accordance with the terms and conditions of the Plan, in full satisfaction and compromise of the applicable Affected Claims;
- (c) each of the Officers and Directors of Sunniva are hereby authorized to take all steps necessary to complete the issuance and distribution of the Conversion Shares, including providing a basis for Sunniva to rely on an exemption from the registration requirement of the United States Securities Act of 1933 (as amended) with respect to the Conversion Shares that may be issued to any applicable Affected Creditor that resides in the United States; and
- (d) the Monitor is hereby authorized and directed to pay the Restricted Distributions from the Restricted Distribution Reserve to any Affected Creditors that are prohibited by statute from acquiring or holding any Conversion Shares in accordance with the terms and conditions of the Plan, and such Restricted Distributions shall be for the account of the Petitioners regarding the fulfilment of the Petitioners' obligations under the Plan.

21. If any cheque delivered to an Affected Creditor by the Monitor in respect of a Restricted Distribution is not cashed within 180 days after the Effective Date, then (as necessary) the Monitor

shall stop payment on any cheques payable to such Affected Creditor, and any funds payable to such Affected Creditors under the Plan shall be paid by the Monitor to Sunniva without restrictions.

#### **NON-TERMINATED CONTRACTS AND FURTHER PROCEEDINGS**

22. Subject to the performance by the Petitioners of their obligations under the Plan, all obligations, contracts, agreements, leases and other arrangements to which any of the Petitioners is a party shall be and remain in full force and effect, unamended, as at the Effective Date, unless disclaimed or resiliated by the applicable Petitioner prior to the Effective Date, and no party to any such obligation or agreement shall, on or following the Effective Date, accelerate, terminate, refuse to renew, rescind, refuse to perform, or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason of:
- (a) any event or matter which existed or occurred on or before, and is not continuing after, the Effective Date, or which is or continues to be suspended or waived under the Plan, which would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Petitioners);
  - (b) the Petitioners having sought or obtained relief or have taken steps as part of the Plan or under the CCAA;
  - (c) any default or event of default arising as a result of the financial condition or insolvency of the Petitioners prior to the Effective Date;
  - (d) the effect upon the Petitioners of completing the transactions contemplated under the Plan;
  - (e) any compromises, settlements, restructurings and releases effected pursuant to the Plan; and
  - (f) any change in the control of Sunniva arising from the Plan Implementation and issuance of the Conversion Shares, and it is hereby declared that any consent required under any such contracts, leases, agreements or other arrangements in respect of such change of control are hereby deemed satisfied.
23. As of the Effective Date, the commencement or prosecution, whether directly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation, or cause of action released, discharged or terminated pursuant to the Plan, is permanently enjoined and the Petitioners are



absolutely released and discharged from all indebtedness, liabilities and other obligations arising in respect of Affected Claims.

24. Subject to further order of the Court, all CCAA Charges shall continue to be in full force and effect as against the Petitioners until all obligations secured thereby are either: (i) paid in full; or (ii) otherwise secured, satisfied or arranged on terms acceptable to the Petitioners and the beneficiaries of the CCAA Charges; and in either such event, the applicable CCAA Charge shall immediately thereupon be discharged without the need for further order of the Court or action on the part of any Person.

#### **THE MONITOR**

25. As of the Effective Date, the Monitor shall be discharged and released from its duties in relation to the Petitioners, other than those obligations, duties and responsibilities necessary or required to give effect to the terms of the Plan, the Claims Process Order, and this Sanction Order.
26. The protections afforded to the Monitor pursuant to the Amended and Restated Initial Order made in these proceedings on October 19, 2020 are hereby extended and, in addition to those rights and protections afforded to the Monitor under the CCAA and the Plan, the Monitor shall incur no liability or obligation whatsoever as a result of its appointment, the carrying out of its duties or obligations in the CCAA Proceedings in relation to the Petitioner, including the discharge of its duties or obligations under the Plan and the implantation thereof, save and except any claim or liability arising out of fraud, willful misconduct or gross negligence on the part of the Monitor.
27. Upon the Monitor being satisfied that: (a) all Conditions Precedent to the Plan have been satisfied or waived, and (b) the Petitioners have paid all amounts secured by the CCAA Charges; (c) the Monitor has received sufficient funds to pay the Priority Claims and the Restricted Distributions; and (d) the Plan has been implemented, the Monitor is authorized and directed to file with the Court the Plan Implementation Certificate.
28. Upon the completion by the Monitor of its duties pursuant to the CCAA, the Plan and all applicable Orders of the Court, the Monitor is authorized and directed to apply to the Court for an order of final discharge and approval of its activities and professional fees.

#### **DISCHARGE OF THE PETITIONERS FROM CCAA PROCEEDINGS**

29. As of the Effective Time, the Petitioners shall be discharged and released from the CCAA Proceedings, other than in relation to matters related to the implementation of the Plan, and the CCAA Charges shall, as against the Petitioners, be discharged.



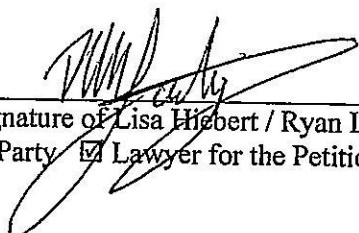
### AID AND RECOGNITION OF THIS SANCTION ORDER

30. This Sanction Order shall have full force and effect in all provinces and territories of Canada, and abroad as against all Persons against whom it may otherwise be enforced.
31. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies to act in aid of and to be complementary to the Court in carrying out the terms of this Sanction Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Sanction Order.

### MISCELLANEOUS

32. Without limiting any other term of this Sanction Order, all Persons named in the Plan are hereby authorized and directed to perform their functions and fulfil their obligations as provided for in the Plan in order to facilitate the implementation of the Plan.
33. The Petitioners, the Monitor, and any other interested parties are hereby granted leave to apply to the Court for any directions or determinations required to resolve any matter or dispute relating to the Plan, this Sanction Order or the subject matter thereof and the rights and benefits thereunder, provided that no provision of this Sanction Order shall be construed to modify or impair any right, title, interest, privilege or remedy expressly provided for or reserved under the Plan.
34. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of Lisa Hebert / Ryan Laity  
☐ Party ☒ Lawyer for the Petitioners



BY THE COURT

  
\_\_\_\_\_  
REGISTRAR

**Schedule "A"**

**LIST OF COUNSEL**

<b>Name of Counsel</b>	<b>Party Represented</b>
Lisa Hiebert Ryan Laity	The Petitioners, Sunniva Inc., Sunniva Medical Inc., 11111035 Canada Inc., and 1167025 B.C. Ltd
Mary Buttery, Q.C.	The Monitor, Alvarez & Marsal Canada Inc.
Christine Matthews	Her Majesty the Queen in right of Canada as represented by the Minister of National Revenue

**Schedule "B"**

**AMENDED CONSOLIDATED PLAN OF ARRANGEMENT AND COMPROMISE**

Please see attached.

**No. S-2010103  
Vancouver Registry**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND**

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44  
AND THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57**

**AND**

**IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 11111035 CANADA INC.  
AND 1167025 B.C. LTD**

**PETITIONERS**

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**AMENDED CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT  
OF**

**SUNNIVA INC. SUNNIVA MEDICAL INC., 11111035 CANADA INC. AND 1167025 B.C. LTD.**

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**January 14, 2021**

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## **CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT**

This is the consolidated plan of compromise and arrangement of Sunniva Inc., Sunniva Medical Inc., 11111035 Canada Inc, and 1167025 B.C. Ltd. made pursuant to the CCAA, CBCA and BC BCA.

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Definitions**

In this Plan (including any schedules hereto), unless otherwise stated or unless the context otherwise requires:

**“Administrative Charge”** means the charge granted in favour of the Monitor, counsel to the Monitor and counsel to the Petitioners pursuant to paragraph 33 of the ARIO.

**“Affected Claim”** means any Proven Claim that is not an Unaffected Claim.

**“Affected Creditor”** means a Creditor of any Petitioner who has an Affected Claim to the extent of such Affected Claim.

**“Affected Creditor Class”** means all of the Affected Creditors, being the class that will vote on this Plan in accordance with the terms set forth herein and in the Meeting Order.

**“Arbitration”** means the arbitration proceeding conducted by Judicial Arbitration and Mediation Services (JAMS) in the State of California, between CP Logistics, LLC and Bobs, LLC (as successor-in-interest to Sunniva Production Campus, LLC), in respect of the leasehold interest of CP Logistics, LLC in and to the California Greenhouse Facility.

**“ARIO”** means the Amended and Restated Initial Order of the Court on October 19, 2020, as extended by an Order of the Court on November 27, 2020, as further extended by an Order of the Court on December 11, 2020, and as may be further extended, amended, supplemented, modified or replaced from time to time by the Court.

**“BC BCA”** means the *Business Corporations Act*, S.B.C. 2002 c.57.

**“Business Day”** means any day other than a Saturday, Sunday or a day on which banks in Vancouver, British Columbia are authorized or obligated by applicable law to close or otherwise are generally closed.

**“California Greenhouse Facility”** means the under-construction cannabis cultivation facility located at 69375 Ramon Road, Cathedral City, California, USA, to which Sunniva has an indirect leasehold interest through its subsidiary, CP Logistics, LLC.

**“Canadian Subsidiaries”** means, collectively, Sunniva Medical Inc., 1167025 B.C. Ltd., and 11111035 Canada Inc.

**“Cash”** means cash, certificates of deposit, bank deposits, and other cash equivalents.

**“CBCA”** means the *Canada Business Corporations Act*, R.S.C., 1985, c.C-44, as amended.

**“CCAA”** means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

**“CCAA Charges”** means, collectively, the Administration Charge and the D&O Charge and any other charge over the Petitioners’ assets created by any other Order of the Court.



**“CCAA Proceedings”** means the proceedings commenced by the Petitioners under the CCAA on the Filing Date in Supreme Court of British Columbia, Action No. S-2010103, Vancouver Registry.

**“Claims Process Order”** means the Claims Process Order granted by the Court on October 19, 2020, approving and directing the establishment of a procedure for filing Proofs of Claim and resolving Disputed Claims, as amended or varied by further Order.

**“Claim”** means (i) any Pre-Filing Claim; (ii) any Restructuring Claims; or (iii) any Director/Officer Claim, but does not include an Unaffected Claim.

**“Claimant”** means a Person that has a Claim which is not yet a Proven Claim.

**“Commissions”** means the British Columbia Securities Commission and the Ontario Securities Commission.

**“Conditions Precedent”** means those conditions precedent to the implementation of this Plan, as set forth in Article 5.

**“Conversion”** has the meaning set out in Section 3.5(a).

**“Conversion Shares”** has the meaning set out in Section 3.5(a).

**“Court”** means the Supreme Court of British Columbia.

**“Creditor”** means any Person having a Claim and includes, without limitation, the transferee or assignee of a Claim that is recognized as a Creditor in accordance with paragraph 32 of the Claims Process Order, or a trustee, liquidator, receiver, manager, or other Person acting on behalf of such Person.

**“Crown”** means Her Majesty the Queen in Right of Canada, or any province or territory of Canada.

**“Crown Priority Claim”** means any claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;
- (b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of the Employment Insurance Act and of any related interest, penalties or other amounts;
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a “provincial pension plan” as defined in that subsection.

“**CSE**” has the meaning set out in Section 3.6.

“**CTO**” has the meaning set out in Section 3.6.

“**D&O Charge**” means the charge in favour of the Directors and Officers of the Petitioners granted pursuant to paragraph 23 of the ARIO.

“**Director**” means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director of any of the Petitioners.

“**Disclosure Filings**” has the meaning set out in Section 3.6.

“**Disputed Claim**” means, with respect to a Claim, the amount of the Claim or such portion thereof which has not been determined to be a Proven Claim in accordance with the process set forth in the Claims Process Order, which is disputed and which is subject to adjudication in accordance with the Claims Process Order, and is not barred pursuant to the Claims Process Order.

“**Effective Date**” means the Business Day on which the Conditions Precedent have been satisfied, fulfilled or waived in accordance with the terms hereof, as applicable, this Plan becomes effective, and the Monitor has completed and filed its certificate with the Court in accordance with Section 5.3 hereof, which date shall occur on or before July 31, 2021, or such later date as may be specified by the Petitioners with the consent of the Monitor.

“**Effective Time**” means the time on the Effective Date when the Monitor has filed its certificate with the Court in accordance with Section 5.3.

“**Employee Priority Claims**” means, with respect to Creditors who are or were employees of any Petitioner:

- (a) claims equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(l)(d) of the *Bankruptcy and Insolvency Act* (Canada), to the extent of \$2,000, if the Petitioners had become bankrupt on the Filing Date; and
- (b) claims for wages, salaries, commissions or compensation for services rendered by such employees and former employees other than Dr. Anthony F. Holler after the Filing Date and on or before the date of the Sanction Order, together with, in the case of travelling salespersons (if any), disbursements properly incurred by them in and about any Petitioner’s business during the same period.

“**Filing Date**” means October 9, 2020.

“**Final Order**” means an Order, ruling or judgment of the Court, or any other court of competent jurisdiction, which has not been reversed, modified or vacated, and is not subject to any stay or appeal, and for which any and all applicable appeal periods have expired.

“**Intercompany Claims**” means all debts, liabilities and obligations of a Canadian Subsidiary to Sunniva or to another Canadian Subsidiary in connection with intercompany loans and payables.

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), as amended, and any regulations thereunder.

“**Lien**” means any mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest, deemed trust or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law, including any security interest granted by any Petitioner in favour of any Person

pursuant to the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 or other analogous personal property security legislation.

“**Meeting**” means the meeting of the Affected Creditors to be held on the Meeting Date for the purpose of considering and voting on this Plan pursuant to the CCAA, as such meeting may be adjourned, postponed or otherwise rescheduled in accordance with the Meeting Order.

“**Meeting Date**” means February 5 2021, as may be rescheduled in accordance with the terms of the Meeting Order.

“**Meeting Order**” means the Order of the Court made on January 15, 2021, and all schedules to the Order, setting the Meeting Date, approving the procedure for the Meeting, and authorizing the dissemination of this Plan to the Petitioners’ Creditors.

“**Monitor**” means Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Monitor of the Petitioners pursuant to the ARIO.

“**Monitor’s Website**” means <https://www.alvarezandmarsal.com/sunniva>.

“**Numberco**” means 1167925 B.C. Ltd.

“**Officer**” means any person who is or previously was an officer of any Petitioner.

“**Order**” means an order of the Court in these CCAA Proceedings.

“**Person**” means any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate (including a limited liability company and an unlimited liability company), corporation, unincorporated association or organization, governmental authority, syndicate or other entity, whether or not having legal status.

“**Petitioners**” means, collectively, Sunniva Inc., Sunniva Medical Inc., 11111025 Canada Inc., and 1167025 B.C. Ltd., and “**Petitioner**” means any one of them.

“**Plan**” means this Consolidated Plan of Compromise and Arrangement filed by the Petitioners pursuant to the CCAA, including any schedules hereto, as may be amended, varied or supplemented hereafter in accordance with the terms hereof, or made at the direction of the Court in accordance with the Sanction Order.

“**Pre-Filing Claim**” means any right or claim of any Person that may be asserted or made in whole or in part against any of the Petitioners or a Director or Officer whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the Filing Date, at law or in equity, including by reason of the commission of a tort (intentional or unintentional), any breach of contract or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the Petitioners or their property or assets, or a Director or Officer, and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including any right

or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable in bankruptcy had any of the Petitioners become bankrupt on the Filing Date, and for greater certainty, includes any Tax Claims; provided, however, that **“Pre-Filing Claim”** shall not include an Unaffected Claim.

**“Priority Claim”** means a Crown Priority Claim or an Employee Priority Claim.

**“Priority Claim Reserve”** means a Cash reserve, equal to the amount of the Priority Claims, to be deposited by the Petitioners to the Monitor for the purpose of paying the Priority Claims.

**“Proof of Claim”** means a proof of claim filed by a Claimant in accordance with the Claims Process Order for the purpose of establishing a Proven Claim against the Petitioners (or any one of them).

**“Pro Rata Share”** has the meaning set out in Section 3.5(b).

**“Proven Claim”** means any Claim that has been deemed to be a Proven Claim or otherwise admitted in whole or in part pursuant to the provisions of the Claims Process Order.

**“Released Claims”** has the meaning set out in Section 7.3.

**“Released Parties”** means, collectively:

- (a) the Petitioners;
- (b) the employees, legal advisors, and other representatives of any Petitioner, in their capacity as such;
- (c) the Directors and the Officers; and
- (d) the Monitor and its legal advisors in their capacities as such.

**“Required Majorities”** means, with respect to the Affected Creditor Class, a majority in number representing at least two-thirds of the value of the Affected Claims of Affected Creditors who actually vote, or who pursuant to the provisions of this Plan, the Claims Process Order or other Order, are deemed to have voted, on the resolution approving this Plan at the Meeting (in person, by proxy or by ballot).

**“Restricted Distribution Reserve”** means a Cash reserve, in the amount of \$5,000, to be deposited by the Petitioners to the Monitor for the purposes of compromising the Affected Claim of any Affected Creditor that is prohibited by statute from acquiring or holding the Conversion Shares to be issued pursuant to the Plan.

**“Restricted Distribution”** has the meaning set out in Section 3.5(f).

**“Restructuring Claim”** means any right or claim of any Person against any of the Petitioners or a Director or Officer in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Petitioners or a Director or Officer to such Person arising out of the disclaimer, rescission or termination on or after the Filing Date of any contract including any employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such disclaimer, rescission or termination took place or takes place before or after the date of this Claims Process Order, and includes for greater certainty any right or claim of an employee of any of the Petitioners arising from a termination of its employment after

the Filing Date; provided, however that “**Restructuring Claim**” shall not include an Unaffected Claim.

“**Sanction Order**” means an Order of the Court under the CCAA to, among other things, sanction, authorize and approve this Plan.

“**Service List**” means the service list kept by the Monitor in the CCAA Proceedings.

“**SMI**” means Sunniva Medical Inc.

“**Subscription Price**” has the meaning set out in Section 3.5(b).

“**Sunniva**” means Sunniva Inc.

“**Tax**” or “**Taxes**” means any and all amounts subject to a withholding or remitting obligation and any and all taxes, duties, fees, and other governmental charges, duties, impositions and liabilities of any kind whatsoever whether or not assessed by the Taxing Authorities (including any Claims by any of the Taxing Authorities), including all interest, penalties, fines, fees, other charges and additions with respect to such amount.

“**Tax Claim**” means any Claim against any of the Petitioners for any taxes in respect of any taxation year or period ending on or prior to the Filing Date, and in any case where a taxation year or period commences on or prior to the Filing Date, for any taxes in respect of or attributable to the portion of the taxation period commencing prior to the Filing Date and up to and including the Filing Date. For greater certainty, a Tax Claim shall include, without limitation, any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident tax related thereto.

“**Taxing Authorities**” means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of each and every province or territory of Canada and any political subdivision thereof, and “**Taxing Authority**” means any one of them.

“**Transfer Agent**” means Odyssey Trust Company, in its capacity as the share transfer agent for Sunniva.

“**Unaffected Claims**” means, collectively, and subject to further order of the Court:

- (a) any right or claim of any Person that may be asserted or made in whole or in part against any of the Petitioners in connection with any indebtedness, liability or obligation of any kind which arose in respect of obligations first incurred on or after the Filing Date (other than Restructuring Claims and Director/Officer Claims) and any interest thereon, including any obligation of the Petitioners to creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Petitioners on or after the Filing Date, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or advancement of funds on or after the Filing Date;
- (b) any claim secured by any of the CCAA Charges;
- (c) any claim against any Director that cannot be compromised as identified in section 5.1(2) of the CCAA;
- (d) any Claims in respect of any payments referred to in sections 6(3), 6(5) and 6(6) of the CCAA.

**“Unaffected Creditors”** means holders of Unaffected Claims.

## **1.2 Accounting Terms**

All accounting terms not otherwise defined herein shall have the meanings ascribed to them in accordance with International Financial Reporting Standards, including without limitation, those prescribed by Financial Reporting and Assurance Standards Canada.

## **1.3 Articles of Reference**

The terms “hereof”, “hereunder”, “herein”, and similar expressions refer to this Plan and not to any particular article, section, subsection, clause or paragraph of this Plan, and include any agreements supplement hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph shall, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of this Plan.

## **1.4 Interpretation Not Affected by Headings**

The division of this Plan into articles, sections, subsections, clauses and paragraphs and the insertion of a table of contents and headings are for convenience of reference only, and shall not affect the construction or interpretation of this Plan.

## **1.5 Date for Any Action**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **1.6 Time**

All times expressed herein are local time in Vancouver, British Columbia, Canada, unless otherwise stipulated.

## **1.7 Number, Etc.**

In this Plan, where the context requires, a word importing the singular number shall include the plural and vice versa; a word or words importing gender shall include all genders, and the words “including” and “includes” shall mean “including (or includes) without limitation”.

## **1.8 Currency**

Unless otherwise specified, all references to monetary amounts are to lawful currency of Canada. All Affected Claims denominated in a currency other than Canadian Dollars shall, for the purposes of this Plan, be converted to and shall constitute obligations in Canadian Dollars, such calculation to be effected using the applicable Bank of Canada exchange rates published on the Filing Date (exchange rate conversion on such date for United States Dollars was: USD: 1.00 = CAD 1.3136).

## **1.9 Statutory References**

Except as provided herein, any references in this Plan to a statute includes all regulations and rules made thereunder, all amendments to such statute, regulations or rules in force from time to time, and any statute, regulation or rule that supplements or supersedes such statutes or regulation.

## **1.10 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, except as they apply to the conflict of laws. All questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan shall be subject to the exclusive jurisdiction of the Court.

## **ARTICLE 2 PURPOSE AND EFFECT OF PLAN**

### **2.1 Purpose**

The purpose of this Plan is to resolve all Affected Claims in order to preserve and improve the value of the Petitioners' assets and maximize any prospect of recovery for Affected Creditors. The Petitioners intend to accomplish this by, among other things:

- (a) effecting a compromise of the Claims of the Affected Creditors of the Petitioners on the terms set out in this Plan;
- (b) cancelling all outstanding warrants and options for unissued shares in Sunniva Inc.;
- (c) extinguishing Intercompany Claims;
- (d) seeking court approval to access additional funds in the short-term, including those held in trust with the Monitor and completing a financing in one or more of Sunniva's US subsidiaries, in the amount of approximately CA\$1,680,000, to fund working capital expenses, the Arbitration, and resolve the on-going dispute in respect of the California Greenhouse Facility; and
- (e) in due course, obtaining additional financing, working with strategic partners and investors, working with the landlord to complete the construction of the California Greenhouse Facility, rebuilding internal capabilities, commencing cannabis cultivation operations, completing commercial third party arrangements and generating revenue.

Further particulars of Sunniva's strategy and next steps are set out in the attached Schedules. Schedule A details the capabilities of the California Greenhouse Facility. Schedule B details the funding requirements and anticipated value of the California Greenhouse Facility.

The Petitioners' expectation is that the successful implementation of this Plan will provide greater benefits to all Persons with an economic interest in the Petitioners than would result from the bankruptcy of the Petitioners.

### **2.2 Affected Creditors**

On the Effective Date, this Plan will be binding on the Petitioners and all Affected Creditors to the extent of their Affected Claims. The Plan will be binding upon and enure to the benefit of the Petitioners, the Released Parties, the Affected Creditors, any trustee, agent or other Person acting on behalf of any Affected Creditor and any other Persons who have received the benefit of, or are bound by, any compromises, waivers or releases under this Plan.



### **2.3 Unaffected Creditors**

Unaffected Creditors, to the extent of their Unaffected Claims, will not be affected by the compromises or arrangements set out in this Plan.

### **2.4 Extinguishment of Intercompany Claims**

On the Effective Date, the following transactions shall be deemed to occur in the manner and sequence set forth below:

- (a) Numberco shall without any further act or formality, grant, assign, transfer, convey and set over to SMI all the right, title and interest of Numberco in and to any and all property or assets of Numberco of any nature or kind whatsoever and wheresoever situate, and SMI shall without any further act or formality accept the assignment thereof. SMI shall assume and agree to pay and satisfy all liabilities, obligations, claims, demands, costs and expenses of Numberco, whether known or unknown, absolute or contingent. For greater certainty, any Intercompany Claim owing by Numberco to SMI shall be cancelled by operation of law as a result of this Section 2.4(a).
- (b) SMI shall without any further act or formality, grant, assign, transfer, convey and set over to Sunniva all the right, title and interest of SMI in and to any and all property or assets of SMI of any nature or kind whatsoever and wheresoever situate, and Sunniva shall without any further act or formality accept the assignment thereof. Sunniva shall without any further act or formality assume and agree to pay and satisfy all liabilities, obligations, claims, demands, costs and expenses of SMI, whether known or unknown, absolute or contingent. For greater certainty, any Intercompany Claim owing by SMI to Sunniva shall be cancelled by operation of law as a result of this Section 2.4(b).
- (c) All Intercompany Claims, if any, that are owing after the assignment and assumption in Section 2.4(b) above, shall be cancelled, terminated and extinguished in all respects, and the Intercompany Claims shall be of no further force or effect against Sunniva or any Canadian Subsidiary.

From and after the Effective Date, all corporate actions contemplated by this Section 2.4 shall be deemed to have been authorized and approved in all respects (subject to the provisions of the Plan).

## **ARTICLE 3 CLASSIFICATION AND TREATMENT OF AFFECTED CLAIMS**

### **3.1 Classification**

The only class of creditors for the purposes of considering and voting upon this Plan is the Affected Creditor Class consisting of the Affected Creditors.

### **3.2 Voting by Affected Creditors**

- (a) Affected Creditors shall be entitled to cast a vote in respect of this Plan at the Meeting.
- (b) Each Affected Creditor with one or more Proven Claims shall be entitled to one (1) vote and the weight attributed to such vote shall be equal to the aggregate Canadian dollar value of such Affected Creditor's Proven Claim (if necessary, converted into Canadian

Dollars in accordance with Section 3.5).

- (c) Claimants with Disputed Claims shall be entitled to attend the Meeting and cast a vote in respect of the Plan. The Monitor shall keep a separate record and tabulation of any votes cast in respect of Disputed Claims. The Monitor shall report the result of the vote and the tabulation of votes of Affected Claims and the Disputed Claims to the Court and, if the decision whether to approve or reject this Plan is affected by the votes cast in respect of the Disputed Claims, the Petitioners shall seek direction from the Court in respect thereof. The fact that a Disputed Claim is allowed for voting purposes shall be without prejudice as to whether all or any part of such Disputed Claim is a Proven Claim and shall not preclude the Petitioners or the Monitor from disputing the Disputed Claim, including for distribution purposes.
- (d) Any Affected Creditor's proxy will be voted in accordance with the Affected Creditor's instruction to vote for or against the approval of the Plan and any other matters before the Meeting, in the absence of such instruction, the proxy will be voted for the approval of the Plan. Forms of proxy may confer discretionary authority on the individuals designated therein with respect to amendments or variations of matters identified in the notice of the Meeting and other matters that may properly come before the meeting. In the absence of such discretion, the proxy will be voted in favour of any amendments or variations.

### **3.3 Approval of this Plan**

This Plan must receive an affirmative vote by the Required Majorities of the Affected Creditor Class in order to be approved, on a vote to be conducted in accordance with the procedures in the Meeting Order.

### **3.4 Priority Claims**

In accordance with the Sanction Order, the CCAA and with the steps and in the sequence set forth herein, the Employee Priority Claims and the Crown Priority Claims, if any, shall be paid from the Priority Claim Reserve. Subject to the Effective Time occurring:

- (a) all Crown Priority Claims that were outstanding as at the Filing Date shall be paid in full by the Monitor on behalf of the Petitioners, from the Priority Claim Reserve, within six months after the Sanction Order, as required by subsection 6(3) of the CCAA; and
- (b) all Employee Priority Claims to the extent unpaid prior to the Effective Date shall be paid by the Monitor, on behalf of the Petitioners, from the Priority Claim Reserve immediately after the Sanction Order as required by subsection 6(5) of the CCAA.

### **3.5 Treatment of Affected Creditors – Debt-to-Equity Conversion**

On the Effective Date, in full and final satisfaction of the Affected Claims:

- (a) All indebtedness, liabilities and obligations of the Petitioners of or in respect of the Affected Claims, being the aggregate amount of approximately CA \$64,380,947.33, shall be converted (the “**Conversion**”) into 758,770,662 common shares to be issued in the capital of Sunniva having equivalent value (the “**Conversion Shares**”) at the

conversion price equal to the total amount of Affected Claims divided by the total number of Conversion Shares, being approximately \$0.085 per common share.

- (b) Each Affected Creditor's "**Pro Rata Share**" of the Conversion Shares shall be equal to the total number of the Conversion Shares multiplied by the quotient of X/Y, where X is equal to the amount of the Affected Claim of that Affected Creditor, and Y is equal to the total amount of all Affected Claims (being approximately CA \$64,380,947.33).
- (c) The Conversion shall, upon its completion, constitute:
  - (i) a subscription by each Affected Creditor of its Pro Rata Share of the Conversion Shares at the aggregate subscription price equal to the amount of its Affected Claim (the "**Subscription Price**");
  - (ii) a set-off of the Subscription Price owing by each Affected Creditor against the amount of the Affected Claim of that Affected Creditor constituting payment of an amount equal to the Subscription Price applied against the amount of that Affected Claim.
- (d) In connection with the Conversion, Sunniva shall distribute the Conversion Shares in accordance with Section 6.2.
- (e) For greater certainty, no fractional shares in the capital of Sunniva shall be issued pursuant to the Conversion or the terms of this Plan. In the event that an Affected Creditor would, but for the terms of this Section 3.5, have been entitled to receive a fraction of a share in the capital of Sunniva pursuant to the Conversion, then the number of shares in the capital of Sunniva issuable to such Affected Creditor will be rounded down to the nearest whole number.
- (f) Notwithstanding the above, any Affected Creditor that is prohibited by statute from acquiring or holding the Conversion Shares to be issued pursuant to the Plan shall receive a *pro rata* Cash distribution from the Restricted Distribution Pool (the amount of each such *pro rata* distribution referred to herein as a "**Restricted Distribution**").

Attached as Schedule C is a summary of the current capitalization of Sunniva and the proposed conversion.

### 3.6 Securities Regulator Approvals

On June 22, 2020, the British Columbia Securities Commission and Ontario Securities Commission each issued a cease trade order ("**CTO**") in respect of the issued and outstanding shares in the capital of Sunniva. The CTO was imposed due to Sunniva's failure to file the following periodic disclosure required under applicable securities legislation (the "**Disclosure Filings**"):

- (a) annual audited financial statements for the year ended December 31, 2019;
- (b) annual management's discussion and analysis for the year ended December 31, 2019; and
- (c) certification of the annual filings for the year ended December 31, 2019.

As a result of the CTO, the Canadian Securities Exchange (“CSE”) has suspended all trading of the shares in the capital of Sunniva since the summer of 2020.

In order for the CTO to be partially revoked for the purpose of issuing shares pursuant to this Plan, Sunniva must make an application to the Commissions to have the CTO partially revoked, and the Commissions must accept the applications and issue an order partially revoking the CTO, all of which Sunniva anticipates completing prior to implementation of this Plan.

In order for the CTO to be fully revoked, Sunniva must complete the Disclosure Filings together with the filing of all other periodic disclosure documents for the financial year ended December 31, 2020 in accordance with the requirements under applicable securities legislation, Sunniva must make an application to the Commissions to have the CTO revoked, and the Commissions must accept the application and issue an order revoking the CTO, all of which Sunniva anticipates having completed upon exiting CCAA Proceedings. If a full revocation of the CTO is required to implement this Plan, Sunniva anticipates seeking an order to that effect prior to exiting the CCAA Proceedings.

In order for the shares in the capital of Sunniva to resume trading, the CTO must be revoked, Sunniva must complete any outstanding filings required under the policies of the CSE and Sunniva must pay any required reinstatement fees to the CSE, all of which Sunniva anticipates completing prior to or upon exiting the CCAA Proceedings.

### **3.7 Unaffected Claims**

Notwithstanding anything to the contrary herein, no Unaffected Creditor shall be entitled to vote or receive any distributions under this Plan in respect of such Unaffected Claim. Nothing in this Plan shall affect the Petitioners’, or any Unaffected Creditor’s, rights and defences with respect to any Unaffected Claim, unless such Unaffected Claim is paid in full on the Effective Date.

### **3.8 Transfer or Assignment of Affected Claims**

An Affected Creditor may transfer or assign the whole of its Affected Claim prior to the Meeting provided that the Petitioners and the Monitor shall not be obliged to deal with any such transferee or assignee as an Affected Creditor in respect thereof, including allowing such transferee or assignee to vote at the Meeting (to the extent permitted by this Plan and the Meeting Order), unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received and acknowledged by the Petitioners and the Monitor on or before 5 p.m. (Vancouver time) on the date that is seven (7) days prior to the date of the Meeting, failing which the original transferor or assignor shall have all applicable rights as the “Affected Creditor” with respect to such Affected Claim as if no transfer of the Affected Claim had occurred. Thereafter, such transferee or assignee shall for all purposes constitute an Affected Creditor and shall be bound by any and all notices previously given to the transferor or assignor in respect of such Affected Claim. For greater certainty, the Petitioners shall not recognize partial transfers or assignments of Claims or Affected Claims.

### **3.9 Extinguishment of Claims**

As of and from the Effective Time and in accordance with the provisions of the Sanction Order, the treatment of Affected Claims (including Disputed Claims which may become Affected Claims) under this Plan shall be final and binding on the Petitioners and all Affected Creditors (and Claimants who may become Affected Creditors), and all Affected Creditors and all other Claims shall be released and discharged as against the Petitioners or their Directors or Officers, and the Petitioners shall thereunder be forever released from all Affected Claims and all other Claims, other than in respect of the obligations of

the Petitioners to make payments in the matter and to the extent provided for in this Plan; provided, however, that such discharge and release shall be without prejudice to the right of a Claimant to prove a Disputed Claim so that such Disputed Claim becomes a Proven Claim. For clarity, this Plan does not release the Petitioners from Unaffected Claims.

### **3.10 Interest on Affected Claims**

Interest shall not accrue on or be paid on any Affected Claim after or in respect of the period following the Filing Date.

## **ARTICLE 4 SANCTION ORDER**

### **4.1 Application for Sanction Order**

As soon as reasonably practicable following the approval of this Plan by the Required Majorities, the Petitioners shall bring an application to the Court seeking the Sanction Order.

### **4.2 Effect of the Sanction Order**

In addition to approving the Plan, the Sanction Order will, without limitation to any other term that it may contain:

- (a) confirm that the Meeting was duly called and held in accordance with the Meeting Order;
- (b) authorize all Persons named in the Plan to perform their functions and fulfill their obligations under the Plan to facilitate the implementation of the Plan;
- (c) declare that: (i) the Plan has been approved by the Required Majority of Affected Creditors in accordance with the CCAA, (ii) the Petitioners have complied with the provisions of the CCAA and the Orders of the Court made in these CCAA Proceedings in all respects; (iii) the Court is satisfied that the Petitioners have not done or purported to do anything that is not authorized by the CCAA, and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;
- (d) declare that, as of the Effective Date, the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved, binding and effective on the Petitioners, all Affected Creditors, the Released Parties, and all other Persons and parties affected by the Plan;
- (e) declare that the compromises, arrangements, discharges and the releases referred to in the Plan are approved and shall become binding and effective in accordance with the Plan;
- (f) compromise, discharge and release the Petitioners from any and all Affected Claims and declare that the ability of any Person to proceed against any of the Petitioners in respect of or relating to any Affected Claims shall be forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claim shall be permanently stayed against the Petitioners, subject only to the

right of the Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims;

- (g) confirm the releases of the Released Parties as set out in Section 7.3;
- (h) authorize and direct Sunniva to issue the Conversion Shares to the applicable Affected Creditors in accordance with the terms and conditions of the Plan and authorize any of the Officers of Sunniva to take all steps necessary to do so, and, if required, provide a basis for Sunniva to rely on an exemption from the registration requirement of the United States Securities Act of 1933 (as amended) with respect to the Conversion Shares that may be issued to any applicable Affected Creditor that resides in the United States;
- (i) authorize and direct the Petitioners, after the Effective Date, to complete the distributions and transactions contemplated pursuant to the Plan, without need for any further approvals or actions on the part of Directors and Officers or any other Person;
- (j) declare that, subject to the performance by the Petitioners of their obligations under the Plan, all obligations, contracts, agreements, leases and other arrangements to which any of the Petitioners is a party shall be and remain in full force and effect, unamended, as at the Effective Date, unless disclaimed or resiliated by the applicable Petitioner prior to the Effective Date, and no party to any such obligation or agreement shall, on or following the Effective Date, accelerate, terminate, refuse to renew, rescind, refuse to perform, or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason:
  - (i) of any event which occurred prior to, and not continuing after, the Effective Date or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies;
  - (ii) that the Petitioners have sought or obtained relief or have taken steps as part of the Plan or under the CCAA;
  - (iii) of any default or event of default arising as a result of the financial condition or insolvency of the Petitioners;
  - (iv) of the effect upon the Petitioners of completing the transactions contemplated under the Plan; and
  - (v) of any compromises, settlements, restructurings and releases effected pursuant to the Plan; and
- (k) declare that the Petitioners and the Monitor may apply to the Court from time to time for advice and direction in respect of any matters arising or under the Plan.

**ARTICLE 5**  
**CONDITIONS PRECEDENT TO PLAN IMPLEMENTATION**

**5.1 Conditions of Plan Implementation**

The implementation of this Plan is conditional on the satisfaction or waiver (subject to Section 5.2 hereof) of the following conditions precedent:

- (a) this Plan shall have been approved by the Required Majorities of the Affected Creditor Class;
- (b) the Plan shall have been approved and sanctioned by the Court by the granting of the Sanction Order, including the issuance of the Conversion Shares to the applicable Affected Creditors, and the Sanction Order shall have become a Final Order;
- (c) the Petitioners shall have taken all necessary corporate actions and proceedings in connection with this Plan and to approve this Plan and to enable the Petitioners to execute, deliver and perform their obligations under this Plan, agreements, documents, the Conversion, and other items to be executed or completed by the Petitioners pursuant to this Plan;
- (d) the British Columbia Securities Commission and Ontario Securities Commission shall have either: (i) revoked the CTO; or (ii) granted a partial revocation of the CTO for the purposes of completing the Conversion and other transactions contemplated herein;
- (e) all agreements, documents and actions necessary to implement and give effect to this Plan shall have been executed and delivered, or carried out as the case may be, by all relevant Persons; and
- (f) no action shall have been instituted and be continuing on the Effective Date for an injunction to restrain, a declaratory judgment in respect of, or damages on account or, or relating to, this Plan.

**5.2 Waiver of Conditions**

Any Condition precedent may be waived by the Petitioners with the approval of the Monitor, other than any statutory requirements regarding the voting, approval or sanctioning of this Plan pursuant to the provisions of the CCAA.

**5.3 Monitor's Certificate**

Upon being advised in writing by counsel for the Petitioners that the Conditions Precedent set out in Section 5.1 have been satisfied or waived in accordance with Section 5.2 and that this Plan is capable of being implemented, the Monitor shall file with the Court a certificate stating that all Conditions Precedent of this Plan have been satisfied or waived in accordance with this Plan and that this Plan is capable of being implemented forthwith.

**5.4 Failure to Satisfy Conditions Precedent**

If the Conditions Precedent are not satisfied or waived in accordance with Section 5.2 on or



before July 31, 2021, or such later date as may be specified by the Petitioners with the consent of the Monitor, this Plan shall not be implemented and this Plan shall cease to have any further force or effect.

## **ARTICLE 6 IMPLEMENTATION OF THE PLAN**

### **6.1 Distribution to Priority Claim Holders**

On the Effective Date, the Monitor shall pay to each Priority Claim Holder the full amount payable to it by the Petitioners under this Plan, calculated in accordance with Section 3.5.

### **6.2 Distributions to Affected Creditors**

As soon as practicable following the Effective Date, Sunniva shall:

- (a) authorize and approve the issuance to each Affected Creditor its Pro Rata Share of the Conversion Shares and, when issued and delivered in accordance with the terms and conditions of the Plan, such Conversion Shares shall be fully paid and non-assessable common shares in the capital of Sunniva; and
- (b) for each Affected Creditor:
  - (i) issue and deliver to that Affected Creditor a share certificate or direct registration statement representing that Affected Creditor's Pro Rata Share of the Conversion Shares; or
  - (ii) direct the Transfer Agent to issue and record in Sunniva's securities register the number of common shares representing that Affected Creditor's Pro Rata Share of the Conversion Shares,

in each case, issued to and in the name of the applicable Affected Creditor or as that Affected Creditor may direct in writing.

Notwithstanding the aforementioned, as soon as practicable following the Effective Date, the Monitor shall pay to each Affected Creditor that is prohibited by statute from acquiring or holding the Conversion Shares contemplated to be issued pursuant to the Plan its respective Restricted Distribution, as determined by Section 3.5(f). For greater certainty, any Affected Creditor who receives a Pro Rata Share of the Conversion Shares pursuant to Section 3.5 is ineligible to receive any Restricted Distribution, and the Monitor shall not pay any Restricted Distribution to such Affected Creditors.

### **6.3 Undeliverable Distributions**

If any distribution in respect of an Affected Claim is returned as undeliverable, no further distributions shall be made unless and until the Monitor is notified of the current address of the applicable Affected Creditor, at which time all missed distributions shall be made in respect of such Affected Claim without interest. Undeliverable distributions shall be retained by the Petitioners until such distributions are claimed. The Petitioners shall make reasonable efforts to locate the Affected Creditors for which distributions were undeliverable. Notwithstanding the foregoing, all claims for undeliverable distributions must be made on or before the date that is 180 days after the Effective Date, after which date all unclaimed distributions shall revert to the Petitioners.

### **6.4 No Distribution for Disputed Claims**

Claimants with Disputed Claims on the Effective Date shall not be entitled to receive any distribution hereunder with respect to such Disputed Claim unless and until such Disputed Claim becomes an Affected Claim. A Disputed Claim shall be referred for resolution in the manner set out in the Claims Process Order. Distributions pursuant to Sections 3.5 and 6.2 shall be paid in respect of any Disputed Claim that is finally resolved or settled and becomes a Proven Claim in accordance with the Claims Process Order and an Affected Claim hereunder.

## **6.5 Calculations**

All amounts of consideration to be received hereunder will be calculated to the nearest cent (\$0.01). All calculations and determinations made by the Petitioners and the Monitor for the purposes of and in accordance with this Plan, including without limitation, the allocation of the consideration, shall be conclusive, final and binding upon the Affected Creditors and the Petitioners.

## **ARTICLE 7 EFFECT OF THE PLAN**

### **7.1 Binding Effect of this Plan**

This Plan (including, without limitation, the releases and injunctions contained herein), upon being sanctioned and approved by the Court pursuant to the Sanction Order shall be binding as of the Effective Date on all Persons irrespective of the jurisdiction in which the Persons reside or in which the Claims arose and shall constitute:

- (a) a full, final and absolute settlement of all rights of the Affected Creditors; and
- (b) an absolute release and discharge of all indebtedness, liabilities and obligations of the Petitioners of or in respect of the Affected Claims.

### **7.2 Consents, Waivers and Agreements**

From and after the Effective Date, each Affected Creditor, Claimant and other Persons shall be deemed to have consented and to have agreed to all of the provisions of this Plan in its entirety. In particular, each Affected Creditor, Claimant and other Persons shall be deemed:

- (a) to have executed and delivered to the Monitor and the Petitioners all consents, releases, assignments and waiver, statutory or otherwise, required to implement and carry out this Plan in its entirety; and
- (b) to have waived any default by or rescinded any demand for payment against the Petitioners that occurred on or prior to the Effective Date;
- (c) to have agreed that, if there is any conflict between the provisions, whether express or implied, of any agreement or other arrangement, written or oral, between such Affected Creditors and any of the Petitioners with respect to an Affected Claim as at the Effective Date and the provisions of the Plan, then the provisions of the Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly; and
- (d) to have waived any and all defaults then existing or previously committed by any Petitioner in any covenant, warranty, representation, term, provision, condition or obligations, expressed or implied, in any contract, agreement, mortgage, security

agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto, existing between any such Affected Creditor, Claimant or other Person and the Petitioners and any and all notices of default and demands for payment under any instrument, including without limitation any guaranty, shall be deemed to have been rescinded.

### **7.3 Release of Released Parties**

As of the Effective Date, to the extent permitted by law, each of the Released Parties shall be released and discharged from any and all demands, claims, liabilities, obligations, causes of action, damages, executions or other recoveries, known or unknown, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Date relating to, arising out of, or in connection with the CCAA Proceedings, this Plan and any proceedings commenced with respect to or in connection with this Plan (collectively, the “**Released Claims**”); provided that:

- (a) nothing in this paragraph shall release or discharge any of the Released Parties from or in respect of its obligations under this Plan and to comply with and to make the distributions set out therein;
- (b) such release and discharge shall not include any Unaffected Claims against the Petitioners; and
- (c) nothing herein will release or discharge a Released Party if the Released Party is determined by a Final Order of a court of competent jurisdiction to have committed gross negligence, wilful misconduct or fraud in relation thereto and shall not release any claims against any Director or Officer that cannot be compromised as identified in section 5.1(2) of the CCAA.

### **7.4 Injunction**

All Persons, along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, financial advisors, legal counsel, other professionals, sureties, insurers, indemnities, agents, dependents, heirs, representatives and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Date, with respect to Released Claims against the Released Parties, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;
- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or

kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against and Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Released Parties;

- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or
- (e) taking any actions to interfere with the implementation or consummation of this Plan or the transactions contemplated therein.

This Section 7.4 does not apply to any Unaffected Claims or to the enforcement of any obligations under this Plan.

## **7.5 Responsibilities of Monitor**

The Monitor is acting in its capacity as monitor in the CCAA Proceedings and the Monitor will not be responsible or liable for any obligations of the Petitioners hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the Court in the CCAA Proceedings, including the ARIO.

## **ARTICLE 8 GENERAL**

### **8.1 Amendment**

The Petitioners, with the consent of the Monitor, without the need for any further Order of the Court, shall be entitled, at any time and from time to time, to vary, amend, modify or supplement the Plan provided any such variation, amendment, modification or supplement is of a technical or administrative nature that would not materially prejudice any Person (including Affected Creditors and Secured Creditors under the Plan), including without limitation, any amendments, modifications or supplements to Section 3.5 that may be required to implement the Conversion once the final amount of Affected Claims is determined by the claims process set out in the Claims Process Order. Otherwise, the Petitioners, with the consent of the Monitor, shall be entitled to vary, amend, modify or supplement the Plan only in the following circumstances:

- (a) if made prior to or at the Meeting, the Petitioners or the Monitor:
  - (i) files the amended Plan with the Court;
  - (ii) serves the amended Plan on the Service List; and
  - (iii) provides notice of the amended Plan and such other materials as the Monitor deems appropriate to Affected Creditors that have filed Proxies with the Monitor, and any other Affected Creditors that may be prejudiced by any such variation, amendment, modification or supplement, to the extent that such Affected Creditors are not on the Service List; or
- (b) if made after the Meeting, pursuant to an Order of the Court made on notice to all Persons potentially affected by such variation, amendment, modification or supplement.

### **8.2 Paramountcy**

From and after the Effective Date, if there is any conflict between any provision(s) of this Plan or Sanction Order and any provision of any other contract, document, agreement or arrangement, written or oral, between any Affected Creditor and any Petitioner in existence on the Effective Date, the provision(s) of this Plan and Sanction Order shall govern.

### **8.3 Termination**

At any time prior to the Effective Date, the Petitioners may determine not to proceed with this Plan notwithstanding the obtaining of the Sanction Order. If the Conditions Precedent are not satisfied or waived as provided for in this Plan, if the Petitioners determine not to proceed with this Plan, or if the Sanction Order is not issued by the Court, then:

- (c) this Plan shall be null and void in all respects;
- (d) any settlement or compromise embodied in this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and
- (e) nothing contained in this Plan, and no act taken in preparation for the consummation of this Plan, shall:
  - (iv) constitute or be deemed to constitute a waiver or release of any Affected Claims or any defences thereto by or against any of the Affected Creditors or any other Person;
  - (v) prejudice in any manner the rights of any Affected Creditors or any other Persons in any further proceedings involving the Petitioners; or
  - (vi) constitute an admission of any sort by the Petitioners, the Affected Creditors or any other Person.

### **8.4 Severability**

If, prior to the Effective Date, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Petitioner shall have the power to alter and interpret such term or provisions to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alternation or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alternation or interpretation.

### **8.5 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, or successor or assign of such Person.

### **8.6 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan shall occur and be deemed

to occur in the order set out herein without any other additional act or formality, each of the Persons affected hereby shall make, do, and execute, or cause to be made, done or executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by the Petitioners in order to better implement this Plan.

## **8.7 Entire Agreement**

Except as otherwise indicated, upon the Effective Date, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

## **8.8 Exhibits and Related Documents**

All schedules, exhibits and documents filed in relation to this Plan are incorporated into and are a part of this Plan as if set forth in full in this Plan.

## **8.9 Notices**

Any notices or communication to be made or given hereunder to any Petitioner or the Monitor shall be in writing and shall refer to this Plan and may, subject as hereinafter provided, be made or given by prepaid registered mail, courier, personal delivery, or e-mail addressed to the respective parties as follows:

if to the Petitioners

**Sunniva Inc.**

c/o Borden Ladner Gervais LLP  
Counsel to the Petitioners  
1200 Waterfront Centre  
200 Burrard Street  
Vancouver, British Columbia

Attention: Lisa Hiebert and Ryan Laity  
Email: [lhiebert@blg.com](mailto:lhiebert@blg.com) and [rlaity@blg.com](mailto:rlaity@blg.com)

if to the Monitor:

**Alvarez & Marsal Canada Inc.**

Court-appointed Monitor of Sunniva Inc., *et. al.*  
1680 – 400 Burrard Street  
Vancouver, British Columbia V6C 3A6

Attention: Anthony Tillman and Pinky Law  
Email: [sunniva@alvarezandmarsal.com](mailto:sunniva@alvarezandmarsal.com)

-with a copy to-

**Cassels Brock & Blackwell LLP**

Counsel for the Monitor  
Suite 2200, HSBC Building  
885 West Georgia Street  
Vancouver, BC V6C 3E8

Attention: Mary I.A. Buttery Q.C. and H. Lance Williams  
Email: [mbuttery@cassels.com](mailto:mbuttery@cassels.com) and [lwilliams@cassels.com](mailto:lwilliams@cassels.com)

or to such other address or e-mail as any party may from time to time notify the others in accordance herewith. Any such notice or communication delivered by a Creditor shall be deemed to be received on actual receipt thereof by the Monitor before 5:00 p.m. (Vancouver time) on a Business Day or, if delivered after 5:00 p.m. (Vancouver time), on the next Business Day. The unintentional failure by the Petitioners or the Monitor to give any notice contemplated hereunder to any particular Affected Creditor shall not invalidate this Plan or any action taken by any Person pursuant to this Plan.

Any notices or communications to be made or given hereunder by the Petitioners or the Monitor to an Affected Creditor may be sent by fax, e-mail, ordinary mail, registered mail or courier. An Affected Creditor shall be deemed to have received any document sent pursuant to this Plan four (4) Business Days after the document is sent by ordinary or registered mail and on the Business Day immediately following the day on which the document is sent by courier, e-mail or fax transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.

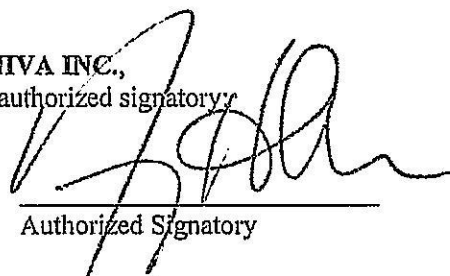
Notices or communications may be mailed to an Affected Creditor as follows: (i) the addresses set forth on the Proofs of Claim; or (ii) if no Proof of Claim has been filed and a Claim Amount Notice was sent to the Affected Creditor, the address at which the Claim Amount Notice was delivered; or (iii) the addresses set forth in any written notice of address change delivered to the Petitioners or the Monitor after the date of any related Proof of Claim.

*[Signature page follows – remainder of page is intentionally blank]*

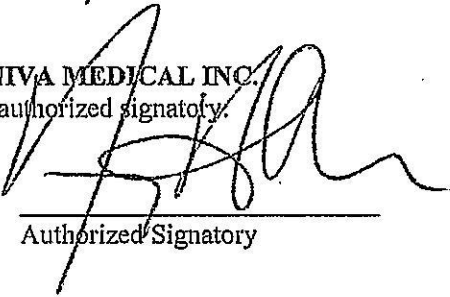


DATED at Vancouver, British Columbia, as of the 14th day of January, 2021.

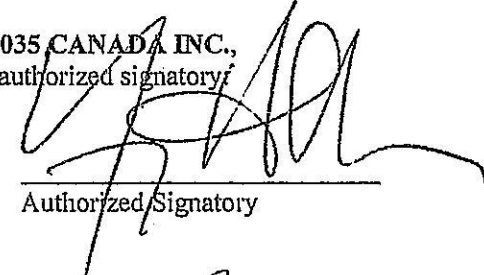
**SUNNIVA INC.,**  
by its authorized signatory:

Per:   
Authorized Signatory

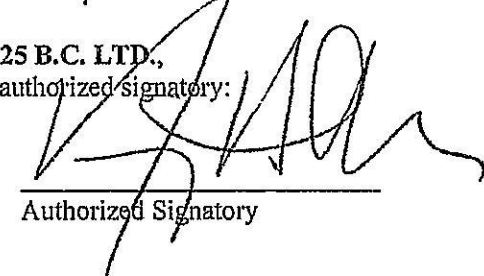
**SUNNIVA MEDICAL INC.**  
by its authorized signatory:

Per:   
Authorized Signatory

**11111035 CANADA INC.,**  
by its authorized signatory:

Per:   
Authorized Signatory

**1167025 B.C. LTD.,**  
by its authorized signatory:

Per:   
Authorized Signatory

**Schedule “A”**

Please see attached.

## SUNNIVA INC.

### Ramon Road Glasshouse in Cathedral City

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The idea underlying the development of the 325,599 sq. foot glasshouse on Ramon Road in Cathedral City evolved out of one of Dr. Anthony Holler's former business ventures. Dr. Holler was one of the original founders and the CEO of ID Biomedical Corporation, an integrated biotechnology company that developed innovative vaccine products with facilities in Canada and the US. ID Biomedical obtained a strategic advantage over its competitors due to the advanced nature of its facilities and the scale in which they could produce vaccines. ID Biomedical was acquired by GlaxoSmithKline for CDN\$1.7 billion in 2005. As a medical doctor Dr. Holler believes that the cannabis plant hosts numerous cannabinoids that are helpful in managing various chronic and acute conditions and treating other ailments. Dr. Holler is a co-founder of Sunniva and envisioned operating a state-of-the-art cannabis facility that incorporated many of the same features as ID Biomedical's facilities. The intent was to produce multiple strains of pharmaceutical grade cannabis with great consistency and at scale. To function at a pharmaceutical level the facility would need to meet stringent requirements. Sunniva determined that the traditional greenhouse is not capable of functioning at a pharma grade.

The Dutch lead the world in greenhouse and glasshouse design, engineering and manufacturing. After extensive exploration, Sunniva partnered with three of the leading companies in the glasshouse industry all of which are based in the Netherlands. Collectively they designed a fully sealed Dutch Venlo glasshouse. The glasshouse in Cathedral City is essentially an indoor facility where no air goes in or out. This allows the cultivator to control all elements of the environment 24 hours a day. In the cannabis world, indoor grows are superior to greenhouses and greenhouses are superior to outdoor grows. It is believed that the glasshouse in Cathedral City is superior to indoor grows in that it contains all elements of an indoor grow plus it has a number of additional advantages. One of the advantages is that unlike indoor grows, it has a diffused glass ceiling which provides natural sunlight spread evenly throughout the canopy. Horticultural experts prefer natural sunlight over artificial lighting as sunlight contains a broader spectrum of light as compared to artificial lighting.

To operate at a pharma level the infrastructure within the glasshouse had to be far superior to traditional cultivation facilities. Sunniva assembled a team from various disciplines including agriculture, fertigation, technology, robotics, automation, cGMP, Lean Manufacturing, and scientific quality analysis. Their goal was to design and operate a large scale grow that could steer the cannabis plant to produce desirable cannabinoid profiles and superior yields.

The process for this is rather complex but at the simplest level the cultivation team utilizes a horticulture computer platform called Priva. Through the Priva system they control all elements of the environment including heating, cooling, humidity, CO<sub>2</sub>, radiation levels, supplemental lighting, irrigation and fertilization. As the specific cannabis strain grows, tissue samples are taken and fed through the on-premise QA lab where an analysis is performed to look at any deficiencies such as Magnesium, Nitrogen, Potassium, Zinc, Iron, Boron and others. Adjustments can then be made through the Priva system to customize the environment and modify nutritional feed strategies. That data is captured within the Priva system and can then be assessed and applied to future harvests.

## **SUNNIVA INC.**

### **Ramon Road Glasshouse in Cathedral City**

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To enable such minute detailed adjustments in the feed schedule, the glasshouse includes a best of class irrigation room including a 10 element feed system which can essentially be programmed to mix customized nutrient feeds for different cannabis strains. Temperature and humidity are controlled via JSK distribution units that run up and down the cultivation bays. Each of these units services 1000 sq. feet and has their own IP address and sensors that can be customized per the desired condition for the strain of plants in the immediate vicinity. Additional sensors exist to monitor the amount of sunlight that the cultivation is receiving. Adjustments can then be made through Priva to add supplemental lighting or reduce lighting once again based on the age or stage of the plant. Numerous industry participants who have toured the facility consider these capabilities to be unprecedented or nearly unprecedented.

The glasshouse also includes a high degree of automation utilizing robotics and automated carts that place plants on large tables in a prefigured order and then shuffle the tables throughout the facility based on the age or stage of the plant. This automation minimizes human interaction which limits disturbance to the plants.

The glasshouse also contains a dispensary which includes a unique viewing platform on the second floor where customers or other interested parties can get a bird's eye view of the ten cultivation bays and the automated table movement as plants are moved through the transit corridor.





Image of the back of the glasshouse



One of the ten cultivation bays



Priva system and electrical panels

**Schedule “B”**

Please see attached.

## **SUNNIVA INC.**

Post CCAA Plan Acceptance

To cover the period from February 15, 2020 – December 31, 2022

Phase # 2, 3, & Future State - Cash Flow Planning

(In USD)

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### **CASHFLOW OVERVIEW**

Sunniva, Inc is a publicly traded Canadian company with operating entities in Canada and the US (“Sunniva”, the “Company”). The Company is currently operating on limited cash and resources. The cash flow for the company is managed by the CFO and reviewed by the BOD and Sr. Management team. During the CCAA process it became clear that to accurately analyze cash flow, including payments, receipts, and related activities, that time periods need to be considered with the purpose of being able to ensure all activities are fully funded. The overall period is from December 11, 2020, through full production at the Ramon road facility, December 2022. The Ramon road facility is the glasshouse production site that Sunniva’s US subsidiary, CP Logistics, has a build to suit lease in southern California (“Glasshouse”). Each phase represents a specific goal(s) that Sunniva has set forth on its road to profitability. These steps have been planned out individually and a method to fund each phase has been secured. This document will highlight the two “post creditor plan implementation” phases (2 & 3). It is expected and estimated that the timeline on both phases may overlap as the arbitration dates are estimates. The plan assumes the proposed creditor plan has been accepted and sanctioned.

- Phase 2 – Arbitration & Path to Public Trading. Dates: Mid February 2021 – May / June 2022. The company will go through the arbitration process with the current owner of the Ramon road facility, Bob’s LLC. This is expected to take 12 months and a favorable outcome for Sunniva to advance construction and production start up. During the arbitration, management will engage MNP, LLP to perform annual audits and update reporting requirements to the CSE to resume public trading. Operating expenses are expected to remain at a minimum with the bulk of cash going towards the arbitration and audit work.
- Phase 3 – Construction / Sunniva Production Start Up. Dates: April 2022 – December 2022. It is expected to take the current owner of the Ramon road facility an additional nine months to complete construction of the facility, which includes re-engaging sub-contractors, updating permits, and an overall review of the facility. During this time, the Sunniva management team will work on staffing and setting up the infrastructure to operate the facility.
- Future State – January 2023 and going forward. Estimates have been generated to represent the capacity and cash flow generation of the Glasshouse using a 12-month period.

### **PHASE 2: ARBITRATION & PATH TO PUBLIC TRADING**

Duration of this phase is forecasted from mid-February 2021 to May / June 2022, which represents the period from Plan sanction to the completion of the arbitration. Below is a summary of cash flow during this phase:

**SUNNIVA INC.**

Post CCAA Plan Acceptance

To cover the period from February 15, 2020 – December 31, 2022

Phase # 2, 3, &amp; Future State - Cash Flow Planning

*(In USD)***Phase 2 - Sources & Uses***- USD, Cash in 000's**- Feb 2021 - May / Jun 2022***Sources of Cash****\$'s**

1.) Prom Note Cash Raise	\$1,286
2.) Receivables Collections	\$32
3.) Alvarez Trust - Equipment Sale	\$400
4.) Alvarez Trust - \$1.3M CAD	\$1,009
<i>Total:</i>	<b><u>\$2,726</u></b>

**Uses of Cash****\$'s**

1.) Arbitration	\$1,425
2.) Financial Audit & Tax (2019 & 2020)	\$338
3.) Core Operating Expense	\$765
4.) Restructuring Fees	\$124
5.) Other	\$55
<i>Total:</i>	<b><u>\$2,707</u></b>

**Net Cash: \$19****SUMMARY OF CASH RAISED TO SUPPORT PHASE 2**

- To cover the company's operating expenses, arbitration, and multi-year audits, cash is forecasted to be raised in four specific transactions: promissory note, AR cash collections, sale of SMI assets, and receipt of the cash put into trust in December 2020. The sale of SMI assets will be put directly into the monitor's (Alvarez) trust account and returned at the same time upon the sanctioning of the CCAA Plan of Arrangement (the "Plan") by the court, or with court approval. These cash receipts are expected to be funded at the beginning of Phase 2.
  - Promissory Note: The company has been able to raise \$1.3M USD (\$1.6M CAD) in the form of a secured note purchase agreement. Payment of the note proceeds will be paid into trust by January 10, 2021.
  - US Entity Collections – The Company has multiple entities within the US. CP Logistics (CPL) and Full Scale Distributors (FSD) are both operating companies in the US. FSD imported and sold cannabis accessories and engaged CannaBIZ Collects in April 2020. CannaBIZ is a collection group that specialized in the cannabis industry. CannaBIZ has been successful in collecting accounts receivable and has set up payment plans with multiple customers. The monthly forecasted payments represent total collections from customers on monthly payment plans.
  - Sale of SMI assets – Maynards, an auction and liquidation company, has been engaged to assist with the sale of the existing assets of Sunniva Medical (SMI). The sale of multiple pieces of equipment started in December 2020 and be completed by the end of Q2 2021. All receipts prior to mid February 2021 will be deposited into the Monitor's trust account. This amount will be transferred to Sunniva upon request and approval from the court or when the Plan is sanctioned.



## **SUNNIVA INC.**

### **Post CCAA Plan Acceptance**

To cover the period from February 15, 2020 – December 31, 2022

Phase # 2, 3, & Future State - Cash Flow Planning

(In USD)

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- On December 11, 2020, the company was directed to transfer the bulk of the remaining cash in Canada, \$1.3M CAD, to the monitor's trust account. This total is still intact and anticipated to be transferred back to Sunniva upon request and approval of the court or when the plan is sanctioned.

## **ARBITRATION**

- The Company's US based operating company, CP Logistics, LLC ("CPL") is the tenant under an October 2017 conditional Build to Suit lease that governs the construction, and eventual occupancy by CPL, of a cannabis growing facility in Cathedral City, California. During construction, disputes arose between CPL and the landlord under the lease, Sunniva Production Campus, LLC ("SPC"), including the extent to which certain change order costs assessed by the general contractor were attributable to the changes requested by CPL or the mismanagement of the project by SPC or its general contractor that resulted in substantial cost overruns. To avoid a dispute and keep the construction moving, CPL paid several of the disputed change order costs under protest and subject to an audit that was to be conducted upon completion of the project. CPL invested roughly \$23M USD to pay both the legitimate and disputed change order costs, as well as to finance the acquisition and installation of sophisticated equipment needed to operate the facility. CPL commenced an arbitration under JAMS. The original arbitration is now stayed due to SPC filing a Chapter 7 bankruptcy petition. On September 1, 2020, Bob's LLC, which provided a construction loan secured by the real property, including the building, conducted a foreclosure sale on its security interests. Bob's LLC has since indicated that it continues to dispute CPL's rights as a tenant under the Lease unless and until the issue is adjudicated in arbitration.
- Denton's estimate for arbitration legal fees = \$1.4M USD (\$1.8M CAD), which covers 5 phases of work. The expenses will be front loaded throughout the process as with a \$250K USD (\$322K CAD) retainer that will be depleted as work is completed. The retainer will be topped up as invoices are received.
- Management is of the opinion that the company will be successful in the arbitration over the lease dispute. The lease and cannabis licenses hold significant potential value which will provide a source of meaningful value for shareholders.

## **FINANCIAL AUDIT, MD&A, & REPORTING REQUIREMENTS**

- The Company's common shares are listed on the Canadian Securities Exchange under the symbol "SNN" and on the OTCQB under the symbol "SNNVF". The Company is currently cease traded on the CSE due to the non-completion of the 2019 financial reporting and annual audit requirements. A strategic management decision was made to hold off on the reporting to better use cash to pursue the CCAA process and fund related professional fees required to support the process. The Company intends to fulfill the pending 2019 audit and reporting during the planned arbitration time, which is forecasted to start in the second half of February 2021. By the end of Q2 2021, the goal is to be completely caught up with financial reporting requirements, all pending filing delinquencies, and become a publicly traded company again.
- The Company's external auditors are MNP, LLP. They have performed audits and reviews on Sunniva's financial statements since the company went public through 2018. MNP will continue to be engaged as Sunniva works through compliance with the reporting requirements. The completion of the 2019 audit is expected to be in line with of the 2020 due date and concurrent audit work for both fiscal years is expected to increase efficiency and save cash.
- MNP have estimated costs for the 2019-year end audit at \$194K USD (\$250K CAD), an incremental \$100K USD (\$130K CAD) has been added as an estimate for completion of the 2020-year end audit.

## SUNNIVA INC.

Post CCAA Plan Acceptance

To cover the period from February 15, 2020 – December 31, 2022

Phase # 2, 3, & Future State - Cash Flow Planning

(In USD)

- Tax work will be completed by PwC and is forecasted to cost \$24K USD (\$31K CAD). PwC will also be engaged to work on year-end 2020.
- The financial audits will require additional assistance to be performed by Ryan Marcineu, former Director of Accounting at Sunniva. This cost is estimated at \$20K USD (\$26K CAD). Ryan will be engaged as a consultant to assist with the audits as a resource and an advisor on historical subject matter.
- BLG have acted as the Company's external corporate counsel with regards to financial reporting and compliance. The company will work with them during this time to ensure all filing fees and requirements are met.

### OPERATING EXPENSES AND OTHER FEES

- The management team and BOD will continue to operate on a lean budget through Phase 2. The spend control that has been implemented will remain. The total operating expense for Phase 2 is forecasted at \$765K USD (\$986K CAD), this includes payroll, insurance, and bank fees.
- Anthony Holler, CEO and Chairman of the BOD will go unpaid during this phase.

### PHASE 3: CONSTRUCTION & PRODUCTION START UP

This phase represents the period from April 1, 2022 to December 31, 2022, which is the forecasted duration required for the Glasshouse to be fully constructed and Company's operations to be commenced. Below is a summary of cash flow during this phase:

<b><u>Phase 3 - Sources &amp; Uses</u></b>	
<i>- USD, Cash in 000's</i>	
<i>- Apr 2022 - Dec 2022</i>	
<b><u>Sources of Cash</u></b>	<b><u>\$'s</u></b>
1.) Equity Raise / Partnership	\$10,500
2.) Operational Revenue	\$3,678
<b>Total:</b>	<b><u>\$14,178</u></b>
<b><u>Uses of Cash</u></b>	<b><u>\$'s</u></b>
1.) Operating Expense	\$796
2.) Financial Audit & Tax	\$194
3.) Other	\$691
4.) Production Start Up	\$12,300
<b>Total:</b>	<b><u>\$13,981</u></b>
<b>Net Cash:</b>	<b><u>\$197</u></b>

## **SUNNIVA INC.**

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(In USD)

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### **SUMMARY OF CASH RAISED TO SUPPORT PHASE 3**

- To cover the company's operating expenses and production start up costs, two potential options are available. First, cash can be raised via an equity raise. Second, Sunniva can enter into a partnership with another company. The total cash required from either option is \$10.5M (\$13.5M CAD) to meet expenses.
- Operational Revenue is forecasted to start in December 2022. One salable harvest is forecasted to be sold as a phased production schedule with regards to the number of growth bays will be adopted.

### **CONSTRUCTION**

- Sunniva intends to be the tenant representative during construction to monitor timelines and complete tasks on infrastructure development, which will be done in parallel. A significant portion of the facility's operating systems will be installed with Sunniva's IT teams assisting in the efforts and configuration during construction.

### **PRODUCTION START UP / OVERVIEW**

- The 325,000 sq ft. Dutch Venlo style glasshouse requires extensive support systems and complex operational flows to successfully operate. The facility is broken up into 10 growth bays and a phased approach will be used to bring each bay on-line. The initial first couple of months will start with 4 bays and then move to full production.
- While it is expected that the construction at the glasshouse would not be completed until the end of December 2022, the Company is expected to utilize the 10 growth bays as they become available and expects to be commencing limited production at four growth bays by the end of this phase.
- Operational metrics, such as, yield, # of harvests, length, and bays in operation have been estimated at conservative values during the first 6 – 12 months of operations, to allow the multiple systems to be properly calibrated. Productivity improvements and efficiencies have not been included in the forecast until 2024.
- Hiring Plan – The hiring plan has been developed based on the expected volume and number of bays in operation. The plan contains direct and indirect labor, management, infrastructure, and support teams. The hiring will take place in phases before and after the official start, which is estimated for November 2022. Each role has a defined desired start date driven by the specific role and time required to train. Example, Maintenance Manager will be onboarded 3 months prior to the official start to assist with commissioning the facility and development of preventative maintenance programs.
- ERP – The Company's management team has worked to customize the ERP to link directly with METRC, California's track and trace system for commercial cannabis, and advanced activity-based costing.
- Pricing Strategy – The management team used a conservative expected sales price. Rates are consistently monitored through BDS Analytics, which is a resource for cannabis pricing and growth strategy.
- Supply Agreements – LOI's have been secured to sell 90% of production to specific customers. A small percentage of production has been kept for Sunniva to develop its own brand.

### **OPERATING EXPENSES AND OTHER FEES**

- Operating expenses are expected to remain lean during Phase 3. The budget has been designed to layer on incremental start up production costs. The total operating expense for Phase 3 is forecasted at \$796K USD (\$1.0M CAD).

## SUNNIVA INC.

Post CCAA Plan Acceptance

To cover the period from February 15, 2020 – December 31, 2022

Phase # 2, 3, & Future State - Cash Flow Planning

(In USD)

## FUTURE STATE

- It is management's belief that the benefits to be generated from the assets in CA will prove to be an asset to shareholders. Below is the future state of cash flows planned for 2023. No productivity savings or pricing improvements have been used in this calculation.
- Future state 2023 represents a full 12-month production cycle.
- Pricing assumptions have come MJ Biz Daily.com, which is a business news outlet for professionals and company's in the cannabis industry. The current range for indoor premium grade cannabis flower is \$1,800 - \$2,200 USD per pound (\$3.97 - \$4.85 USD per ounce). The middle of this range was used in the Future State calculation \$2,000 USD per pound (\$4.41 USD per ounce).
- A level loaded financial flow is anticipated as the facility can produce 9 - 12 harvests per qtr. 9 harvests used for 2023.
- Gross margins are based off an average of current public reporting cannabis company filings that are like Company's proposed business model, 35% GM.

### **2023 - Future State**

- USD, Cash in 000's

- Jan 2023 - Dec 2023

#### **Sources of Cash**

1.) Operational Revenue	<b>\$'s</b>
	\$225,707
<i>Total:</i>	<b>\$225,707</b>

#### **Market GM % - 35%**

1.) COGS	<b>\$'s</b>
	\$146,710
<i>Total:</i>	<b>\$146,710</b>

<b>Gross Margin:</b>	<b>\$78,997</b>
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**Schedule “C”**

Please see attached.

**SUNNIVA INC.**

## Capitalization Table – Creditor Plan

## Debt to Equity Conversion

**EQUITY – CURRENT STATE**

The current capitalization table is below.

<b>CAPITALIZATION</b>	
Basic Shares Outstanding	39,935,298
Options (Including Broker Compensation Options)	3,958,285
Warrants	16,065,817
Convertible Debentures (Issuable Shares based on Outstanding Principle)	5,020,095
<b>Fully Diluted Shares Outstanding</b>	<b>64,979,496</b>

**2021 CCAA CREDITOR PLAN**

Sunniva's plan is convert creditor's claims to equity. This includes all debt identified in the CCAA claims process. A summary of the claims process is pictured below. The total amount of debt included in the claims process is anticipated to be \$64,380,947. A split of 95% equity to creditors and 5% equity to shareholders was used in the calculation.

- To calculate the # of shares to be used in the above calculation, shares related to Options, Warrants, and Convertible debentures were eliminated. Basic shares outstanding per the "Current State" were used.
- The calculation assumes the Basic shares outstanding are set to 5% of the total. The additional 95% equates to adding an incremental 758,770,662 shares at a calculated share price of \$0.085 (Total Claims / Shares to Creditors). Total shares outstanding post conversion will be 798,705,960.
- The calculated share price for the debt conversion is \$0.085 and within 15% or \$0.011 of the December 2020, 1-month average closing share price on OTC trading, \$0.0739. Sunniva is traded on the OTC under the symbol SNNVF. Trading on the OTC is for securities that are not traded on a centralized exchange or are cease traded.

<b><u>Current</u></b>	<b><u>95% / 5%</u></b>
# of Outstanding Shares	39,935,298 5%
<b><u>New</u></b>	
Shares to Creditors	758,770,662 95%
<b>Total Shares</b>	798,705,960
<b>Calculated Share Price - Creditor Shares</b>	\$0.085

Schedule "C"

**FORM OF PLAN IMPLEMENTATION CERTIFICATE**

No. S-2010103  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44 AND  
THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 11111035 CANADA INC. AND  
1167025 B.C. LTD.

PETITIONERS

**MONITOR'S CERTIFICATE**

(PLAN IMPLEMENTATION)

- A. Pursuant to an Order of the Honourable Madam Justice Fitzpatrick of the Supreme Court of British Columbia (the "**Court**") dated October 9, 2020, Alvarez & Marsal Canada Inc. was appointed monitor (and, in such capacity, the "**Monitor**") of the Sunniva Inc., Sunniva Medical Inc., 11111035 Canada Inc., and 1167025 B.C. Ltd. (collectively, the "**Petitioners**").
- B. Pursuant to a further Order of the Court pronounced on February 12, 2021 (the "**Sanction Order**"), the Court, among other things: (i) sanctioned and approved the Amended Consolidated Plan of Arrangement and Compromise dated January 14, 2021 concerning and involving the Petitioners (the "**Plan**"); and (ii) authorized and directed the Monitor to file with the Court this certificate confirming the implementation of the Plan.
- C. All capitalized terms used herein but not otherwise defined have the meanings set out in the Plan.

THE MONITOR HEREBY CERTIFIES the following:

- 1. The Monitor has received from the Petitioners all cash amounts required in respect of the Priority Claims and the Restricted Distribution Reserve, and will pay such amounts in accordance with the terms and conditions of the Plan.

2. The Petitioners have paid all amounts secured by the CCAA Charges.
3. All Conditions Precedent set out in the Plan are satisfied, fulfilled or waived.
4. In accordance with the terms of the Plan and the Sanction Order, the Petitioners have successfully implemented the Plan, and the Effective Date under the Plan is the date hereof.

DATED at the City of Vancouver, in the Province of British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**ALVAREZ & MARSAL CANADA INC.,**  
in its capacity as Monitor of the Petitioners, and  
not in its personal or corporate capacity:

Per:

\_\_\_\_\_  
Name:

Title: