

# Verva Pharmaceuticals Limited

## ACN 074 636 847

### Explanatory notes

These explanatory notes have been prepared to provide shareholders with sufficient information to assess the merits of the resolutions contained in the accompanying notice of annual general meeting of the Company to be held at the offices of Middletons, Level 25, 525 Collins Street Melbourne on Friday 29 May 2009 at 11.00 am.

#### 1. Resolution 1: Financial statements and reports

Section 317 of the Corporations Act 2001 (Cth) (**Act**) requires the last financial years financial report, the directors' report and the auditor's report to be laid before the Company's annual general meeting. There is no requirement either in the Act or in the Company's constitution for shareholders to approve the financial report, the directors' report or the auditor's report. Shareholders will have a reasonable opportunity at the meeting to ask questions and comment on these reports and on the Company's business and operations.

The Company's board of Directors (**Board**) unanimously recommends that shareholders vote in favour of this Resolution 1.

#### 2. Resolution 2: Election of directors of the Company

Rule 13.2 provides that any director appointed to fill a casual vacancy or as an addition to the Board may only hold office until the next annual general meeting and is then eligible for election at that meeting. As each of Messrs Collier, Nisbet, MacDonald and Baker have been appointed pursuant to Rule 13.2 of the Constitution, each is due to retire at this annual general meeting and has submitted himself for election.

A profile of each of the Directors may be found in the 2008 Annual Report and at the Company's website <http://vervapharma.com/about/board/>.

The Chairman in his capacity as proxy holder intends to vote undirected proxies in favour of approving each of Resolutions 2(a), 2(b), 2(c) and 2(d).

### Special business

#### 3. Resolution 3: Entry into Subscription Agreement and issue of the Class A Redeemable Preference Shares

##### 3.1 Corporations Act requirements

While the issue of the Class A Redeemable Preference Shares (referred to in these explanatory notes as the "**Class A Shares**") is under the Company's Constitution within the authority of the Board, section 254A of the Corporations Act requires that a company can only issue preference shares (such as the Class A Shares) if the rights attached to the preference shares are set out in the relevant company's constitution or approved by a special resolution of its shareholders.

The Class A Shares are a new class of shares and the Company's Constitution did not expressly contemplate the nature of the rights attaching to those preference rights. Accordingly under Resolution 3 approval is sought from Company's shareholders (in the

form of a special resolution) to the issue of the Class A Shares having the rights as outlined in Annexure A.

Please note that separate resolutions are included as Resolution 4, 5 and 6 regarding the Class A Shares, but this relates to the approval sought from shareholders to the issue of the Class A Shares where the subscribers will on issue of the Class A Shares hold greater than 20% of the issued share capital of the Company.

### 3.2 Background

The Company has been endeavouring to obtain further funding since its restructure in December 2007 with Adipogen (see item 3.3 below) and has now entered a conditional subscription agreement ("**Subscription Agreement**") with following investors:

- QBF No 1 Pty Ltd as trustee for Queensland BioCapital Fund No 1 (**QBF 1**);
- QBF No 2 Pty Ltd as trustee for Queensland BioCapital Fund No 2 (**QBF 2**);
- GBS Venture Partners Limited as trustee for The Genesis Fund (**GBS**);
- Westscheme Pty Ltd as trustee for Westscheme (**Westscheme**)
- MTAA Superannuation Fund (Companion Funds) Private Equity Investment Pty Ltd as trustee for MTAA Superannuation Fund (Comparison Funds) Private Equity Funds Trust (**MTAA**)
- UIIT Pty Ltd as trustee for Universities Innovation Investment Trust No 1 (**UIIT 1**);
- UIIT Pty Ltd as trustee for Universities Innovation Investment Trust No 2 (**UIIT 2**);  
and
- UIIT Pty Ltd as trustee for Universities Innovation Investment Trust No 3 (**UIIT 3**).

(Collectively the "**Subscribers**")

pursuant to which the Company has agreed to issue in aggregate to the Subscribers 42,553,192 Class A Shares in the capital of the Company in return for the aggregate subscription monies of AU\$2,000,000. The rights attaching to the Class A Shares are detailed in Annexure A to these explanatory notes.

The Company and Subscribers have each provided the other with the usual warranties in relation to such a subscription, with corresponding indemnity by the Company in the event of a breach by the Company of any of its warranties. The minimum amount of a warranty claim by a Subscriber against the Company is AU\$100,000. Each Subscriber enters the Subscription Agreement as a trustee of a trust and so any liability of the Subscribers is limited to the extent the particular trustee is entitled and able to recover against the assets of their respective trusts.

The Company is to pay all stamp duty and reimburse the Subscribers for legal and other costs incurred in relation to the document preparation and execution.

The Directors believe that it is critical the Company secure further funding in the near future so as to fund its working capital for the purpose of achieving the objectives in the business plan. Despite extensive efforts in Australia and overseas the Directors have not been able to secure any alternative, or more attractive, source of funding from any third party, largely due to the current economic situation.

### 3.3 Key terms of the Class A Shares

The Subscribers (in aggregate) are to invest AU\$2,000,000 in the Company, in return for which they shall be issued 42,553,192 Class A Shares. The funds are to be used by the Company for working capital purposes and achieving its business plan objectives.

The Class A Shares are participating, redeemable, convertible, fully paid shares in the Company. A more detailed summary of the rights attaching to the Series A Shares is contained in Annexure A to these Explanatory Notes but in brief the Class A Shares have the following rights –

- (a) carry voting rights on an “as converted basis”;
- (b) have a preferential right to dividends and return of capital on a winding up;
- (c) subject to the Corporations Act:
  - (i) may be converted by one or more Subscribers at any time into ordinary shares in the Company at the conversion ratio; or
  - (ii) Upon a **Liquidity Event** the holder of the Class A shares may require the Class A Shares to be redeemed, or a return of capital be paid to that holder plus the holder be allotted fully paid ordinary shares under the conversion formula. In both cases the effect is that:
    - (A) the full subscription amount plus accumulated dividends are to be paid to the holder of the Class A Shares **plus**,
    - (B) for no further consideration, each holder is also to be issued that number of fully paid ordinary shares in Verva in accordance with the conversion ratio (as if the Class A Shares had been converted instead).

A “**Liquidity Event**” means:

- (A) an insolvency event happening to the Company;
- (B) a sale of substantially all of the Company’s assets or shares (**Trade Sale**), or
- (C) an initial public offering of the Company’s shares (**IPO**),

but excludes a Trade Sale and IPO where the IPO price or value per Class A Preference Share is at least 5 times the subscription price paid per Class A Share held by the Class A Preference Shareholder.

### 3.4 Impact on the existing Convertible Notes

After the merger of Adipogen Pharmaceutical Pty Ltd ACN 102 901 397 with the Company, the Company in December 2007 raised AU\$2.75 million by issuing the Convertible Notes.

Under the terms of the Convertible Notes, the noteholders have the right at any time prior to the Maturity date to convert the Convertible Notes into any class of securities in the Company then on issue. The Company, and not the noteholders, has the right to redeem the Convertible Notes. At this stage the Company does not contemplate redeeming the Convertible Notes (due to funding constraints).

The Convertible Notes terms provide that if they are not redeemed beforehand, the Convertible Notes automatically convert on 30 June 2009 into any class of shares (as chosen by the noteholder) on issue at that time. Accordingly, by issuing the Class A Shares, the noteholders may elect (but are not obliged) to convert their Convertible Notes into Class A Shares on 30 June 2009.

This means the holders of the Convertible Notes may convert into Class A Shares and obtain the same benefits of the Class A Share terms as the Subscribers pursuant to the Subscription Agreement.

The details regarding share capital structure below have been prepared on the assumption that the Convertible Notes will be converted into Class A Shares. The noteholders have indicated their intention (without actually converting) to convert the Convertible Notes into Class A Shares once the Class A Shares have been issued.

### 3.5 Effect on share capital structure

The relevant interest in the securities of the Company held by all shareholders, current holders of Convertible Notes and the holders of Class A shares before and after the conversion of the Convertible Notes and conversion of the Class A Shares into fully paid ordinary shares is as follows:

SHAREHOLDERS	ORDINARY SHARES		SERIES A SHARES		TOTAL* <sup>c</sup>	
	Shares	Pct %	Note <sup>a</sup>	Subscrip <sup>b</sup>	Shares	Pct %
QBF (1&2)	5,648,617	5.86	30,194,986	18,617,022	54,460,625	33.13
GBS Genesis (incl Westscheme, MTAA)	1,459,304	3.03	29,998,251	18,617,021	50,074,576	30.47
UIIT (1,2,3)	2,235,051	3.09	13,416,497	5,319,149	20,970,697	12.76
GBS Venture Partners	3,325,953	6.90	-	-	3,325,953	2.02
QIC	3,211,764	6.66	-	-	3,211,764	1.95
Berne Nominees (Alta Partners)	7,401,934	15.36	-	-	7,401,934	4.50
National Nominees (Dennis Brown)	3,786,486	7.86	-	-	3,786,486	2.30
Merck-Sante	3,758,750	7.80	-	-	3,758,750	2.29
J P Morgan Nominees	1,887,223	3.92	-	-	1,887,223	1.15
Elan Services	1,400,000	2.90	-	-	1,400,000	0.85
ANZ Nominees	1,364,833	2.83	-	-	1,364,833	0.83
HSBC Nominees	1,176,454	2.44	-	-	1,176,454	0.72
Toibb Investments	887,356	1.84	-	-	887,356	0.54
Teqstart	748,438	1.55	-	-	748,438	0.46
Citicorp Nominees	606,466	1.26	-	-	606,466	0.37
Uniquet Pty Ltd	493,298	1.02	-	-	493,298	0.30
QIMR	192,797	0.4	-	-	192,797	0.12
All Others	8,614,109	17.87	-	-	8,614,109	5.24
<b>TOTAL</b>	<b>48,198,833</b>	<b>100.00</b>	<b>73,609,734</b>	<b>42,553,192</b>	<b>164,361,759</b>	<b>100.00</b>

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<sup>a</sup> Series A shares issued on conversion of the Convertible Note plus accrued interest to the 29<sup>th</sup> May, 2009

<sup>b</sup> Series A shares purchased under the current subscription agreement

<sup>c</sup> Total shares on an "as converted basis assuming a 1:1 conversion ratio to ordinary shares. The number of ordinary shares to issue to the Class A Shareholders may increase (further diluting the current holders of ordinary shares to a corresponding proportion) for example where the Class A Share anti-dilution rights are triggered or there is a further issue of ordinary shares under the redemption or return of capital provisions as described ©3.2(c)(ii) above.

This table excludes reference to where a holder of a Class A Share may be an 'associate' of another holder, which is discussed with respect to resolutions 4, 5 and 6 below.

If shareholders approve this Resolution 3, the effect of the issue of the Class A Shares (assuming conversion into fully paid ordinary shares) will be to substantially dilute the shareholding of existing shareholders (and implicitly, the Noteholders on conversion of the Convertible Notes) to the percentages shown in the table above and effectively create a change in control in the Company.

### **3.6 Possible impact of redemption of Class A Shares**

The Company may be required to redeem/convert the Class A Shares, requiring the Company:

- (a) on a redemption to source funds for the repayment of the subscription funds (AU\$2 million) plus accrued dividends; and
- (b) on a Liquidity Event (as described at item 3.3 above), in addition to the repayment under item 3.6(a) above, to issue that number of ordinary shares which would have been issued on a conversion of the Class A Shares at that time.

This would have the effect of returning to the holder of the Class A Shares **both** the amount they paid for the Class A Shares (plus dividends) **and** the same number of fully paid ordinary shares as if the Class A Shares were converted.

## **4. Resolution 4: Section 611 approval re Class A Shares - issue to GBS Genesis, MTAA and Westscheme**

Resolutions 4, 5 and 6 all relate to the approval sought from the Company's shareholders in accordance with Chapter 6 of the Corporations Act and, in particular under section 611 item 7. As the proposed terms for the Class A Shares have been negotiated with the Subscribers as one group of investors, the Company views those Subscribers as "acting in concert" and therefore for the purposes of Chapter 6 of the Corporations Act the Company has aggregated that group in terms of determining the shares / voting entitlements the Subscribers will acquire on the issue of the Class A Shares.

Section 611 (item 7) essentially provides for the shareholders to approve in advance the issue of the Class A Shares to the Subscribers and accordingly to permit each Subscriber (and its Associates) to increase its relevant interest in Verva shares above 20%.

Resolutions 4, 5 and 6 have been separated to deal with each of the Subscribers who are related to each other.

As outlined at paragraph 7 below, no independent expert report has been commissioned by Verva as the alternative is effectively the winding up of the Company.

#### 4.1 Section 611, item 7 approval under the Corporations Act

Section 606(1) of the Corporations Act effectively provides that a person cannot acquire a “relevant interest” (as defined in the Corporations Act) in issued voting shares in a company (in this case Verva ) if ... *that person's voting power (or “relevant interest”) in the company increases from 20% (or below) to an amount more than 20%.*

“Voting power” is calculated in accordance with section 610(1) of the Corporations Act to include both:

- (a) the person concerned and that person’s “associates”. “**Associate**” is defined in section 12 of the Corporations Act to include a person acting, or proposing to act, in concert in with the primary person in relation to the relevant company’s affairs; and
- (b) any other person with whom that person is acting in concert.

The table at item 3.5 shows the proposed relative share ownership of each of the Subscribers (ignoring any options under the Company’s ESOP). As the table outlines, approval pursuant to section 611 item 7 would have been necessary for GBS Venture Partners Limited as trustee for The Genesis Fund together with its associate GBS Venture Partners in any case as its proposed shareholding would have increased from 9.93% prior to the issue of any Class A Shares to 25.1% as a result of the issue of the Class A Shares.

#### 4.2 Information requirements

In terms of the requirements for the Section 611 (item 7) approval by Verva shareholders, the following information is provided in relation to Resolution 4:

1. The identity of the person acquiring the shares –  
GBS Venture Partners Limited (as trustee for The Genesis Fund), MTAA Superannuation Fund (Companion Funds) Private Equity Investment Pty Ltd (as trustee for MTAA Superannuation Fund Comparison Funds Private Equity Funds Trust) and Westscheme Pty Ltd (as trustee for Westscheme)
2. The maximum extent of the increase in “voting power” –  
The changes in voting power are outlined in the table at item 3.5 which outlines:  
  
The combined interests of GBS Genesis (together with its associate GBS Venture Partners), MTAA and Westscheme was immediately prior to the issue of the Class A Shares is 9.93% and after the issue of the Class A Shares it will be 32.49%
3. The voting power as a result of the issue of the Class A Shares –  
As the Class A Shares entitle the holder to vote on an “as converted” basis, the voting power on the issue of the Class A Shares to the Subscribers in aggregate (including their associates) is 80.33% (assuming a 1:1 conversion ratio for the purposes of this example), or for the combined GBS Genesis (together with its associate GBS Venture Partners), MTAA and Westscheme after the issue of the Class A Shares it will be 32.49%.
4. Intentions of the Subscribers regarding the business –  
The Verva Board has confirmed with each Subscriber that they have NO intentions (either in their own right or with any Associates) to change the activities of Verva (whether a change in the business, redeployment of any assets or a change in the employment of any present Verva employees) or in the future to enter into any further transactions with Verva (whether of a capital nature or acquisition of assets).
5. Interests of Directors –  
Apart from Mr Andrew Baker (as a Director of GBS Venture Partners Limited and its associate GBS Venture Partners), none of the existing directors of the Company have any interest in or are in any way associated with any of the Subscribers.

### 4.3 Voting Exclusion Statement for resolution 4

The Company will disregard any votes cast in respect of Resolution 4 by:

- GBS Genesis, Westscheme and MTAA; or
- any associate of GBS Genesis, (including GBS Venture Partners), Westscheme or MTAA.

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### 4.4 Directors' recommendation

The Verva directors recommend that shareholders vote in favour of this resolution as the alternative given the lack of available funding is for an orderly realisation of the assets of the Company and its subsequent winding up.

## 5. Resolution 5: Section 611 approval re Class A Shares - issue to QBF1 and QBF2

### 5.1 Information requirements

In terms of the requirements for the Section 611 (item 7) approval by Verva shareholders, the following information is provided in relation to Resolution 5:

1. The identity of the person acquiring the shares –  
QBF No 1 Pty Ltd (as trustee for Queensland BioCapital Fund No 1) and QBF No 2 Pty Ltd (as trustee for Queensland BioCapital Fund No 2).
2. The maximum extent of the increase in "voting power" –  
The combined interests of both QBF No 1 Pty Ltd (as trustee for Queensland BioCapital Fund No 1) and QBF No 2 Pty Ltd (as trustee for Queensland BioCapital Fund No 2) together with its associated Queensland Investment Corporation ("**QIC**") was immediately prior to the issue of the Class A Shares 12.52% and after the issue of the Class A Shares will be 35.08%.
3. The voting power as a result of the issue of the Class A Shares - As the Class A Shares entitle the holder to vote on an "as converted" basis, the voting power on the issue of the Class A Shares to the Subscribers in aggregate is 80.33% (assuming a 1:1 conversion ratio for the purposes of this example), or for the combined QBF No 1 Pty Ltd (as trustee for Queensland BioCapital Fund No 1) and QBF No 2 Pty Ltd (as trustee for Queensland BioCapital Fund No 2) together with its associated QIC after the issue of the Class A Shares it will be 35.08%.
4. Intentions of the Subscribers regarding the business –  
The Verva Board has confirmed with each Subscriber that they have NO intentions (either in their own right or with any Associates) to change the activities of Verva (whether a change in the business, redeployment of any assets or a change in the employment of any present Verva employees) or in the future to enter into any further transactions with Verva (whether of a capital nature or acquisition of assets).
5. Interests of Directors –  
Apart from Mr Andrew Baker (as a Director of GBS Venture Partners Limited and GBS Venture Partners), none of the existing directors of the Company have any interest in or are in any way associated with any of the Subscribers.

## 5.2 Voting Exclusion Statement for resolution 5

The Company will disregard any votes cast in respect of Resolution 5 by:

- QBF No 1 Pty Ltd and QBF No 2 Pty Ltd; or
- any associate of QBF No 1 Pty Ltd, QBF No 2 Pty Ltd.

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

## 5.3 Directors' recommendation

The Verva directors recommend that shareholders vote in favour of this resolution as the alternative given the lack of available funding is for an orderly realisation of the assets of the Company and its subsequent winding up.

## 6. Resolution 6: Section 611 approval re Class A Shares - issue to UIIT1, UIIT2 and UIIT3

### 6.1 Information requirements

In terms of the requirements for the Section 611 (item 7) approval by Verva shareholders, the following information is provided in relation to Resolution 6:

1. The identity of the person acquiring the shares –  
UIIT Pty Ltd (as trustee of the Universities Innovation Investment Trusts No 1, 2 and 3).
2. The maximum extent of the increase in "voting power" –  
The combined interests of UIIT Pty Ltd (as trustee of the Universities Innovation Investment Trusts No 1, 2 and 3) was immediately prior to the issue of the Class A Shares 3.09% and after the issue of the Class A Shares will be 12.76%.
3. The voting power as a result of the issue of the Class A Shares - As the Class A Shares entitle the holder to vote on an "as converted" basis, the voting power on the issue of the Class A Shares to the Subscribers in aggregate is 80.33% (assuming a 1:1 conversion ratio for the purposes of this example), or for the combined interests of UIIT Pty Ltd (as trustee of the Universities Innovation Investment Trusts No 1, 2 and 3) after the issue of the Class A Shares it will be 12.76%.
4. Intentions of the Subscribers regarding the business –  
The Verva Board has confirmed with each Subscriber that they have NO intentions (either in their own right or with any Associates) to change the activities of Verva (whether a change in the business, redeployment of any assets or a change in the employment of any present Verva employees) or in the future to enter into any further transactions with Verva (whether of a capital nature or acquisition of assets).
5. Interests of Directors –  
Apart from Mr Andrew Baker (as a Director of GBS Venture Partners Limited and GBS Venture Partners), none of the existing directors of the Company have any interest in or are in any way associated with any of the Subscribers.

### 6.2 Voting Exclusion Statement for resolution 6

The Company will disregard any votes cast in respect of Resolution 6 by:

- UIIT Pty Ltd (as trustee of the Universities Innovation Investment Trusts No 1, 2 and 3); or
- any associate of UIIT Pty Ltd (as trustee of the Universities Innovation Investment Trusts No 1, 2 and 3).

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### **6.3 Directors' recommendation**

The Verva directors recommend that shareholders vote in favour of this resolution as the alternative given the lack of available funding is for an orderly realisation of the assets of the Company and its subsequent winding up.

## **7. Analysis – no independent expert report**

The Company has not commissioned an independent expert report for any of Resolutions 4, 5 or 6 in the light of the following factors:

- (a) Despite extensive market soundings over the last 16 months, apart from the proposed issue of the Class A Shares, the Company has been unable to source any other funds to continue operations and endeavour to deliver a return for shareholders. While the Verva portfolio and story have been well received by potential investors and partners, the recent decline in the investment market as a result of the global financial crisis; sensitivity to a changing diabetes regulatory climate; and lack of willingness by potential US, EU and Japanese investors to make investments in unlisted entities outside their borders mean Verva has not been able to attract investment beyond the current proposal for the issue of the Class A Shares. Market conditions for capital raisings are unlikely to change in the immediate future and the Company requires funding now for it to continue its research and development activities.
- (b) The entire AU\$2 million investment round via the proposed Class A Shares is contingent on participation of all of the Subscribers. The Board believes that if any Subscriber is precluded from making the current investment then the investment is unlikely to proceed, in which case the alternative for the Company would be for an orderly winding up of its research / development activities and attempting to dispose of its intellectual property.
- (c) There is no guarantee that a sale by the Company of its intellectual property would provide any return to Verva shareholders (particularly having regard to the repayment entitlements of the holders of the Convertible Notes which rank ahead of ordinary shareholders).
- (d) The investment terms are the same for all Subscribers.

In the above circumstances the Board does not believe there is any material benefit for Verva shareholders in the Company paying for an independent expert valuation to opine on (i) whether the issue of the Class A Shares to any of the Subscribers is reasonable and fair or (ii) whether there is a sufficient control premium being paid by the Subscribers to increase their aggregate relevant interest in shares in the Company to in excess of 20% - when the alternative is effectively winding up the Company with little prospect of any return to ordinary shareholders.

The Board believes that it has the experience and qualifications to provide Verva shareholders with sufficient information in these Explanatory Notes to make an informed assessment of the Resolutions and in particular where the Class A Shares are issued the increase in relevant interest of each of the Subscribers.

## **8. Resolution 7 - Amendment of Constitution**

As a condition of the Subscription Agreement in respect of the proposed issue of the Class A Shares, the Company is required to obtain Verva shareholder approval to the amendment of the Company's Constitution as detailed below.

Full details of the proposed amendments are contained in Annexure D and by way of a brief summary:

- (a) shareholders holding 10% or more of votes of the Company are to have the right to nominate a representative to the Verva Board; and
- (b) the holders of the Class A Shares are entitled to vote at any meeting of the ordinary shareholders on an "as converted" basis giving them the same voting rights as the ordinary shareholders.

The Chairman in his capacity as proxy holder intends to vote undirected proxies in favour of approving this Resolution 7.

## **9. Further information**

The Directors of the Company are not aware of any other information which is relevant to the consideration by shareholders of the proposed resolutions set out in the notice of general meeting.

The Directors recommend shareholders read these explanatory notes in full and, if desired, seek advice from their own independent financial or legal adviser as to the effect of the proposed resolutions before making any decision in relation to the proposed resolutions.

# Annexure A – Verva Pharmaceuticals Limited: Series A Redeemable Preference Shares terms

The following is a brief summary of the terms for the proposed Series A Redeemable Preference Shares. Certain definitions relevant to the interpretation of this Annexure are contained in clause 10 below.

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## 1. Conversion to ordinary shares

### 1.1 Subject to law

This clause applies subject to clause 2 (“Anti-dilution”), the Corporations Act and any other applicable laws.

### 1.2 When shares may be converted

Class A Preference Share will convert into fully paid ordinary shares in the following circumstances:

- (a) if a Class A Preference Shareholder notifies the Company in writing that the Class A Preference Shareholder wants to exercise its option to convert some or all of the Class A Preference Shareholder’s Class A Preference Shares - at the time and in relation to the Class A Preference Shares specified in the notice;
- (b) if a Class A Preference Shareholder notifies the Company following a Liquidity Event that the Class A Preference Shareholder wants to exercise its option to receive a capital sum under clause 4.2 (“Right to Redeem or return of capital”) of this Annexure at the time and in relation to the Class A Preference Shares for which amounts are paid under clause 4.4(a) (“Payment of capital sum and conversion”) of this Annexure;
- (c) on an IPO, if the price per share issued under the IPO is at least 5 times the subscription price paid per Class A Preference Shares held by the Class A Preference Shareholder - all Class A Preference Shares will convert automatically when the new shares are issued;
- (d) on a Trade Sale, at an effective price or value per Class A Preference Share (determined as if immediately post-completion of the sale) at least 5 times the subscription price paid per Class A Preference share held by the Class A Preference Shareholder - all Class A Preference Shares will convert automatically at the time when the shares are transferred; or
- (e) with the approval of the holders of at least 75% of the Class A Preference Shares - all Class A Preference Shares will convert automatically at the time specified in the relevant resolution.

### 1.3 Conversion Ratio

A Class A Preference Share will convert into an ordinary share under clause 1.2 (“When shares may be converted”) at the following conversion ratio:

- (a) if there has not been a Relevant Issue, one; and
- (b) if there has been a Relevant Issue, then:

$$CR = \frac{SP}{NCP}$$

where:

CR = conversion ratio

SP = subscription price paid for the Class A Preference Share

NCP= conversion price immediately following the latest Relevant Issue, calculated in accordance with clause 2 (“Anti-dilution”) of this Annexure.

## 1.4 Rights after conversion

At the time of conversion and without any further act, a Class A Preference Share:

- (a) has the same rights as a fully paid ordinary share; and
- (b) ranks equally with other fully paid ordinary shares on issue.

## 1.5 Effect of conversion

Conversion under this clause 1 (“Conversion to ordinary shares”) does not constitute a cancellation, redemption or termination of the Class A Preference Share or the issue, allotment or creation of new shares, but has the effect of varying the status of, and the rights attaching to, the Class A Preference Share so that it becomes an ordinary share.

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## 2 Anti-dilution

- (a) If the Company makes a Relevant Issue, the Company will recalculate the conversion price (used to calculate the conversion ratio under clause 1.3 (“Conversion Ratio”)) of the Class A Preference Shares which have not been converted, in accordance with the following formula:

$$NCP = \frac{PNS \times PCP + A}{TNS}$$

where:

NCP = new conversion price applicable immediately after the Relevant Issue.

PNS = number of issued shares in the capital of the Company immediately prior to the Relevant Issue.

PCP = previous conversion price calculated as:

- (i) if no prior Relevant Issue has occurred, the subscription price paid per Class A Preference Shares; or
- (ii) if a Relevant Issue has occurred previously, the issue or exercise price paid for the Securities issued under the immediately preceding Relevant Issue.

A = total amount raised by the Relevant Issue.

TNS= total number of issued shares in the capital of the Company immediately after the Relevant Issue.

- (b) Any adjustment under this clause 2 (“Anti-dilution”) will not be taken to be a modification of the rights attaching to the Class A Preference Shares.

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## 3. Dividend rights

- (f) Each Class A Preference Share confers on the holder a right to receive a dividend (“**Dividend**”) calculated at a rate of 8% per annum payable on the occurrence of a Liquidity Event, or an IPO or Trade Sale to which clause 1.2(c) or 1.2(d) (“When shares may be converted”) of this Annexure (“Terms of Class A Preference Shares”) applies. Any Dividend is cumulative and will rank for payment in priority to all other classes of shares.
- (g) If, and to the extent that, the Directors decide under the terms of issue, each Class A Preference Share may, in addition to any right to receive a Dividend under clause 3(a) (“Dividend rights”), participate equally with the ordinary shares in the distribution of profits available for dividends.

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## **4. Liquidity Event**

### **4.1 Notice of Liquidity Event**

Immediately following a Liquidity Event, the Company must notify each Class A Shareholder that a Liquidity Event has occurred.

### **4.2 Right to Redeem or return of capital**

On receipt of a notice under clause 4.1 ("Notice of Liquidity Event"), a Class A Preference Shareholder may by notice in writing to the Company:

- (a) require the Company to redeem some or all of the Class A Preference Shareholder's Class A Preference Shares; or
- (b) require the Company to pay a return of capital in respect of each of the Class A Preference Shareholder's Class A Preference Shares, up to the amount paid on the Class A Preference Share.

### **4.3 Redemption Rights**

On request of a Class A Preference Shareholder under clause 4.2(a) ("Right to redeem or return of capital"), the Company must:

- (a) pay the Class A Preference Shareholder the redemption price for each Class A Preference Share being redeemed, being the amount paid on the Class A Preference Share;
- (b) cancel each Class A Preference Share being redeemed; and
- (c) for each Class A Preference Share being redeemed, issue to the Class A Preference Shareholder ordinary fully paid shares at the conversion ratio under clause 1.3 ("Conversion Ratio").

### **4.4 Payment of capital sum and conversion**

- (a) On request of a Class A Preference Shareholder under clause 4.2(b) ("Right to redeem or return of capital"), the Company must pay such return of capital to the Class A Preference Shareholder.
- (b) Each Class A Preference Share for which a Class A Preference Shareholder has received a return of capital under 4.4(a) ("Right to redeem or return of capital"), will convert to ordinary fully paid shares under clause 1 ("Conversion to ordinary shares") at the conversion ratio under clause 1.3 ("Conversion Ratio").

### **4.5 Dividends on Liquidity Event**

In addition to payments under clause 4.3(a) ("Redemption Rights") and 4.4(a) ("Payment of capital and conversion"), each Class A Preference Share confers on its holder the right in a Liquidity Event, or an IPO or Trade Sale to which clause 1.2(c) or 1.2(d) ("When shares may be converted") applies of accrued but unpaid dividends under clause 3(a) ("Dividend rights") in priority to all other classes of shares.

### **4.6 No other rights to profits**

A Class A Preference Share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this Annexure ("Terms of Class A Preference Shares").

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## **5. Voting**

Each Class A Preference Shareholder's entitlement to vote at meetings of the Company is to be calculated as though its Class A Preference Shares had been converted to ordinary shares in accordance with clause 1 ("Conversion to ordinary shares").

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## **6 Pre-emptive rights**

### **6.1 Notice of issue to be given**

Subject to clause 2 ("Anti-dilution"), if the Company proposes to issue new shares, the Company must give a notice to each Class A Preference Shareholder, specifying:

- (a) the total number of new shares to be offered;
- (b) the number of new shares for which the Class A Preference Shareholder is entitled to subscribe, being the number of new shares which correlate to the proportion which the Class A Preference Shareholder's shareholding in Class A Preference Shares bears to the aggregate shareholding of all Class A Preference Shareholders in the Company;
- (c) the issue price of each new share;
- (d) the date by which the offer of new shares must be accepted; and
- (e) the date for subscription, and any other terms of the offer of the new shares.

### **6.2 Notice of acceptance**

Within 10 Business Days of receipt of a notice of issue in accordance with clause 6.1 ("Notice of issue to be given"), a Class A Preference Shareholder who wants to take up all or part of its entitlement to the new shares must give a notice of acceptance to the Company specifying:

- (a) the number of new shares that the Class A Preference Shareholder wants to take up; and
- (b) the number or value (if any) of new shares in excess of the Class A Preference Shareholder's entitlement, for which the Class A Preference Shareholder would be prepared to subscribe.

### **6.3 Failure to give a notice of acceptance**

If a Class A Preference Shareholder fails to give a notice of acceptance within the period stated in clause 6.2 ("Notice of acceptance"), that Class A Preference Shareholder is taken to have waived its right to participate in that issue of new shares.

### **6.4 Allocation of Declined Shares**

If a Class A Preference Shareholder does not take up all of its entitlement to new shares offered under clause 6.1 ("Notice of issue to be given"), then the Declined Shares must be offered (on the same terms as specified in the relevant notice of issue) first to those Class A Preference Shareholders who have offered to take up new shares additional to their entitlements in the proportions which each relevant Class A Preference Shareholder's shareholding of Class A Preference Shares bears to the aggregate shareholding of all Class A Preference Shareholders who have offered to take up new shares additional to their entitlements. The process is to be repeated in respect of any remaining Declined

Shares until all of the Declined Shares are taken up, or until no Class A Preference Shareholder accepts an offer to take up further Declined Shares. Each offeree shall have a period of 5 Business Days in which to accept an offer, failing which the offeree is deemed to have rejected the offer.

### **6.5 Issue of remaining Declined Shares to third parties**

Subject to compliance with clause 6.4 (“Allocation of Declined Shares”), if the Class A Preference Shareholders do not take up all of the Declined Shares, the Company may, during the period of 10 Business Days following completion of the offers of new shares under clause 6.4 (“Allocation of Declined Shares”), issue the remaining Declined Shares to any third parties the Directors determine, on terms no less favourable than were offered to the Class A Preference Shareholders.

### **6.6 Issue of other Securities**

Subject to clause 6.7 (“Excluded issues”), the right of first refusal under this clause 6 (“Pre-emptive rights”) also applies to a proposed issue of any other Securities by the Company.

### **6.7 Excluded issues**

The right of first refusal under this clause 6 (“Pre-emptive rights”) does not apply to any of the following:

- (a) **(Share option scheme)** Securities issued to employees, directors or consultants of the Company under an ESOP, provided that the total ESOP is not more than 10% of the issued capital of the Company; or
- (b) **(capital structure)** Securities issued in connection with any share split, dividend or recapitalisation by the Company, or on conversion of any convertible Securities,

provided that such issues of Securities are approved by a resolution of the Directors who together comprise not less than 75% of the Directors who are not disqualified from voting on that resolution, and who are present and voting on that resolution.

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## **7. Amendment to the terms**

Subject to complying with all applicable laws, the Company may, without the consent of the Class A Preference Shareholders, amend or add to the terms of the Class A Preference Shares under this Annexure (“Terms of Class A Preference Shares”) if, in the opinion of the Company, the amendment or addition is:

- (a) of a formal, minor or technical nature;
- (b) to correct a manifest error;
- (c) made to comply with any applicable law; or
- (d) not likely to be or become materially prejudicial to the Class A Preference Shareholders.

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## 8. Variation of rights

Subject to clause 7 (“Amendment to the terms”) and the terms of issue of a Class A Preference Share as determined by the Directors and under this Annexure (“Terms of Class A Preference Shares”), the rights attaching to a Class A Preference Share may only be varied or cancelled by a special resolution of the Company and:

- (a) by a special resolution passed at a meeting of Class A Preference Shareholders entitled to vote; or
- (b) with the written consent of holders of at least 75% of the issued Class A Preference Shares.

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## 9. Further issue of shares

If the Company issues new preference shares that rank equally with the Class A Preference Shares, the issue will not be taken to vary the rights attached to the existing Class A Preference Shares unless otherwise determined by the Directors in the terms of issue of the existing Class A Preference Shares.

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## 10. Definitions re Class A Preference Shares

**Liquidity Event** means the occurrence of:

- (a) an Insolvency Event; or
- (b) following a Trade Sale and following a resolution of the Board or the Shareholders approving the distribution and payment to Shareholders of the proceeds of sale, a final determination being made of the amount that will be paid to Shareholders (including by way of dividend, in a winding up, by return of capital or share buyback); or
- (c) an IPO; or
- (d) an acquisition by the Company, where the subject of the acquisition is valued at 75% or more of the value of the Company immediately prior to the acquisition; or
- (e) a winding up of the Company

other than an IPO or Trade Sale to which clause 1.2(c) or 1.2(d) (“When shares may be converted”) of this Annexure (“Terms of Class A Preference Shares”) applies.

**“Relevant Issue”** is an issue of new securities in the Company convertible into shares at a price per security less than the subscription price paid per Class A Share.

## Annexure B – Verva Pharmaceuticals Limited: Share Capital immediately prior to Completion

Shareholder	No of Shares	Percentage of share capital
<b>Ordinary shares</b>		
QBF1	2,824,309	5.27
QBF2	2,824,308	5.27
QIC	3,211,764	6.00
GBS Genesis	1,459,304	2.72
GBS	3,325,953	6.21
Berne Nominees (Alta Partners)	7,401,934	13.82
National Nominees (Dennis Brown)	3,786,486	7.07
Merck-Sante	3,758,750	7.02
UIIT Pty Ltd (UniSeed)	2,235,051	4.17
J P Morgan Nominees	1,887,223	3.52
Elan Services	1,400,000	2.61
ANZ Nominees	1,364,833	2.55
HSBC Nominees	1,176,454	2.20
Toibb Investments	887,356	1.66
Teqstart	748,438	1.40
Citicorp Nominees	606,466	1.13
Uniquet Pty Ltd	493,298	0.92
QIMR	192,797	0.36
All others (< 1%; 4,260)	8,614,109	16.08
Proposed ESOP		10.00
<b>Total Ordinary Shares</b>	<b>48,198,833</b>	<b>100.00</b>

## Annexure C – Verva Pharmaceuticals Limited: Post-completion shareholding and Subscription Price

### Part 1 – Ordinary shares

Shareholder	No of Shares	Percentage of share capital
Ordinary shares		
QBF1	2,824,309	5.27
QBF2	2,824,308	5.27
QIC	3,211,764	6.00
GBS Genesis	1,459,304	2.72
GBS	3,325,953	6.21
Berne Nominees (Alta Partners)	7,401,934	13.82
National Nominees (Dennis Brown)	3,786,486	7.07
Merck-Sante	3,758,750	7.02
UIIT Pty Ltd (UniSeed)	2,235,051	4.17
J P Morgan Nominees	1,887,223	3.52
Elan Services	1,400,000	2.61
ANZ Nominees	1,364,833	2.55
HSBC Nominees	1,176,454	2.20
Toibb Investments	887,356	1.66
Tegstart	748,438	1.40
Citicorp Nominees	606,466	1.13
Uniquet Pty Ltd	493,298	0.92
QIMR	192,797	0.36
All others (< 1%; 4,260)	8,614,109	16.08
Proposed ESOP		10.00
<b>Total Ordinary Shares</b>	<b>48,198,833</b>	<b>100.00</b>

## Part 2 - Class A Preference Shares

Shareholder	<u>SERIES A SHARES</u>			
	Issued Upon Conversion of Convertible Note*	Shares Purchased Under Current Agreement	Percentage of Series A	Shareholder's portion of Subscription Price
QBF1	15,097,493	9,308,511	21.01	A\$437,500
QBF2	15,097,493	9,308,511	21.01	A\$437,500
GBS Genesis	29,998,251	5,106,383	30.22	A\$240,000
UIIT1	6,708,249	2,659,575	8.06	A\$125,000
UIIT2	3,354,124	1,329,787	4.03	A\$67,500
UIIT3	3,354,124	1,329,787	4.03	A\$67,500
Westscheme	0	8,404,255	7.23	A\$395,000
MTAA	0	5,106,383	4.40	A\$240,000
<b>Totals</b>	<b>73,609,734</b>	<b>42,553,192</b>	<b>100.00%</b>	<b>A\$2,000,000</b>
* Convertible notes issued 21 <sup>st</sup> December, 2007 and extended on the 9 <sup>th</sup> September, 2008 and the 15 <sup>th</sup> December, 2008. Conversion includes accrued interest to 29 <sup>th</sup> May, 2009				

## Annexure D – Verva Pharmaceuticals Limited: Proposed amendments to the Company's Constitution

It is proposed that the Company's Constitution be amended as follows -

- (a) Immediately prior to rule 10.8 insert the following new rule 10.8A:

*“The holders of Class A Shares will be entitled to vote on an as converted basis (one vote per Class A Share, as adjusted for conversion ratio and anti-dilution) and a reference to “Shareholder” in this Constitution shall include the holders of Class A Shares as if those shares had been converted to ordinary shares.”*

- (b) The following new rule 16.4 is inserted:

**“16.4 Directors Appointed by Shareholders**

*For so long as a Shareholder holds 10% or more of the voting power in the Company, that Shareholder has the right to nominate, and the Board shall appoint, a person to the office of Director of the Company. Where the appointing Shareholder's voting rights fall below 10% of the voting rights in the Company, the Director nominated by that Shareholder pursuant to this rule 16.4 shall unless otherwise elected or re-elected by the shareholders remain in office until the Director vacates the office pursuant to Rule 15 or retires in accordance with rules 16.1 and 16.2 or the Corporations Act. To the extent any appointment of a Director pursuant to this rule results in the number of Directors exceeding the maximum provided by rule 13.1(b), this maximum is correspondingly increased to allow for the appointment pursuant to this rule.”*