

ASX Announcement

Melbourne, Australia, 9 March 2023

Exopharm to Receive \$1 million from the Issue of Convertible Notes

Highlights:

- **Company has subscriptions for a total of \$1 million (before costs) in \$1 convertible notes**
- **The Company has received the subscription funds**
- **Funds will be used to provide working capital and extend cash runway**
- **Update to terms of convertible notes**

Further to its announcement of 13 February 2023, genetic medicine and exosome-based drug-delivery company Exopharm Limited (ASX:EX1) is pleased to advise that it has completed the Convertible Note (CN) subscription and issue process and that the CN subscription was over subscribed, with the amount extended to \$1 million.

The Convertible Notes have been issued today to professional, sophisticated and other exempt investors who are not related parties of the Company under Convertible Note Subscription Agreements, with the main terms being:

- Subscribers must be exempt investors and not a person to whom listing rule 10.11 may apply;
- Notes cannot be transferred or sold except where the purchaser falls under the Corporations Act 2001 sections 708 or 708A exemptions;
- Conversion price applicable to converting the CN to EX1 shares is \$0.008 (0.8 cents);
- Conversion is subject to the Company obtaining all necessary legal, regulatory and shareholder approvals;
- Subject to obtaining the above approvals:
 - The notes may be converted by the holder between 1 May 2023 and the day 3 months before the maturity date (9 December 2023);
 - The notes will automatically convert upon at the completion of the anticipated Rights Issue announced to ASX on 13 February 2023;
- The maturity date of the notes is 9 March 2024 (the first anniversary of the issue date). Notes which have not been converted or redeemed will be redeemed on earlier of the maturity date or the sale of the Company's main undertaking or major asset;
- The notes have nil interest rate; and

- The notes are unsecured (in the announcement of 13 February 2023 it was anticipated that the notes would be secured over the Company's intellectual property (IP), which is no longer the case).

The above is provided as a summary of key points. Attached as Appendix A is a copy of the CN Subscription Agreement which contains the full terms of the notes.

Dr Ian Dixon, CEO & Managing Director of Exopharm said "This additional funding extends the cash runway and will allow us to continue on the pathway to realise financial value from our exosomes assets with further reductions in operating costs."

Alto Capital (ACNS Markets Pty Ltd) and Canary Capital Pty Ltd acted as joint lead managers of the note issue and have been engaged to act as joint lead managers of the anticipated Rights Issue.

The Company will arrange to hold general meetings seeking shareholder approval to permit the notes to be converted. Currently a meeting is anticipated to be held at about the end of April 2023. The Company anticipates holding further meetings to seek further approvals to maintain the ability for the notes to convert.

Further announcements will be made regarding seeking shareholder approvals (including releasing copies of the applicable notice(s) of meeting(s)) and the anticipated Rights Issue (including a timetable and copies of the offer materials).

An Appendix 3G and convertible note cleansing notice be released in conjunction with this announcement.

By the Managing Director – this announcement has been authorised for release by the Managing Director.

COMPANY AND MEDIA ENQUIRIES:

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ABOUT EXOPHARM

Exopharm (ASX:EX1) is a leader in exosome technology and holds a portfolio of intellectual property and know-how related to exosomes and the manufacture of exosomes.

Exosomes could be an alternative means of drug-delivery inside the body, alongside technologies such as lipid nanoparticles (LNP), cell-penetrating peptides, viral vectors and liposomes.

Exopharm's exosome technologies solve important needs for the success of exosome medicines – **LEAP** manufacturing technology, **LOAD** API loading technologies and **EVPS** tropism technologies.

Exosome-based medicines could improve the treatment of many chronic or inherited medical conditions.

Exopharm is making its proprietary technologies available to pharmaceutical and biotechnology companies that want to harness exosome-delivery for their own products.

FORWARD LOOKING STATEMENTS

This announcement contains forward-looking statements which incorporate an element of uncertainty or risk, such as 'intends', 'may', 'could', 'believes', 'estimates', 'targets', 'aims', 'plans' or 'expects'. These statements are based on an evaluation of current corporate estimates, economic and operating conditions, as well as assumptions regarding future events. These events are, as at the date of this announcement, expected to take place, but there cannot be any guarantee that such events will occur as anticipated or at all given that many of the events are outside of Exopharm's control or subject to the success of the Development Program. Furthermore, the Company is subject to several risks as disclosed in the Prospectus dated 6 November 2018.

Appendix A: Convertible Note Subscription Agreement

CONVERTIBLE NOTE SUBSCRIPTION AGREEMENT

Exopharm Limited

Exopharm Limited

issuer

The person(s) specified in item 1 of the Contract Particulars.

subscriber



Level 26,
140 St Georges Terrace
Perth WA 6000

PO Box 8098
Cloisters Square
Perth WA 6850

Ref: [BLA/EST/001]

Contact: Jamie Ogilvie
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Convertible Note Subscription Agreement

Entered into on _____ February 2023

Parties

issuer **Name:** Exopharm Limited ACN 163 765 991
Address: Suite 201/697 Burke Road, Camberwell 3124
Email: investors@exopharm.com
Contact: Mr David Franks

subscriber The person(s) specified in item 1 of the Contract Particulars.

Contract Particulars

1. subscriber **Name:**
ACN:
Address:
Email:
Contact:

2. convertible notes XX,XXX convertible notes, each having a face value of \$1.00.

3. subscription amount The sum of \$XX,XXX

4. sunset date 3 March 2023

Background

- A. The directors of the *issuer* have the power under the *issuer's* constitution to borrow money and issue securities in the *issuer*.



- B. The directors of the *issuer* have resolved to create and issue the *convertible notes*.
- C. The *parties* now enter this agreement to record the terms and conditions on which the *convertible notes* are to be subscribed for and issued.

Operative Terms

In consideration for the mutual covenants hereafter set forth, the *parties* agree as follows:

1. SUBSCRIPTION FOR CONVERTIBLE NOTES

1.1. Agreement to subscribe

The *subscriber* agrees to subscribe for, and the *issuer* agrees to issue, the *convertible notes* for the *subscription amount*, on and subject to the terms and conditions of this *agreement*.

1.2. No separate application

This *agreement* serves as an application by the *subscriber* for the issue of the *convertible notes*.

1.3. Terms of convertible notes

- (a) Each *convertible note* is issued on the *note terms* and will, from the *issue date*, rank equally with all other *convertible notes*.
- (b) Each *party* must comply with the *note terms* in relation to each *convertible note*.

1.4. Payment of subscription amount

The *subscriber* must pay the *subscription amount* to the *issuer*, within 5 *business days* of this *agreement*, by way of electronic funds transfer into a bank account nominated by the *issuer*, or by such other method of payment approved by the *issuer*.

2. ISSUE OF CONVERTIBLE NOTES

2.1. Conditions precedent to issue

The issue of the *convertible notes* is subject to and conditional on:



- (a) the *issuer* obtaining subscriptions for *convertible notes* (including under this *agreement*) totalling at least \$600,000 on or before the *sunset date*;
- (b) *shares* continuing to be quoted and trading on *ASX*; and
- (c) the *issuer* not being subject to any actual or anticipated material legal disputes, (together, *issue conditions*).

2.2. Issue of convertible notes

Subject to the *issuer* having received the *subscription amount* in full, the *issuer* must:

- (a) issue the *convertible notes* to the *subscriber* within 5 *business days* of the *issue conditions* being satisfied;
- (b) enter the *subscriber's* details on the *issuer's* register of *convertible note* holders (*register*); and
- (c) deliver to the *subscriber* a certificate for the *convertible notes*, setting out the number, face value and *maturity date* of *convertible notes* issued to the *subscriber*.

2.3. Scale back or termination

2.3.1. At any time prior to the *issue date*, the *issuer* may, in its absolute discretion:

- (a) scale back the number of *convertible notes* to be issued to the *subscriber*; or
- (b) terminate this *agreement*.

2.3.2. In the event that the *issuer* gives notice to the *subscriber* of the application of clause 2.3.1, the *subscription amount* or portion thereof (as the case may be) will be refunded to the *subscriber* within 5 *business days*.

3. WARRANTIES AND ACKNOWLEDGEMENTS

3.1. Issuer warranties

The *issuer* warrants to the *subscriber* that the following statements are true and correct in all material respects, and not misleading in any material respect, at the date of this *agreement* and at the date the *convertible notes* are issued (except where a statement is expressed to be given on a particular date, in which case that statement is given on that date only):



- (a) (**approvals**) subject to the terms of this *agreement*, the *issuer* warrants to the *subscriber* that the *issuer* has obtained all approvals and consents of its shareholders necessary to issue the *convertible notes*, including pursuant to the *issuer's* constitution; and
- (b) (**equal ranking**):
 - (i) all *convertible notes* will rank equally with all other *convertible notes* then on issue; and
 - (ii) all *conversion shares* issued on conversion of *convertible notes* will, from the time of issue, be fully paid and rank equally with all other *shares* then on issue.

3.2. Subscriber warranties

The *subscriber* warrants to the *issuer* that the following statements are true and correct in all material respects, and not misleading in any material respect, at the date of this *agreement* and at the date the *convertible notes* are issued (except where a statement is expressed to be given on a particular date, in which case that statement is given on that date only):

- (a) (**investor type**) the *subscriber*:
 - (i) is an *exempt investor*; and
 - (ii) is not a person to whom *listing rule 10.11* may apply (or an *associate* of such a person).
- (b) (**purpose of subscription**) the *subscriber* is not subscribing for the *convertible notes*, or *shares* issued upon conversion of *convertible notes*, with the purpose of:
 - (i) selling or transferring all or any of them; or
 - (ii) granting, issuing or transferring interests in or options over them,except where disclosure to investors is not required under sections 708 or 708A of the *Corporations Act*; and
- (c) (**trust warranties**) if the *subscriber* enters this *agreement* in the capacity as a trustee of a trust (**trust**)
 - (i) the *subscriber* is the only trustee of the *trust*;
 - (ii) action is not pending nor threatened to remove the *subscriber* as trustee of the *trust*;
 - (iii) a default does not subsist under the terms of the *trust*;



- (iv) the *subscriber* has full power and authority to enter into and perform this *agreement* under the terms of the *trust*; and
- (v) the *subscriber* has a right of indemnity out of the *trust's* assets for all liabilities incurred by it under this *agreement* and the assets of the *trust* are sufficient to satisfy that right.

3.3. Mutual warranties

Each *party* (**warrantor**) warrants to the other *party* that the following statements are true and correct in all material respects, and not misleading in any material respect, at the date of this *agreement* and at the date the *convertible notes* are issued (except where a statement is expressed to be given on a particular date, in which case that statement is given on that date only):

- (a) (**incorporation**) if the *warrantor* is a body corporate:
 - (i) it is incorporated, registered (or taken to be registered) and validly existing under the laws of the jurisdiction of its incorporation;
 - (ii) the signing, delivery and performance by the *warrantor* of this *agreement* does not and will not violate, breach, or result in a contravention of the *warrantor's* constitution or other constituent documents;
- (b) (**power and authority**) the *warrantor* has full power, legal capacity and authority to enter into and perform the *warrantor's* obligations under this *agreement* in accordance with its terms;
- (c) (**approvals**) the *warrantor* has taken all necessary actions and obtained all necessary approvals to authorise the *warrantor's* execution, delivery and performance of this *agreement* (if any);
- (d) (**binding obligations**) this *agreement* constitutes legal, valid and binding obligations on the *warrantor* and is enforceable in accordance with its terms, subject to laws generally affecting creditors' rights and to principles of equity;
- (e) (**no breach**) the signing, delivery and performance by the *warrantor* of this *agreement* does not and will not violate, breach, or result in a contravention of any applicable law by the *warrantor*; and
- (f) (**solvency**) the *warrantor* is not subject to an *insolvency event*, and the *warrantor* is not aware of any *insolvency event* pending in relation to the *warrantor*.

3.4. Reliance

Each *party* acknowledges that, in relation to the warranties given in this *agreement* by that *party*, the other *party* has entered this *agreement* and will perform the other *party's*



obligations under this *agreement* (including to complete each transaction contemplated by this *agreement*) in reliance upon such warranties.

3.5. Issuer undertakings

During the *term*, the *issuer* undertakes:

- (a) to use its best endeavours to complete:
 - (i) the *entitlement issue*; or
 - (ii) a *material capital raise*; and
- (b) that the *issuer* will not:
 - (i) declare or pay a dividend or carry out a return of capital; or
 - (ii) lend any money to any third party (including any *related entity*),until all *convertible notes* have been converted or redeemed.

3.6. Subscriber acknowledgements

The *subscriber* acknowledges and agrees that:

- (a) an investment in the *issuer* is highly speculative and involves risks, including the following:
 - (i) shareholders in the *issuer* may not receive dividends or dividends may be reduced;
 - (ii) the value of *shares* or share-based securities in the *issuer* may fall;
 - (iii) there may not be any market for the *issuer's shares* and therefore the *convertible notes* and the *shares* issued on their conversion may constitute an illiquid investment;
 - (iv) there is no guarantee that the *subscriber* will be able to sell *shares* issued on the conversion of the *convertible notes* for an amount greater than or equal to the *subscription amount*; and
 - (v) the value of *convertible notes* and *shares* may be impacted by both internal and external factors such as the *issuer's* profitability, expected future profits, dividend policy, balance sheet and marketing success, as well as the general economic outlook (domestic and international), government fiscal, monetary and regulatory policies, changes in interest rates, rates of inflation, currency exchange rates, commodity prices, financial market



volatility, acts of terrorism, the occurrence of hostilities or natural disasters, other force majeure events, and industry developments;

- (b) any investor presentation materials provided by the *issuer* to the *subscriber* before this *agreement* (***investor materials***) do not purport to contain all of the information that a prospective investor may require to make an evaluation of the *issuer*, the *convertible notes or shares* and the *issuer* shall not be obliged to update any materials or information unless required to be released to ASX (in which case the Issuer will only be obliged to make such a release to ASX and not be required to inform subscriber directly.)
- (c) nothing in any *investor materials* is, or is intended to be, a recommendation to invest in the *issuer*;
- (d) the *issuer* does not purport to give financial or investment advice in relation to the *convertible notes*;
- (e) account has not been taken of the objectives, financial situation or needs of the *subscriber* in preparing any *investor materials*;
- (f) *investor materials* may contain forward-looking statements which may be predictive in nature and incorporate an element of uncertainty or risk, such as 'intends', 'may', 'could', 'believes', 'estimates', 'targets' or 'expects', in respect of which there cannot be any guarantee that such events will occur as anticipated, or at all, given that many of the events are outside of the *issuer's* control;
- (g) the *subscriber* has been given the opportunity to obtain independent professional advice (e.g. legal, accounting, financial, tax) before entering into this *agreement*;
- (h) the *subscriber* has made, and it relies upon, its own research, enquiries and analysis in relation to the *issuer* and the *convertible notes*, except to the extent expressly set out in this *agreement* (including in warranties given by the *issuer*);
- (i) the warranties given by the *issuer* are the only warranties or representations that the *subscriber* requires, and on which the *subscriber* has relied, in deciding whether to enter into this *agreement* and subscribe for the *convertible notes*; and
- (j) the *issuer and any person connected with it* is not liable to make any payment (whether by way of payment of damages or otherwise) for any *claim* to the extent that any loss or damage claimed by the *subscriber*:
 - (i) is contingent, prospective, not ascertained or ascertainable, unless and until such liability becomes an actual liability and is due and payable;
 - (ii) could only have been avoided if the *issuer* breached its obligations at law;
or



- (iii) apart from such change already announced, but not enacted, as at date of this *agreement*, arises in relation to:
 - (1) a change in the judicial interpretation of the law in any jurisdiction after the date of this *agreement*; or
 - (2) a change in the administrative practice of any *governmental agency* after the date of this *agreement*, including any change which takes effect retrospectively;
- (iv) if a legal cost, is an unreasonable legal cost; or
- (v) can be remedied by the *issuer*, provided it is remedied to the satisfaction of the *subscriber*, acting reasonably, within 21 days after the *issuer* receives written notice of the *claim*.

3.7. Implied terms

All terms, conditions, warranties and guarantees (as applicable) which would, but for this clause 3.7, be implied into this *agreement* by operation of law are excluded to the maximum extent permitted by law.

4. GENERAL MATTERS

4.1. Further acts and documents

Each *party* undertakes and agrees to do or to procure to be done all such acts (including the execution of any appropriate documents in form and content reasonably satisfactory to every *party*) as may be necessary, subject to this *agreement*, to consummate the transaction or transactions contemplated herein and to give effect to the intent and purposes of this *agreement* fully and effectively.

4.2. Applicable law and jurisdiction

- 4.2.1. This *agreement*, and any dispute or claim arising out of or in connection with it or its formation (including all non-contractual disputes or claims), shall be governed by, construed, interpreted and applied in accordance with the law applying in Western Australia for the time being, save for any such laws as to conflicts or choice of law which would refer construction or interpretation to the substantive law of another jurisdiction.



- 4.2.2. Each *party* irrevocably:
- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this *agreement*; and
 - (b) waives any objection that it may now or in the future have to the venue of any proceedings, and any claim that it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (a).

4.3. Notices

- 4.3.1. Each communication (including each notice, consent, approval, request and demand) under or in connection with this *agreement*:
- (a) must be in writing, in the English language;
 - (b) must be addressed in accordance with the details set out in page 1 of this *agreement* (or as otherwise notified by that *party* to every other *party* from time to time);
 - (c) must be signed by the *party* making it or (on that *party*'s behalf) by the solicitor for or any attorney, director, secretary or authorised agent of that *party*;
 - (d) must be delivered by hand, or posted to the address (provided that any communication to be posted must be posted from within the jurisdiction in which it is to be delivered), or sent to the email address of the addressee in accordance with clause 4.3.1(b); and
 - (e) is taken to be received by the addressee:
 - (i) (in the case of post) on the fifth day after the date of posting;
 - (ii) (in the case of email) at the time that the email is ready for collection via the recipient's or the recipient's internet service provider's mail server; and
 - (iii) (in the case of delivery by hand) on delivery,but if the communication is taken to be received on a day that is not a *business day*, it is taken to be received at 9.00am on the next *business day*.



4.4. Rights of third parties

- 4.4.1. To the extent permitted by law, a person who is not a party to this *agreement* shall have no right to enforce any term of this *agreement* under any legislation in any jurisdiction, except where otherwise expressly set out in this *agreement*.
- 4.4.2. Notwithstanding any rights of persons who are not *parties* to enforce this *agreement*, this *agreement* may be:
- (a) varied by the *parties* in accordance with clause 4.5.1 without the consent of any person who is not a *party*; and
 - (b) terminated by consent of the *parties*, and in any other manner and circumstance in which termination is allowed, without the consent of any person who is not a *party*.

4.5. Variations and assignment

- 4.5.1. Subject to paragraph 2.5 of the *note terms*, this *agreement* may only be varied by a document signed by or on behalf of each the *parties*.
- 4.5.2. This *agreement* is personal to the *parties* and, subject to paragraph 2.6 of the *note terms*, no *party* may assign or dispose of any interest in or rights under this *agreement* without the written consent of the other *party*.

4.6. Counterparts

- 4.6.1. This *agreement* may be executed in any number of counterparts and by the *parties* on separate counterparts.
- 4.6.2. Each counterpart constitutes an original of this *agreement* and all together constitute one agreement.

4.7. Expenses

Except as otherwise provided in this *agreement*, each *party* must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this *agreement*.

4.8. Entire agreement

To the extent permitted by law, in relation to its subject matter this *agreement*:

- (a) embodies the entire understanding between, by or of the *parties*, and constitutes the entire terms agreed between, by or of the *parties*; and



- (b) supersedes any prior written or other agreement, deed or document made between, by or of the *parties*.

4.9. Severance and enforceability

Any provision, or the application of any provision, of this *agreement* that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this *agreement* in that or any other jurisdiction.

4.10. No merger

The rights and obligations of the *parties* under this *agreement* do not merge on completion of any transaction under this *agreement*, and survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under this *agreement*.

4.11. Waivers and consents

- 4.11.1. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this *agreement* by a *party* does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this *agreement*.
- 4.11.2. A waiver or consent given by a *party* under this *agreement* is only effective and binding on that *party* if it is given or confirmed in writing by that *party*.
- 4.11.3. No waiver of a breach of a term of this *agreement* operates as a waiver of another breach of that term or of a breach of any other term of this *agreement*.
- 4.11.4. A consent required under this *agreement* from a *party* may be given or withheld, or may be given subject to any conditions, as that *party* in its absolute discretion think fit, unless this *agreement* expressly provides otherwise.

4.12. Indemnities

- 4.12.1. Each indemnity in this *agreement* is a continuing obligation, separate and independent from the other obligations of the *parties*, and survives termination, completion or expiration of this *agreement*.
- 4.12.2. It is not necessary for a *party* to incur expense or to make any payment before enforcing a right of indemnity conferred by this *agreement*.
- 4.12.3. A *party* must pay on demand any amount it must pay under an indemnity in this *agreement*.



4.13. Interpretation

- 4.13.1. References to this *agreement* include the Background and all and any Schedules, Attachments, Exhibits and Annexures to it, which form part of this *agreement* for all purposes.
- 4.13.2. The headings in this *agreement* are inserted for convenience only and shall be ignored in its construction.
- 4.13.3. In this *agreement*, unless the context otherwise requires, references to:
- (a) clauses, recitals and schedules are, unless otherwise expressly stated, references to the clauses, recitals and schedules to or of this *agreement*;
 - (b) the singular shall include the plural and vice versa, and words which denote any gender include all genders;
 - (c) a company shall be construed so as to include any company, corporation or other body corporate wherever and however incorporated or established;
 - (d) a person includes any body corporate, unincorporated body, a corporation, association, partnership, government authority, or other legal entity;
 - (e) a person includes the person's executors, administrators, substitutes, successors and permitted assigns;
 - (f) any agreement or document is a reference to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, in accordance with this *agreement* or that other agreement or document;
 - (g) statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes;
 - (h) sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
 - (i) a statutory provision or legal term in Western Australia for any action, remedy, method of judicial proceeding, document, legal status, court, official or any other legal concept or thing shall in respect of any jurisdiction other than Western Australia be deemed to include what most nearly approximates in that jurisdiction to the statutory provision or legal term in Western Australia;
 - (j) writing shall include any modes of reproducing words in a legible and non-transitory form;
 - (k) the words "include", "including", "for example", "such as" and other similar words or phrases shall be construed without limitation, so as not limit the



meaning of the words to which any given example relates to that example or to examples of a similar kind;

(l) a day is to a period of time commencing at midnight in Perth, Western Australia and ending 24 hours later; and

(m) time is to the time in Perth, Western Australia.

4.13.4. In the event of a conflict or an inconsistency between the main body of this *agreement* and any of the Schedules, the former shall prevail.

4.13.5. Where any word or phrase is given a defined meaning in this *agreement*, any other grammatical form of that word or phrase has a corresponding meaning.

4.13.6. No rule of construction of documents shall apply to the disadvantage of a *party*, on the basis that the *party* put forward this *agreement* or any relevant part of it.

4.13.7. When, in this *agreement*, a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

4.13.8. When, in this *agreement*, a day on or by which anything to be done is not a *business day*, that thing may be done on the next *business day*.

4.13.9. If two or more persons by this *agreement* undertake an obligation or give any warranty they will be bound jointly and severally unless the context requires otherwise.

4.13.10. The official language of this *agreement* is English and any interpretation or construction of this *agreement* shall be based solely on the English text.

Schedule 1 – Glossary

In this *agreement*, unless the context otherwise requires, the *parties* defined commencing on Page 1 shall have the meanings ascribed to them there, and the following terms bear the following meanings:

agreement means this Convertible Note Subscription Agreement.

associate has the meaning given in the *Corporations Act*.

ASX means the Australian Securities Exchange

business day means a day (other than a Saturday or a Sunday) on which banks in Western Australia are open for normal business.

claim means a claim, demand action, suit or proceeding under law, whether present, unascertained, immediate, future or contingent.

convertible note means an unsecured convertible note issued by the *issuer* on the *note terms*.

conversion has the meaning given to that term in paragraph 4.1 of the *note terms*.

conversion period means the period commencing on 1 May 2023 and ending at 5.00pm WST on the date that is three months before the *maturity date*.

conversion price means \$0.008

conversion share has the meaning given to that term in paragraph 4.4(b) of the *note terms*.

Contract Particulars means the information set out on page 1 of this *agreement*.

Corporations Act means the *Corporations Act 2001* (Cth).

entitlement issue means an issue of *shares* in accordance with a pro rata offer to shareholders of the *issuer* to raise a minimum of A\$1,500,000 as announced to *ASX* on 13 February 2023 and includes issues of shares from shortfall (if any) in acceptances and application for additional shares by eligible shareholders where permitted by the listing rules.



exempt investor means a “sophisticated investor”, “experienced investor”, or “professional investor” for the purposes of section 708(8), section 708(10) or section 708(11) of the *Corporations Act* respectively.

face value means the face value of a *convertible note*, as specified in paragraph 2.3 of the *note terms*.

governmental agency means any federal, state, territory or local government, or any ministry, department, court, commission, tribunal, statutory body, board, agency, instrumentality, political subdivision or similar entity.

insolvency event means, in relation to a *party* (***relevant party***), means any one or more of the following:

- (a) a ‘controller’ (as defined in the *Corporations Act*), administrator, liquidator, provisional liquidator, bankruptcy trustee or similar officer is appointed to the *relevant party* or any of the *relevant party*’s assets;
- (b) an application is made to a court for an order to appoint a person described in paragraph (a) of this definition and that application is not permanently stayed, withdrawn or dismissed within 30 days;
- (c) the *relevant party* enters into, or resolves to enter into, a deed of company arrangement, bankruptcy, a scheme of arrangement, or a compromise or composition with any class of creditors, other than for a solvent reconstruction;
- (d) a resolution is passed or an order is made for the winding up or dissolution of the *relevant party*;
- (e) the *relevant party* ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention not to pay its creditors;
- (f) the *relevant party* is (or states that it is) insolvent or is deemed to be insolvent under relevant insolvency or bankruptcy law;
- (g) the *relevant party* is declared bankrupt under relevant insolvency or bankruptcy law; or
- (h) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (g) of this definition happens under the law of any applicable jurisdiction.

issue conditions has the meaning given to that term in clause 2.1.

issue date means the date of issue of the *convertible notes*.

listing rules means the listing rules of *ASX*.



material capital raise means a placement to raise a minimum of A\$1,500,000 (or by a combination of issuing shares under the entitlement issues and a placement)

maturity date means the date 12 months after the *issue date*.

note terms means the terms of *convertible notes*, as specified in Schedule 2.

noteholder means the registered holder of a *convertible note*.

redemption has the meaning given to that term in paragraph 4.5 of the *note terms*.

register means the register of *convertible notes* maintained by the *issuer*.

related entity has the meaning given in the *Corporations Act*.

related party has the meaning given in the *Corporations Act*.

requisite majority means those *noteholders* whose aggregate face value of *convertible notes* with substantially the same terms as the *convertible notes* issued under this *agreement* represents a majority of the total face value on all issued *convertible notes*.

share means a fully paid ordinary share in the *issuer*.

subscription amount means the amount specified in item 3 of the Contract Particulars.

sunset date means the date specified in item 4 of the Contract Particulars.

term means the period from the date of execution of this *agreement* to the *maturity date*.



Schedule 2 – note terms

1. DEFINITIONS

Italicised terms in these *note terms* have the same meaning as given in the glossary at Schedule 1.

2. FORM OF CONVERTIBLE NOTE

2.1. *Nature of convertible note*

Each *convertible note* is an unsecured, unquoted, convertible note, issued by the *issuer* on and subject to these *note terms*, which constitutes:

- (a) an unconditional and irrevocable undertaking by the *issuer* to the *noteholder* to make all payments in respect of the *convertible note* in accordance with these *note terms*; and
- (b) an entitlement to the other benefits given to the *noteholder* under these *note terms* in relation to the *convertible note*.

2.2. *Certificate*

A certificate will be issued by the *issuer* to the *noteholder* in respect of their *convertible notes* on receipt by the *issuer* of the *subscription amount*.

2.3. *Face value*

Each *convertible note* has a face value of \$1.00 (**face value**) which must be fully paid on subscription.

2.4. *Register conclusive*

Entries in the *register* in relation to a *convertible note* constitute conclusive evidence that the person so entered is the absolute owner of the *convertible note*, subject to correction for fraud or error. Except as required or permitted by law, the *issuer* must treat the person entered in the *register* as the absolute owner of that *convertible note*.

2.5. *Variation*

These *note terms* may be amended, or any term thereof waived, on the written consents of both the *issuer* and the *requisite majority*.



2.6. *Transfer*

- (a) Subject to any restrictions under applicable law, a *convertible note* is transferrable at any time before *redemption* or *conversion*, by
 - (i) any method permitted by the *Corporations Act*; or
 - (ii) otherwise, by written instrument of transfer in any usual form or in any other form approved by the directors of the *issuer* that is permitted by law.
- (b) A *convertible note*:
 - (i) may only be transferred to *exempt investors*; and
 - (ii) must not be transferred to a person to whom *listing rule 10.1* or *10.11* may apply (or any *associate* of such a person) without the prior written consent of the *issuer*, which consent may be conditional.

3. INTEREST

Interest does not accrue in relation to a *convertible note*.

4. CONVERSION AND REDEMPTION

4.1. *Noteholder's right to convert*

Convertible notes may be converted into *conversion shares* in accordance with this paragraph 4 (**conversion**) at any time during the *conversion period* by the *noteholder* giving the *issuer* written notice to that effect at any time on or before the end of the *conversion period*.

4.2. *Automatic conversion*

- (a) Subject to paragraph 4.2(b), *convertible notes* will automatically convert to *conversion shares* on completion of:
 - (i) the *entitlement issue*; or
 - (ii) a *material capital raise*.

For the avoidance of doubt, the entitlement issue is not necessarily “completed” when the offer to eligible shareholders closes and may be completed by the issue of shares from the shortfall (if any) in acceptances and applications for additional shares by eligible shareholders where, and in the period, permitted by the listing rules, and a material capital raise will be deemed



to be completed if a total of \$1,500,000 is raised by a combination of issuing shares under the entitlement issue and a placement.

- (b) The automatic conversion of *convertible notes* in accordance with paragraph 4.2(a) is:
 - (i) conditional on *shares* continuing to be quoted and trading on *ASX*; and
 - (ii) subject to satisfaction of the requirements of paragraph 4.3.

4.3. *Conversion subject to approvals*

- (a) Despite any other provision of these *note terms*, *conversion* is conditional upon all necessary legal, regulatory and shareholder approvals being obtained, including:
 - (i) any approvals required under *listing rules 7 or 10*; or
 - (ii) approval under item 7 of section 611 of the *Corporations Act*, if applicable and unless having regard to the anticipated time and cost of obtaining that approval the Issuer determines such approval shall not be sought, in which case the number of convertible notes to be converted will be such number as results in the holder(s) of relevant interest to or for which the approval would have applied or been required not exceed 20% or such greater percentage as may be permitted by the *Corporations Act* (whether under item 9 of section 611 of the *Act* or otherwise) and the balance of its or their convertible notes shall be redeemed under paragraph 4.5).
- (b) The *issuer* and the *noteholder* must (subject to sub paragraph 4.3(a)(ii)) use their respective best endeavours to procure the approvals under paragraph 4.3(a) as soon as reasonably practicable after:
 - (i) a notice to convert is received under paragraph 4.1; or
 - (ii) successful completion of the *entitlement issue* or a *material capital raise* under paragraph 4.2.
- (c) If the approvals under paragraph 4.3(a) are not obtained within 60 days (or such longer period as agreed by the *noteholder* in writing) of:
 - (i) a notice to convert being received under paragraph 4.1; or
 - (ii) successful completion of the *entitlement issue* or a *material capital raise*,the *convertible note* (or the relevant number of convertible notes if sub paragraph 4.3(a)(ii) applies) will be redeemed under paragraph 4.5.



(d) During the period provided for seeking the approvals under paragraph 4.3(c) and the period provided for in paragraph 4.4(c), the convertible notes will not be redeemable unless the approvals are not obtained.

4.4. *Conversion procedure*

If a *convertible note* is to be converted:

- (a) the *noteholder* consents to becoming a member of the *issuer* and being bound by the *issuer's* constitution;
- (b) the *issuer* will issue new *shares* (**conversion shares**) to the *noteholder* calculated by dividing the *face value* by the *conversion price*, with any entitlement to a fraction of a *conversion share* to be rounded to the nearest whole number, or if the fractional entitlement is exactly one half, rounded up to the nearest whole number;
- (c) the *issuer* must issue the *conversion shares* within 10 *business days* of the notice to convert being received under paragraph 4.1 and the last condition in paragraph 4.2(a) being satisfied, whichever is the later in time;
- (d) all *conversion shares* will, from the time of issue, rank equally in all respects with all other *shares* then on issue; and
- (e) the *issuer's* obligations in relation to the *convertible note* (including any obligation to pay the *face value*) are satisfied and discharged upon issue of the *conversion shares* in accordance with this paragraph 4.4.

4.5. *Redemption*

Subject to paragraph 4.7, *convertible notes* not previously converted, or redeemed in accordance with paragraph 4.3(c) or 4.6, will be redeemed on the *maturity date*.

4.6. *Early redemption*

Convertible notes will be automatically redeemed on receipt of proceeds from the sale of:

- (a) the *issuer's* main undertaking; or
- (b) a major asset (as described in Section 3.2 of ASX guidance note 13).

4.7. *Redemption procedure*

If a *convertible note* is to be redeemed:



- (a) the *issuer* must pay the *noteholder* the *face value* by way of cash payment in cleared funds, before or within 10 *business days* of the *maturity date*;
- (b) the *face value* must be paid to the *noteholder* by way of electronic funds transfer into an Australian bank account nominated by the *noteholder* in writing; and
- (c) the *issuer's* obligations in relation to the *convertible note* are satisfied and discharged, and all other rights conferred, or restrictions imposed, by the *convertible note* will cease to have effect, upon payment of the *face value* being made in accordance with this paragraph 4.7.

5. NOTEHOLDER'S RIGHTS

5.1. Restrictions

A *convertible note* does not confer on the *noteholder* any right:

- (a) of participation or any entitlement inherent in holding *shares* or other securities in the *issuer*
- (b) to receive notice of, attend, or vote on any resolution proposed at, a general meeting of the *issuer*, except and only to the extent required by applicable law;
- (c) to receive a dividend by the *issuer*, whether fixed or at the discretion of the directors of the *issuer*; or
- (d) to:
 - (i) a return of capital by the *issuer*, whether on winding-up of the *issuer*, a reduction of capital, an in specie distribution of assets, or otherwise; or
 - (ii) participate in the surplus profits or assets of the *issuer* on winding-up of the *issuer*.

5.2. Rights of participation in new issues of securities

A *noteholder* will not, solely by virtue of being the registered holder of a *convertible note*, be entitled to participate in any new issue of *shares* or other securities in the *issuer*, made by the *issuer* to its shareholders unless and to the extent that the *convertible note* has converted and *conversion shares* have been issued before the record date for determining entitlements to the new issue of *shares* or securities, such that the *noteholder* participates as a shareholder of the *issuer*.

5.3. Reorganisation

If there is a reorganisation (including consolidation, sub-division, reduction or return) of the share capital of the *issuer* (**reorganisation**), then the rights of the



noteholder to convert a *convertible note* that has not been redeemed or converted prior to the *reorganisation*:

- (a) are to be reconstructed in the same proportion and manner as any such reconstruction of the issued capital of the *issuer*; and
- (b) are subject to the same provisions (if any) with respect to the rounding of entitlements as are sanctioned by the meeting of members of the *issuer* which approves any such *reorganisation*,
- (c) but in all other respects, the terms for *conversion* will remain unchanged.

6. PAYMENTS

6.1. *Deductions*

The *issuer* may deduct from any payment payable to the *noteholder*, the amount of any withholding or other tax, duty or levy required by applicable law to be deducted in relation to such payment, in which case the *issuer* must:

- (a) pay the full amount required to be deducted to the relevant *governmental agency* responsible for collection of the same, within the time allowed for such payment without incurring penalty under the applicable law; and
- (b) must deliver to the *noteholder* the relevant receipt issued by the *governmental agency* without delay after it is received by the *issuer*.

6.2. *Calculation of payments*

- (a) All calculations of payments will be rounded to two decimal places.
- (b) For the purposes of making any payment, any fraction of a cent will be disregarded.

6.3. *Date of payment*

If the date scheduled for any payment in relation to a *convertible note* is not a *business day*, then the payment will be made on the next *business day* (and without any interest or other payment in respect of such delay).

6.4. *Time limit for claims*

A claim against the *issuer* for payment of any amount in relation to a *convertible note* is void unless made within 1 year of the due date for payment.





Signing Page

IN WITNESS WHEREOF this document has been duly executed by and on behalf of the *parties* on the day and year first above written.

issuer

EXECUTED by **Exopharm Limited ACN 163 765 991** in accordance with section 127 of the *Corporations Act*:

Signature of Director



Signature of Director/Secretary



Full name of Director (please print)

Full name of Director/Secretary (please print)

subscriber (if a company) EXECUTED by XXXXXX in accordance with section 127 of the *Corporations Act*:

Signature of Director



Signature of Director/Secretary



Full name of Director (please print)

Full name of Director/Secretary (please print)