

ASX/NASDAQ ANNOUNCEMENT

Re-domiciliation to the United States

Melbourne – 27 November 2019 - Benitec Biopharma Limited ("**Benitec**" or the "**Company**") (ASX:BLT; NASDAQ:BNTC; NASDAQ:BNTCW) is pleased to announce its intention to re-domicile from Australia to the United States of America. To implement the re-domiciliation, Benitec has entered into a Scheme Implementation Agreement dated 27 November 2019 with Benitec Biopharma Inc. ("**Holdco**"), a new US company incorporated for the purpose of effecting the re-domiciliation, pursuant to the terms of which Holdco will acquire all of the ordinary shares in Benitec ("**Benitec Shares**") and the warrants of Benitec listed on the Nasdaq Capital Markets ("**Benitec Warrants**") by way of two separate schemes of arrangement, pursuant to which:

- holders of Benitec Shares ("**Benitec Shareholders**") will receive new shares of ordinary stock ("**Holdco Shares**") in exchange for the Benitec Shares ("**Share Scheme**"); and
- holders of the Nasdaq listed Benitec Warrants ("**Benitec Warrant Holders**") will receive new warrants issued by Holdco ("**Holdco Warrants**") on equivalent terms in exchange for the Benitec Warrants ("**Warrant Scheme**"),

("Schemes") held as at the record date. Holders of American Depositary Shares listed on Nasdaq ("**ADS**") will be entitled to vote and participate in the Share Scheme (through the ADS depository).

The Schemes are subject to court approval, as well as approval by Benitec Shareholders (in respect of the Share Scheme) and by Benitec Warrant Holders (in respect of the Warrant Scheme).

If the Schemes are implemented, Benitec will become a wholly owned subsidiary of Holdco. Benitec would be de-listed from the Australian Securities Exchange ("**ASX**") and the Nasdaq Capital Market ("**Nasdaq**") and Holdco will apply for the Holdco Shares and Holdco Warrants to be listed on Nasdaq.

Reasons for re-domiciliation

After carefully considering the relative merits of the re-domiciliation, the directors of Benitec are of the view that the advantages materially outweigh the disadvantages. In particular, the board believes that the re-domiciliation would provide the following potential benefits:

- streamline and reduce overhead costs of the group, particularly in respect of compliance, audit and insurance costs;
- align its corporate and operations structure, noting that the majority of Benitec's current business and employees are already located in the US;

- provide access to a broader range of US investors in a market which is familiar with and has a stronger interest in early to mid-stage biotechnology companies, which may lead to a stronger valuation of Holdco over time and improve liquidity in trading of shares; and
- improve attractiveness as a potential target and its opportunities with potential licensing or joint venture partners.

Independent Expert

Benitec has engaged McGrathNicol (“**Independent Expert**”) to prepare the Independent Expert’s Report for the Scheme Booklet.

Benitec board unanimously recommends the Schemes

The directors of Benitec unanimously recommend Benitec Shareholders to vote in favour of the Share Scheme subject to the Independent Expert concluding that the Share Scheme is in the best interests of Benitec Shareholders, in the absence of a superior proposal. The directors of Benitec intend to vote all Benitec Shares they hold in favour of the Share Scheme, subject to the same qualifications.

The directors of Benitec unanimously recommend Benitec Warrant Holders to vote in favour of the Warrant Scheme subject to the Independent Expert concluding that the Warrant Scheme is in the best interests of Benitec Warrant Holders, in the absence of a superior proposal. The directors of Benitec intend to vote all Benitec Warrants they hold in favour of the Warrant Scheme, subject to the same qualifications.

Terms of the Schemes

Implementation of the Schemes is subject to a number of conditions precedent, including:

- approval by Benitec Shareholders and Benitec Warrant Holders by the requisite majorities;
- the Holdco Shares and Holdco Warrants being authorised for listing on Nasdaq, subject to subject to official notice of issuance following the implementation of the Schemes and any customary conditions;
- the Independent Expert concluding that the Share Scheme is in the best interests of Benitec Shareholders and the Warrant Scheme is in the best interests of Benitec Warrant Holders;
- court approval of the Schemes; and
- Benitec receiving all required regulatory approvals for, and no regulatory intervention preventing the, Schemes.

If the Share Scheme is implemented but the Warrant Scheme is not implemented, Holdco will consider the avenues available to it to acquire any shares issued upon exercise of the Benitec Warrants, including under compulsory acquisition under Chapter 6A of the Corporations Act.

A copy of the Scheme Implementation Agreement is attached to this announcement.



Indicative timetable and next steps

Benitec Shareholders and Warrant Holders do not need to take any action at this time.

A Scheme Booklet containing, amongst other things, further information relating to the Schemes, reasons for the directors' unanimous recommendation, information on the Scheme Meetings and the Independent Expert's Report is expected to be sent to Benitec Shareholders and Warrant Holders in February/March 2020. Benitec is targeting implementation date for the Schemes by April/May 2020, with the Nasdaq listing for Holdco to be completed shortly thereafter. These dates are indicative only and subject to change.

Benitec has retained Jones Day as its legal advisor.

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**About Benitec Biopharma Limited**

Benitec Biopharma Limited (ASX: BLT; NASDAQ: BNTC; NASDAQ: BNTCW) is a clinical-stage biotechnology company focused on the development of novel genetic medicines. The proprietary platform, called DNA-directed RNA interference, or ddRNAi, combines RNA interference, or RNAi, with gene therapy to create medicines that facilitate sustained silencing of disease-causing genes following a single administration. Based in Melbourne, Australia with laboratories in Hayward, California (USA), and collaborators and licensees around the world, the Company is developing ddRNAi-based therapeutics for chronic and life-threatening human conditions including oculopharyngeal muscular dystrophy (OPMD), and chronic hepatitis B.

Safe Harbor Statement:

This press release contains "forward-looking statements" within the meaning of section 27A of the US Securities Act of 1933 and section 21E of the US Securities Exchange Act of 1934. Any forward-looking statements that may be in this ASX/Nasdaq announcement are subject to risks and uncertainties relating to the difficulties in Benitec's plans to develop and commercialise its product candidates, the timing of the initiation and completion of preclinical and clinical trials, the timing of patient enrolment and dosing in clinical trials, the timing of expected regulatory filings, the clinical utility and potential attributes and benefits of ddRNAi and Benitec's product candidates, potential future out-licenses and collaborations, the intellectual property position and the ability to procure additional sources of financing. Accordingly, you should not rely on those forward-looking statements as a prediction of actual future results.

Investor Relations

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Execution version

Scheme Implementation Agreement

Benitec Biopharma Limited ACN 068 943 662

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AUI-930763234v3

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Scheme Implementation Agreement

Date 27 November 2019

Parties

Benitec	Benitec Biopharma Limited ACN 068 943 662, an Australian public company incorporated under the laws of Australia of Level 14, 114 William Street, Melbourne, Victoria 3000
Holdco	Benitec Biopharma Inc., a corporation formed under the laws of Delaware, United States of America of Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801

Recitals	<p>A. Benitec is an Australian public company and the current holding company of the Benitec Group.</p> <p>B. Holdco is a special purpose vehicle incorporated in Delaware, United States, for the purpose of effecting the re-domiciliation.</p> <p>C. Benitec wishes to effect a re-domiciliation from Australia to the United States by Holdco acquiring all of the Benitec Shares and Benitec Warrants by two separate schemes of arrangement under Part 5.1 of the Corporations Act (Schemes), following which Benitec will become a wholly owned subsidiary of Holdco.</p> <p>D. Benitec and Holdco propose to implement the Schemes on the terms and conditions of this document.</p>
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It is **agreed** as follows.

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ADS means an American Depositary Share representing 200 Benitec Shares, which trade on the Nasdaq under the ticker code "BNTC".

Adviser means, in relation to an entity, its legal, financial and other professional advisers, but excluding the Independent Expert.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

Benitec Group means Benitec and each of its Subsidiaries.

Benitec Released Party means each member of the Benitec Group and their respective Representatives.

Benitec Share means a fully paid ordinary share issued in the capital of Benitec.

Benitec Shareholder means each person who is registered in the Register as a holder of Benitec Shares.

Benitec Warrant means a warrant to acquire an ADS with an exercise price of US\$55.00 per warrant, which trade on the Nasdaq under the ticker code "BNTCW".

Benitec Warrant Holder means each person who is registered in the Warrant Register as a holder of Benitec Warrants.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

Change of Control Requirements has the meaning given to that term in clause 7.2(a).

Claim means a demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent, including any claim for specific performance.

Completion means completion of the implementation of the Schemes on the Implementation Date.

Conditions Precedent means the conditions precedent set out in clauses 3.1 and 3.2.

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

Court means a court of competent jurisdiction under the Corporations Act as agreed between the parties.

Deed Polls means the Share Scheme Deed Poll and the Warrant Scheme Deed Poll.

Effective, when used in relation to a Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means, when used in relation to a Scheme, the date on which the Scheme becomes Effective.

End Date means 5.00 pm on 30 June 2020 or such other date and time agreed in writing between the parties.

First Court Date means the date of the hearing by the Court of the application to order the convening of the Scheme Meetings under section 411(1) of the Corporations Act.

Fractional Holdco Share has the meaning given in clause 4.3(b).

Fractional Holdco Warrant has the meaning given in clause 5.3(b).

Government Agency includes, in any jurisdiction:

- (a) a government or governmental, semi-governmental or judicial entity or authority;

(b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and

(c) any regulatory organisation established under statute,

and includes ASX, ASIC, Nasdaq and the Takeovers Panel.

Holdco Information means the information regarding Holdco as is required to be included in the Scheme Booklet under all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules. Holdco Information does not include information about the Benitec Group (except to the extent it relates to any statement of intention relating to the Benitec Group following the Effective Date).

Holdco Released Party means Holdco and its Representatives.

Holdco Share means a share of voting common stock in Holdco.

Holdco Warrant means a warrant to acquire Holdco Shares, to be issued on materially the same terms as a Benitec Warrant, other than any terms which are required to be adjusted to implement the Schemes, including any adjustments to the exercise price and number of Holdco Shares issued upon exercise as a result of the consolidation under the Share Scheme.

Implementation Date means the fifth Business Day following the Record Date or such other date as is agreed by the parties.

Independent Expert means the independent expert appointed by Benitec under clause 6.2(b).

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion:

(a) the Share Scheme is in the best interests of Benitec Shareholders; and

(b) the Warrant Scheme is in the best interests of Benitec Warrant Holders.

Ineligible Foreign Shareholder means a Share Scheme Participant whose address, as shown in the Register (as at the Record Date), is in a place outside Australia, New Zealand or the United States, unless Holdco is satisfied, acting reasonably, that the laws of that place permit the offer and issue of Holdco Shares to that Share Scheme Participant and, in Holdco's sole discretion, is not unduly onerous or impracticable for Holdco.

Ineligible Foreign Warrant Holder means a Warrant Scheme Participant whose address, as shown in the Warrant Register (as at the Record Date), is in a place outside Australia, New Zealand or the United States, unless Holdco is satisfied, acting reasonably, that the laws of that place permit the offer and issue of Holdco Warrants to that Warrant Scheme Participant and, in Holdco's sole discretion, is not unduly onerous or impracticable for Holdco.

A person is **Insolvent** if:

(a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or

(c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a

reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or

- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c);
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Listing Rules means the listing rules of ASX as amended from time to time.

Nasdaq means Nasdaq, Inc. or the Nasdaq Capital Market, as the context requires.

Officer means, in relation to an entity, its directors, officers and employees.

Record Date means 7.00 pm on the fifth Business Day after the Effective Date.

Register means the register of shareholders of Benitec maintained by or on behalf of Benitec.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Representative means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of the Officers and Advisers of the entity or any of its Related Bodies Corporate.

Sale Agent means the person appointed by Benitec to sell:

- (a) the Holdco Shares that are attributable to Ineligible Foreign Shareholders, Selling Shareholders and Share Scheme Participants who are entitled to Fractional Holdco Shares as part of their Share Scheme Consideration under the terms of the Share Scheme; and
- (b) the Holdco Warrants that are attributable to Ineligible Foreign Warrant Holders and Warrant Scheme Participants who are entitled to Fractional Holdco Warrants as part of their Warrant Scheme Consideration under the terms of the Warrant Scheme.

Sale Election means an election by a Selling Shareholder who holds less than 50,000 Benitec Shares to have all (but not some) of the Holdco Shares to which the Selling Shareholder is entitled to under the Share Scheme sold by the Sale Agent through the Share Sale Facility by lodging a "Sale Election Form" in accordance with the instructions on that form so that it is received by Benitec before 5.00pm (Melbourne time) on the Record Date.

Schemes means the Share Scheme and Warrant Scheme.

Scheme Booklet means, in respect of the Schemes, the information booklet to be approved by the Court and despatched to Benitec Shareholders and Benitec Warrant Holders which

includes the Schemes, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration means the Share Scheme Consideration and the Warrant Scheme Consideration.

Scheme Meetings means Share Scheme Meeting and the Warrant Scheme Meeting.

Scheme Share means a Benitec Share as at the Record Date.

Scheme Participants means the Share Scheme Participants and the Warrant Scheme Participants.

Scheme Warrant means a Benitec Warrant as at the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Schemes.

Selling Shareholder means a Benitec Shareholder who makes a valid Sale Election.

Share Sale Facility means the facility to be established by Benitec and managed by the Sale Agent under which:

- (a) the Holdco Shares which otherwise would be received by Ineligible Foreign Shareholders and Selling Shareholders; and
- (b) the aggregate Fractional Holdco Shares,

will be sold in accordance with the Share Scheme and the agreement to be entered into between Benitec and the Sale Agent in relation to the Share Sale Facility.

Share Sale Facility Proceeds means the net cash proceeds from the sale of Holdco Shares sold through the Share Sale Facility, after deducting brokerage and other costs of sale and any taxes which may be required to be withheld under applicable laws.

Share Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all Benitec Shares held by the Share Scheme Participants will be transferred to Holdco substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Share Scheme Consideration means the consideration payable by Holdco for the transfer of Scheme Shares to Holdco, being, being, one Holdco Share for every 300 Scheme Shares held by the Share Scheme Participant.

Share Scheme Deed Poll means a deed poll substantially in the form of Annexure C to this document.

Share Scheme Meeting means the meeting to be convened by the Court at which Benitec Shareholders will vote on the Share Scheme.

Share Scheme Participant means each person who is a Benitec Shareholder as at the Record Date.

Subsidiary has the meaning given to that term in the Corporations Act.

United States means the United States of America.

Warrant Register means the register of holders of Benitec Warrants maintained by or on behalf of Benitec.

Warrant Sale Facility means the facility to be established by Benitec and managed by the Sale Agent under which:

- (a) the Holdco Warrants which otherwise would be received by Ineligible Foreign Warrant Holders; and
- (b) the aggregate Fractional Holdco Warrants,

will be sold in accordance with the Warrant Scheme and the agreement to be entered into between Benitec and the Sale Agent in relation to the Warrant Sale Facility.

Warrant Sale Facility Proceeds means the net cash proceeds from the sale of Holdco Warrants sold through the Warrant Sale Facility, after deducting brokerage and other costs of sale and any taxes which may be required to be withheld under applicable laws.

Warrant Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all Benitec Warrants held by the Warrant Scheme Participants will be transferred to Holdco substantially in the form of Annexure B together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Warrant Scheme Consideration means the consideration payable by Holdco for the transfer of Scheme Warrants, being, in respect of each Scheme Warrant, one Holdco Warrant, subject to any adjustments as a result of the consolidation under the Share Scheme.

Warrant Scheme Deed Poll means a deed poll substantially in the form of Annexure D to this document.

Warrant Scheme Meeting means the meeting to be convened by the Court at which Benitec Warrant Holders will vote on the Warrant Scheme.

Warrant Scheme Participant means each person who is a Benitec Warrant Holder as at the Record Date.

1.2 Interpretation

In this document, the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes other genders;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) a reference to a person includes a natural person, a body corporate, a corporation, a trust, a partnership, an unincorporated association or any other entity;
- (f) a reference to a person includes a reference to the person's successors, administrators, executors, and permitted assigns and substitutes;
- (g) a reference to legislation includes regulations and other instruments issued under it and consolidations, amendments, modifications, re-enactments or replacements of any of them;
- (h) a reference to a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document;

- (i) a reference to a document (including this document) includes any amendment, variation, replacement or novation of it;
- (j) the meaning of general words is not limited by using the words "including", "for example" or similar expressions;
- (k) a reference to dollars, AUD, \$ or A\$ is a reference to the lawful currency of Australia;
- (l) a reference to time is a reference to time in Melbourne, Australia;
- (m) nothing in this document is to be construed to the disadvantage of a party because that party prepared it or any part of it;
- (n) a reference to a day (including a Business Day) means a period of time commencing at midnight and ending 24 hours later;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) a reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:
 - (i) pay money:
 - (A) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (B) in circumstances that are commercially onerous or unreasonable in the context of this document;
 - (ii) provide other valuable consideration to or for the benefit of any person; or
 - (iii) agree to commercially onerous or unreasonable conditions.

2. Agreement to propose and implement Scheme

2.1 Benitec to propose Schemes

Benitec agrees to propose the Schemes on and subject to the terms and conditions of this document.

2.2 Agreement to implement Schemes

The parties agree to implement the Schemes on the terms and conditions of this document.

2.3 Holdco Nominee

- (a) HoldCo may by notice to Benitec before the First Court Date nominate a wholly owned Subsidiary of Holdco (**Nominee**) to be the entity to which the Scheme Shares and Scheme Warrants will be transferred in accordance with this document and the Schemes if the Schemes becomes Effective.
- (b) From the date of receipt of the notice referred to in clause 2.3(a) (**Notification Date**), HoldCo must procure that the Nominee complies with this document (to the extent applicable) as if the Nominee were a party to it.

- (c) Despite the above, Holdco will continue to be bound by all of the obligations of Holdco under this document and will not be released from any obligations or liabilities under this document following the Notification Date. However, HoldCo will not be in breach of this document for failing to discharge an obligation of HoldCo if the Nominee fully discharges that obligation, other than in respect of payment of the Scheme Consideration which remains the obligation of Holdco.

3. Conditions Precedent

3.1 Conditions Precedent to Share Scheme

Subject to this clause, the Share Scheme will not become Effective, and the obligations of Holdco under clause 4.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	(ASIC and ASX) before 8.00am on the Second Court Date, ASIC and ASX issue or provide all reliefs, waivers, confirmations, exemptions, consents or approvals, and have done all other acts, necessary, or which Benitec and Holdco agree are desirable, to implement the Share Scheme and such reliefs, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) have not been withdrawn, suspended or revoked at 8.00am on the Second Court Date.	Both	Both
(b)	(Shareholder approval) Benitec Shareholders approve the Share Scheme by the requisite majorities required under section 411(4)(a)(ii) in accordance with the Corporations Act.	Cannot be waived	Benitec
(c)	(Court approval) the Court approves the Share Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Benitec
(d)	(Regulatory Authority) before 8.00am on the Second Court Date, the approvals of each Regulatory Authority which Benitec and Holdco agree (acting reasonably) are necessary to implement the Share Scheme or conduct the Benitec Group's business on and from Completion, lawfully and in a manner consistent with its conduct prior to the Implementation Date.	Both	Both
(e)	(Independent Expert) the Independent Expert issues a report which concludes that the Share Scheme is in the best interests of Benitec Shareholders on or before the date on which the Scheme Booklet is lodged with ASIC.	Benitec	Benitec

Condition Precedent		Party entitled to benefit	Party responsible
(f)	(Nasdaq approval) Prior to 8.00 am on the Second Court Date, the Holdco Shares have been authorised for listing on Nasdaq, subject to official notice of issuance following the implementation of the Share Scheme and any customary conditions.	Both	Both
(g)	(Regulatory intervention) no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Share Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date.	Both	Both

3.2 Conditions Precedent to Warrant Scheme

Subject to this clause, the Warrant Scheme will not become Effective, and the obligations of Holdco under clause 5.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	(Warrant holder approval) Benitec Warrant Holders approve the Warrant Scheme by the requisite majorities required under section 411(4)(a)(ii) in accordance with the Corporations Act.	Cannot be waived	Benitec
(b)	(Court approval) the Court approves the Warrant Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Benitec
(c)	(Regulatory Authority) before 8.00am on the Second Court Date, the approvals of each Regulatory Authority which Benitec and Holdco agree (acting reasonably) are necessary to implement the Warrant Scheme.	Both	Both
(d)	(Nasdaq approval) Prior to 8.00 am on the Second Court Date, the Holdco Warrants have been authorised for listing on Nasdaq, subject to official notice of issuance following the implementation of the Warrant Scheme and any customary conditions.	Both	Both
(e)	(Independent Expert) the Independent Expert issues a report which concludes that the Warrant Scheme is in the best interests of Benitec Warrant	Benitec	Benitec

Condition Precedent		Party entitled to benefit	Party responsible
	Holders on or before the date on which the Scheme Booklet is lodged with ASIC.		
(f)	(Regulatory intervention) no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Warrant Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date.	Both	Both
(g)	(Share Scheme Court approval) the Court approves the Share Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Benitec

3.3 Reasonable endeavours

Each party agrees to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clauses 3.1 and 3.2):
 - (i) is satisfied as soon as practicable after the date of this document; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

3.4 Waiver of Condition Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clauses 3.1 and 3.2 (except conditions which cannot be waived) and will be effective only to the extent specifically set out in that waiver.
- (b) To be effective any waiver of the breach or non-fulfilment of any condition in clauses 3.1 and 3.2 (except conditions which cannot be waived) must be in writing and a copy of the waiver must be provided to the other parts prior to 8.00 am on the Second Court Date.
- (c) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

- (d) A waiver of any condition in clauses 3.1 or 3.2 precludes the party who has the benefit of the condition from suing the other party for any breach of this document that resulted from any breach or non-fulfilment of the condition.

3.5 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.5(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.6 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) the relevant Scheme has not become Effective by the End Date,

the parties must consult in good faith with a view to determine whether:

- (d) the relevant Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.7 Failure to agree

- (a) If the parties are unable to reach agreement under clause 3.6 within two Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) and:
 - (i) if the relevant Condition Precedent is a Condition Precedent to the Share Scheme:
 - (A) subject to clause 3.7(a)(i)(B), either party may terminate this document (and that termination will be in accordance with clause 9.3); or

- (B) if the relevant Condition Precedent may be waived and exists for the benefit of one party only, that party only may terminate this document (and that termination will be in accordance with clause 9.3),

in each case before 8.00am on the Second Court Date; and

- (ii) if the relevant Condition Precedent is a Condition Precedent to the Warrant Scheme:

- (A) subject to clause 3.7(a)(ii)(B), either party may terminate the obligations in this document relating to the Warrant Scheme (but without prejudice to any obligations which are not specific to the Warrant Scheme); or

- (B) if the relevant Condition Precedent may be waived and exists for the benefit of one party only, that party only may terminate the obligations in this document relating to the Warrant Scheme (but without prejudice to any obligations which are not specific to the Warrant Scheme),

in each case before 8.00am on the Second Court Date.

- (b) A party will not be entitled to exercise the rights under this clause 3.7 if the relevant Condition Precedent has not been satisfied as a result of a breach of this document by that party.

4. Outline of Share Scheme

4.1 Share Scheme

Benitec must propose a scheme of arrangement under which:

- (a) all of the Benitec Shares held by Share Scheme Participants at the Record Date will be transferred to Holdco; and
- (b) each Share Scheme Participant will be entitled to receive the Share Scheme Consideration.

4.2 Share Scheme Consideration

Subject to and in accordance with this document and the Share Scheme, each Share Scheme Participant is entitled to receive the Share Scheme Consideration in respect of each Benitec Share held by that Share Scheme Participant.

4.3 Provision of Share Scheme Consideration

- (a) Subject to this document and the Share Scheme, Holdco undertakes to Benitec that, in consideration of the transfer to Holdco of each Benitec Share held by a Share Scheme Participant, Holdco will, on the Implementation Date:
 - (i) accept that transfer; and
 - (ii) provide the Share Scheme Consideration in accordance with the Share Scheme.
- (b) Where a Share Scheme Participant would otherwise be entitled to a fraction of a Holdco Share as part of its Share Scheme Consideration (**Fractional Holdco Share**) the entitlement will be aggregated with all other Fractional Holdco Shares and issued to the Sale Agent and sold in accordance with clause 4.4.

4.4 Share Sale Facility

- (a) Where a Share Scheme Participant is an Ineligible Foreign Shareholder, a Selling Shareholder or is entitled to a Fractional Holdco Share, the number of Holdco Shares or Fractional Holdco Shares to which that Share Scheme Participant would otherwise have been entitled to under the Share Scheme will be issued to the Sale Agent and sold under the Share Sale Facility. If the number of Fractional Holdco Shares is, in aggregate, not a whole number, then the nearest whole number of aggregate Fractional Holdco Shares will be issued to the Sale Agent.
- (b) Benitec will procure that, after the Implementation Date, the Sale Agent:
 - (i) sells on Nasdaq all of the Holdco Shares issued to the Sale Agent in accordance with clause 4.4(a) in such manner, at such price and on such other terms as the Sale Agent determines in good faith, and at the risk of the Ineligible Foreign Shareholders, Selling Shareholders or the Share Scheme Participants who are otherwise entitled to Fractional Holdco Shares (as applicable); and
 - (ii) remits the Share Sale Facility Proceeds to each Ineligible Foreign Shareholder, Selling Shareholder or Share Scheme Participant who is otherwise entitled to a Fractional Holdco Share (as applicable) in the amount to which they are entitled, calculated on a volume weighted average basis so that all Ineligible Foreign Shareholders, Selling Shareholders and Share Scheme Participants who are entitled to Fractional Holdco Shares receive the same price (or part thereof) for each whole Holdco Share sold.

5. Outline of Warrant Scheme

5.1 Warrant Scheme

Benitec must propose a scheme of arrangement under which:

- (a) all of the Benitec Warrants held by Warrant Scheme Participants at the Record Date will be transferred to Holdco; and
- (b) each Warrant Scheme Participant will be entitled to receive the Warrant Scheme Consideration.

5.2 Warrant Scheme Consideration

Subject to and in accordance with this document and the Warrant Scheme, each Warrant Scheme Participant is entitled to receive the Warrant Scheme Consideration in respect of each Benitec Warrant held by that Warrant Scheme Participant.

5.3 Provision of Warrant Scheme Consideration

- (a) Subject to this document and the Warrant Scheme, Holdco undertakes to Benitec that, in consideration of the transfer to Holdco of each Benitec Warrant held by a Warrant Scheme Participant, Holdco will, on the Implementation Date:
 - (i) accept that transfer; and
 - (ii) provide the Warrant Scheme Consideration in accordance with the Warrant Scheme.
- (b) Where a Warrant Scheme Participant would otherwise be entitled to a fraction of a Holdco Warrant as part of its Warrant Scheme Consideration (**Fractional Holdco**

Warrant), the entitlement will be aggregated with all other Fractional Holdco Warrants and issued to the Sale Agent and sold in accordance with clause 5.4.

5.4 Warrant Sale Facility

- (a) Where a Warrant Scheme Participant is an Ineligible Foreign Warrant Holder or is entitled to a Fractional Holdco Warrant, the number of Holdco Warrants or Fractional Holdco Warrants to which that Warrant Scheme Participant would otherwise have been entitled to under the Warrant Scheme will be issued to the Sale Agent and sold under the Warrant Sale Facility. If the number of Fractional Holdco Warrants is, in aggregate, not a whole number, then the nearest whole number of aggregate Fractional Holdco Warrants will be issued to the Sale Agent.
- (b) Benitec will procure that, after the Implementation Date, the Sale Agent:
 - (i) sells on Nasdaq all of the Holdco Warrants issued to the Sale Agent in accordance with clause 5.4(a) in such manner, at such price and on such other terms as the Sale Agent determines in good faith, and at the risk of the Ineligible Foreign Warrant Holders or the Warrant Scheme Participants who are otherwise entitled to Fractional Holdco Warrants (as applicable); and
 - (ii) remits the Warrant Sale Facility Proceeds to each Ineligible Foreign Warrant Holder or Warrant Scheme Participant who is otherwise entitled to a Fractional Holdco Warrant (as applicable) in the amount to which they are entitled, calculated on a volume weighted average basis so that all Ineligible Foreign Warrant Holders and Warrant Scheme Participants who are entitled to Fractional Holdco Warrants receive the same price (or part thereof) for each whole Holdco Warrant sold.

6. Implementation of the Schemes

6.1 General obligations

Benitec and Holdco must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Schemes as soon as reasonably practicable and in accordance with the timetable agreed between the parties.

6.2 Benitec's obligations – general

Benitec must take all reasonable steps to implement each of the Schemes on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Scheme Booklet)** prepare and despatch to Benitec Shareholders a Scheme Booklet which complies with all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report;

- (c) **(section 411(17)(b) statement)** apply to ASIC for the production of:
 - (i) a letter stating that it does not intend to appear at the First Court Date; and
 - (ii) a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Schemes;
- (d) **(Consult with Holdco)** provide Holdco with drafts of the Scheme Booklet, consult with Holdco in relation to the content and presentation of the Scheme Booklet and give Holdco and its Representatives a reasonable opportunity to provide input about the content and presentation of the Scheme Booklet, and obtain Holdco's consent to include the Holdco Information in the form and context in which it appears;
- (e) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Benitec to convene the Scheme Meetings;
- (f) **(Registration)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Schemes in accordance with section 412(6) of the Corporations Act;
- (g) **(Benitec new information)** provide to Benitec Shareholders any further or new information which arises after the despatch of the Scheme Booklet and prior to the Scheme Meeting which is necessary to ensure that the information contained in the Scheme Booklet is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) **(Scheme Meetings)** convene the Scheme Meetings to approve the Schemes in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (i) **(lodge copy of Court orders)** lodge with ASIC an office copy of the Court order approving each of the Schemes in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by Holdco);
- (j) **(listing)** take all reasonable steps to maintain Benitec's listing on ASX, notwithstanding any suspension of the quotation of Benitec Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC; and
- (k) **(other steps)** do all other things necessary to give effect to each of the Schemes and the orders of the Court approving the Schemes.

6.3 Benitec's obligations – Share Scheme

In addition to the obligations in clause 6.2, Benitec must take all reasonable steps to implement the Share Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Court approval)** subject to all Conditions Precedent in clause 3.1 (other than paragraph (c)) being satisfied or waived in accordance with this document, apply to the Court for an order approving the Share Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (b) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
 - (i) a certificate confirming (in respect of matters within Benitec's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted

in clauses 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3; and

- (ii) any certificate provided to it by Holdco under clause 6.5(f);
- (c) **(Register)** close the Register as at the Record Date to determine the identity of Share Scheme Participant and their entitlements to Share Scheme Consideration;
- (d) **(instruments of transfer)** subject to Holdco satisfying its obligations under clause 4.3, on the Implementation Date:
 - (i) execute proper instruments of transfer and effect the transfer of all Scheme Shares to Holdco in accordance with the Share Scheme; and
 - (ii) register all transfers of Scheme Shares to Holdco; and
- (e) **(Suspension of trading)** apply to ASX to suspend trading in Benitec Shares with effect from the close of trading on the Effective Date.

6.4 Benitec's obligations – Warrant Scheme

In addition to the obligations in clause 6.2, Benitec must take all reasonable steps to implement the Warrant Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Court approval)** subject to all Conditions Precedent in clause 3.2 (other than paragraph (b)) being satisfied or waived in accordance with this document, apply to the Court for an order approving the Warrant Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (b) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
 - (i) a certificate confirming (in respect of matters within Benitec's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.2 (other than paragraph (b)), have been satisfied or waived in accordance with clause 3; and
 - (ii) any certificate provided to it by Holdco under clause 6.5(f);
- (c) **(Warrant Register)** close the Warrant Register as at the Record Date to determine the identity of Warrant Scheme Participant and their entitlements to Warrant Scheme Consideration; and
- (d) **(instruments of transfer)** subject to Holdco satisfying its obligations under clause 4.3, on the Implementation Date:
 - (i) execute proper instruments of transfer and effect the transfer of all Scheme Warrants to Holdco in accordance with the Warrant Scheme; and
 - (ii) register all transfers of Scheme Warrants to Holdco; and
- (e) **(Suspension of trading)** apply to Nasdaq to suspend trading in Benitec Warrants with effect from the close of trading on the Effective Date.

6.5 Holdco's obligations

Holdco must take all reasonable steps to assist Benitec to implement each of the Schemes on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Holdco Information):**
 - (i) prepare and promptly provide to Benitec for inclusion in the Scheme Booklet the Holdco Information (in accordance with all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet; and
 - (ii) provide Benitec with drafts of the Holdco Information in a timely manner and, acting reasonably in good faith and take into account all reasonable comments from Benitec and its Representatives on those drafts;
- (b) **(Accuracy of Holdco Information)** before the despatch of the Scheme Booklet to Benitec Shareholders and Benitec Warrant Holders, verify to Benitec the accuracy of the Holdco Information contained in the Scheme Booklet, and consent to the inclusion of that information in the form and context in which it appears in the Scheme Booklet, in each case subject to Holdco being reasonably satisfied as to those matters;
- (c) **(Holdco new information)** provide to Benitec further or new information about Holdco which arises after the despatch of the Scheme Booklet to Benitec Shareholders and Benitec Warrant Holders and prior to the Scheme Meetings which is necessary or reasonably required by Benitec to ensure that the Holdco Information disclosed to Benitec Shareholders and Benitec Warrant Holders is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (d) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(Deed Polls)** prior to the Scheme Booklet being sent, sign and deliver to Benitec the Deed Polls;
- (f) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Benitec for provision to the Court at the hearing on that date a certificate confirming (in respect of matters within Holdco's knowledge) whether or not the Conditions Precedent for which Holdco is responsible, as noted in clauses 3.1 (other than paragraph (c)) and 3.2 (other than paragraph (b)), have been satisfied or waived in accordance with clause 3;
- (g) **(Share transfer)** if:
 - (i) the Share Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.3(a)(i) and execute (or procure the execution of) proper instruments of transfer of the Scheme Shares to Holdco in accordance with the Share Scheme; and
 - (ii) the Warrant Scheme becomes Effective, accept a transfer of the Scheme Warrants as contemplated by clause 5.3(a)(i) and execute (or procure the execution of) proper instruments of transfer of the Scheme Warrants to Holdco in accordance with the Warrant Scheme;
- (h) **(Scheme Consideration)** if:

- (i) the Share Scheme becomes Effective, provide or procure the provision of the Share Scheme Consideration in the manner contemplated by the terms of the Share Scheme; and
- (ii) the Warrant Scheme becomes Effective, provide or procure the provision of the Warrant Scheme Consideration in the manner contemplated by the terms of the Warrant Scheme; and
- (i) **(other steps)** do all other things reasonably necessary to ensure that each of the Schemes are effected in accordance with all applicable laws, regulations and policy.

6.6 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) Benitec has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Holdco Information, the Independent Expert's Report or any other report or letter issued to Benitec by a third party; and
- (b) Holdco has prepared, and is responsible for, the Holdco Information in the Scheme Booklet (and no other part of the Scheme Booklet).

6.7 Verification

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

7. Conduct of business

7.1 Specified obligations of Benitec

- (a) During the period between the date of this document and the earliest of:
 - (i) the Implementation Date;
 - (ii) the date this document is terminated in accordance with its terms; and
 - (iii) the End Date,

Benitec must, and must ensure that its Subsidiaries, conduct their businesses in the ordinary and proper course of business.
- (b) Any restriction on conduct which is imposed in clause 7 does not apply to the extent that:
 - (i) the conduct is required to be undertaken by Benitec or its Subsidiary (as the case may be) in connection with each of the Schemes or this document; or
 - (ii) the conduct is approved by Holdco.

7.2 Change of control

As soon as practicable after the date of this document, the parties must:

- (a) seek to identify any change of control or similar provisions in material contracts, joint venture documentation and leases to which a member of the Benitec Group is a party

which may be triggered by the implementation of each of the Schemes ("**Change of Control Requirements**"); and

- (b) unless otherwise agreed between Benitec and Holdco, use all reasonable endeavours to obtain any material consents required in accordance with the terms of any identified Change of Control Requirements as soon as practicable and in any event before 8.00am on the Second Court Date.

8. Warranties

8.1 Benitec warranties

Benitec represents and warrants to Holdco at the date of this document and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** other than any:
 - (i) regulatory approval required in connection with each of the Schemes or any aspect of it;
 - (ii) matter which is the subject of a Condition Precedent; or
 - (iii) Change of Control Requirements,it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(insolvency)** no member of the Benitec Group is Insolvent.

8.2 Holdco Warranties

Holdco represents and warrants to Benitec at the date of this document and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;

- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(insolvency)** Holdco is not Insolvent.

8.3 Nature of warranties

Each representation and warranty in clauses 8.1 and 8.2:

- (a) is severable;
- (b) will survive termination of this document; and
- (c) is given with the intent that liability under it is not confined to breaches which are discovered before the date of termination of this document.

8.4 No other warranties or reliance

- (a) Each party acknowledges that no other party (nor any person acting on that other party's behalf) has made any warranty, representation or other inducement to it to enter into this document, except for the representations and warranties expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any warranty, representation or other inducement by or on behalf of any other party, except for any warranty or representation expressly set out in this document.

8.5 Release

- (a) Each party:
 - (i) releases its rights against, and will not make any Claim against, any past or present Representative of any other party in relation to anything done or purported to be done in connection with each of the Schemes, any transaction contemplated by or warranty given in this document, any information provided to it by another party or in relation to its execution or delivery of this document to the extent that the past or present Representative has acted in good faith and has not engaged in any wilful misconduct; and
 - (ii) holds the releases in clause 8.5(a)(i) in respect of its past and present Representatives as trustee for those Representatives.
- (b) Nothing in clause 8.5(a)(i) excludes any liability that may arise from wilful misconduct or bad faith on the part of any person.

8.6 Directors' and officers' insurance

Subject to the Share Scheme becoming Effective and subject to the Corporations Act, Holdco undertakes in favour of Benitec and each other person who is an Officer of a member of the Benitec Group that it will:

- (a) for a period of 7 years from the Implementation Date, ensure that the constitutions of Benitec and each other member of the Benitec Group are on materially no less favourable terms overall as are contained in those constitutions as at the date of this document that provide for each company to indemnify each of its Officers against any liability incurred by that person in his or her capacity as an Officer of the company to any person other than a member of the Benitec Group; and
- (b) procure that Benitec and each other member of the Benitec Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective Officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those Officers is maintained, for a period of 7 years from the retirement date of each Officer.

8.7 Period of undertaking

The undertakings contained in clause 8.6 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Benitec Group ceasing to be a Subsidiary of Holdco.

8.8 Benefit of undertaking for Benitec Group

Benitec acknowledges that it receives and holds the benefit of clause 8.6 to the extent it relates to each Officer of a member of the Benitec Group on behalf of each of them.

9. Termination

9.1 Termination for breach

Without prejudice to any other rights of termination under this document, either party may terminate this document by giving the other party written notice at any time before 8.00 am on the Second Court Date if:

- (a) the other party is in material breach of any term of this document, or there has been a material breach of a representation or warranty given by the other party under clauses 8.1 or 8.2 (as applicable) on or before the Second Court Date;
- (b) the party wishing to terminate this document has given the other party a written notice setting out details of the breach and stating its intention to terminate this document; and
- (c) the breach is not capable of remedy or has not been remedied 10 Business Days (or any shorter period ending immediately before 8.00 am on the Second Court Date) from the date the notice under clause 9.1(b) is given.

9.2 Mutual termination

This document is terminable if agreed to in writing by Holdco and Benitec.

9.3 Effect of termination

- (a) if either Benitec or Holdco terminates this document under clauses 3.7, 9.1 or 9.2, this document and the parties' obligations under it cease, other than obligations under

this clause and clauses 1, 8.1, 8.2, 8.3, 8.4, 8.5, 10, 11 and 13 which will survive termination.

- (b) Termination of this document under clauses 3.7, 9.1 or 9.2 does not affect any accrued rights of a party in respect of a breach of this document prior to termination.

10. Costs and stamp duty

10.1 Costs

Subject to clause 10.2, each party must bear its own costs and expenses (including professional fees and stamp duty) incurred by it in connection with the negotiation, preparation and execution of this document and the implementation or attempted implementation of each of the Schemes.

10.2 Stamp duty

Holdco must pay all stamp duty and any related fines or penalties in respect of this document, the Deed Poll and the acquisition of the Scheme Shares and Scheme Warrants in accordance with each of the Schemes and indemnify Benitec against any liability arising from failure to comply with this clause 10.2.

11. GST

11.1 Definitions and interpretation

For the purposes of this clause:

- (a) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

11.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

11.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

11.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

11.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 11.3 will apply to the reduced payment.

12. Notices

12.1 How to give a Notice

Any notice, demand, consent, waiver, approval or other communication (a **Notice**) given or made under or in connection with this document:

- (a) must be in legible writing and in English;
- (b) must be signed by the sender or a person duly authorised by the sender; and
- (c) must be delivered to the intended recipient by hand, email or prepaid post (airmail if applicable) to the address or email address below or the address or email address last notified in writing by the intended recipient to the sender:

Benitec	Address:	Level 14, 114 William Street, Melbourne, Victoria 3000
	Email:	mboston@benitec.com
	Attention:	Mrs Megan Boston

Holdco	Address:	Level 14, 114 William Street, Melbourne, Victoria 3000
	Email:	jbanks@benitec.com
	Attention:	Mr Jerel Banks

12.2 When effective

A Notice will be effective upon receipt and will be taken to be received:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting (or seven Business Days after the date of posting if sent from one country to another); and
- (c) in the case of email, the earlier of:
 - (i) at the time the sender receives an automated message confirming delivery;
 - (ii) at the time the intended recipient confirms delivery by reply email; and

- (iii) one hour after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated delivery failure notification indicating that the email has not been delivered,

but if the result is that a Notice is received or taken to be received outside the period between 9.00am and 5.00pm on a Business Day in the place of the addressee's postal address for Notices, then the Notice will be taken to be received at 9.00am on the following Business Day in that place.

13. General

13.1 Amendment

This document can only be amended or replaced by another document signed by or on behalf of each of the parties.

13.2 Assignment

A party may not assign, encumber, declare a trust over or otherwise deal with its rights or obligations under this document, or attempt or purport to do so, without the prior written consent of each other party.

13.3 Further assurances

Each party must do, and procure that its employees and agents promptly do, all things necessary, including executing agreements and documents, to give full effect to this document and the transactions contemplated by it.

13.4 Waivers, rights and remedies

- (a) No failure to exercise or a delay in exercising any right, power or remedy under this document fully or at a particular time will affect that right, power or remedy or operate as a waiver.
- (b) The single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on a party granting a waiver unless it is made in writing and signed by the party giving it.
- (d) A party may exercise right, power or remedy or give or refuse to its consent, waiver or approval in its absolute discretion (including by imposing conditions), unless this document specifies otherwise.
- (e) Except as provided in this document and permitted by law or equity, the rights, powers and remedies provided in this document are cumulative with and not exclusive to the rights, powers and remedies provided by law or equity independently of this document.

13.5 Severability

Any provision of this document which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this document nor affect the validity or enforceability of that provision in any other jurisdiction.

13.6 Entire agreement

To the extent permitted by law, in relation to the subject matter of this document, this document:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

13.7 No merger

The rights and obligations of the parties do not merge on Completion of any transaction contemplated under this document. They survive the execution and delivery of any assignment or other document entered into to implement any transaction contemplated under this document.

13.8 Indemnities

The indemnities in this document are continuing obligations, independent from the other obligations of the parties under this document and continue after this document ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.

13.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document.

13.10 Governing law

- (a) This document is governed by the laws of Victoria.
- (b) Each party irrevocably and unconditionally:
 - (i) submits to the exclusive jurisdiction of the courts of Victoria; and
 - (ii) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

13.11 Counterparts

This document may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Signing page

Executed as an agreement.

Executed by **Benitec Biopharma Limited ACN 068 943 662** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

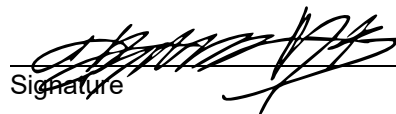
Megan Boston
Name of Director



Signature of ~~Director~~/Secretary

Oliver Kidd
Name of ~~Director~~/Secretary

Executed by **Benitec Biopharma Inc.** by an authorised officer:



Signature

Jerel A. Banks, M.D., Ph.D.
Name

President
Position

Annexure A – Share Scheme



Scheme of Arrangement – Share Scheme

Benitec Biopharma Limited

The holders of fully paid ordinary shares in Benitec Biopharma Limited as at the Record Date

Jones Day
Riverside Centre, Level 31
123 Eagle Street
Brisbane QLD 4000, Australia
Tel: 61 7 3085 7000
Fax: 61 7 3085 7099
www.jonesday.com

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Scheme of Arrangement – Share Scheme

Details

Parties

Benitec Benitec Biopharma Limited ACN 068 943 662, an Australian public company incorporated under the laws of Australia of Level 14, 114 William Street, Melbourne, Victoria 3000

Scheme Participants Each person registered as a holder of fully paid ordinary shares in Benitec as at the Record Date

1. Definitions and interpretation

1.1 In this document, unless the context requires otherwise:

ADS means an American Depositary Share representing 200 Benitec Shares, which trade on the Nasdaq under the ticker code “BNTC”.

ASIC means the Australian Securities and Investments Commission.

ASPL means ASX Settlement Pty Ltd (ABN 49 008 504 532).

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

ASX Settlement Rules means the ASX Settlement Operating Rules.

Benitec Share means an issued fully paid ordinary share in Benitec.

Benitec Shareholder means each person who is registered in the Register as a holder of a Benitec Share.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

CHESS means the Clearing House Electronic Subregister System of share transfers operated by ASPL.

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

Court means a court of competent jurisdiction under the Corporations Act as agreed between the parties.

Deed Poll means the deed poll executed by Holdco substantially in the form of Annexure C of the Scheme Implementation Agreement or as otherwise agreed by Benitec and Holdco under which Holdco covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

Effective, when used in relation to a Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 5.00 pm on 30 June 2020 or such other date and time agreed in writing between the parties.

Holdco means Benitec Biopharma Inc.

Holdco Share means a share of voting common stock in Holdco.

Fractional Holdco Share has the meaning given to that term in the Scheme Implementation Agreement.

Implementation Date means the fifth Business Day following the Record Date or such other date as is agreed by the parties.

Ineligible Foreign Shareholder a Scheme Participant whose address, as shown in the Register (as at the Record Date), is in a place outside Australia, New Zealand or the United States, unless Holdco is satisfied, acting reasonably, that the laws of that place permit the offer and issue of Holdco Shares to that Scheme Participant and, in Holdco's sole discretion, is not unduly onerous or impracticable for Holdco.

Nasdaq means Nasdaq, Inc. or the Nasdaq Capital Market, as the context requires.

Sale Agent has the meaning given to that term in the Scheme Implementation Agreement.

Selling Shareholder has the meaning given to that term in the Scheme Implementation Agreement.

Share Sale Facility has the meaning given to that term in the Scheme Implementation Agreement.

Share Sale Facility Proceeds has the meaning given to that term in the Scheme Implementation Agreement.

Record Date means 7.00 pm on the fifth Business Day after the Effective Date.

Register means the register of shareholders of Benitec.

Scheme means this scheme of arrangement between Benitec and the Scheme Participants under which all of the Scheme Shares will be transferred to Holdco under Part 5.1 of the Corporations Act as described in this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Benitec and Holdco in accordance with clause 8.6.

Scheme Consideration means the consideration payable by Holdco for the transfer of Scheme Shares to Holdco under the terms of this Scheme, being, one Holdco Share for every 300 Scheme Shares held by the Scheme Participant.

Scheme Implementation Agreement means the scheme implementation agreement dated 27 November 2019 between Benitec and Holdco.

Scheme Meeting means the meeting of Benitec Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme.

Scheme Share means a Benitec Share held by a Scheme Participant as at the Record Date.

Second Court Date means the first day on which the Court hears the application for the order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme, or if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application is heard.

1.2 Interpretation

In this document:

- (a) unless the context requires otherwise, a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document or instrument is a reference to that document or instrument as amended, consolidated, supplemented, novated or replaced;
 - (iv) to a clause, paragraph, Schedule or Annexure is to a clause, paragraph, Schedule or Annexure of or to this document;
 - (v) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
 - (vi) to any time is to Melbourne, Australia time;
 - (vii) to "\$" is to the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect interpretation of this document;
- (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

2. Preliminary

2.1 Benitec

- (a) Benitec is:
 - (i) a public company limited by shares;
 - (ii) incorporated in Australia and taken to be registered in Western Australia;
 - (iii) admitted to the official list of ASX and Benitec Shares are quoted on ASX; and

- (iv) admitted to Nasdaq and ADSs and Benitec Warrants are quoted on Nasdaq.
- (b) As at [date], there are [313,029,426] Benitec Shares on issue.

2.2 Holdco

Holdco is a corporation formed under the laws of Delaware, United States of America. Its principal executive office is at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

2.3 Effect of Scheme

If the Scheme becomes Effective:

- (a) Benitec will procure the issue of the Scheme Consideration to Scheme Participants in accordance with the terms of the Scheme; and
- (b) subject to provision of the Scheme Consideration, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Holdco and Benitec will enter Holdco in the Register as the holder of the Scheme Shares.

2.4 Scheme Implementation Agreement

Benitec and Holdco have entered into the Scheme Implementation Agreement which sets out the terms on which Benitec and Holdco have agreed to implement this Scheme.

2.5 Deed Poll

Holdco has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform Holdco's obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3. Conditions precedent

3.1 Conditions precedent to Scheme

The Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement (other than the condition precedent in clause 3.1(c) of the Scheme Implementation Agreement) having been satisfied or (other than the condition precedent in clause 3.1(b) of the Scheme Implementation Agreement, which cannot be waived) waived in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Benitec and Holdco having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme,

and clauses 4, 5, 6 and 7 will not come into effect unless and until each of these conditions precedent has been satisfied.

3.2 Certificate in relation to conditions precedent

- (a) Benitec and Holdco must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 (other than the conditions precedent in clauses 3.1(c) and 3.1(d)) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificate referred to in this clause 3.2 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 (other than the conditions precedent in clauses 3.1(c) and 3.1(d)) have been satisfied or waived as at 8.00am on the Second Court Date.

3.3 Effective Date

Subject to clause 3.4, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.4 End Date

The Scheme will lapse and have no further force or effect if the Effective Date has not occurred on or before the End Date.

4. Implementation of Scheme

4.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 (other than the condition precedent in clause 3.1(d)) are satisfied, Benitec must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Benitec and Holdco agree in writing.

4.2 Transfer of Scheme Shares

- (a) Subject to the Scheme becoming Effective and the provision of the Scheme Consideration in accordance with clause 5.1, on the Implementation Date the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Holdco without the need for any further act by any Scheme Participant by:
 - (i) Benitec delivering to Holdco a duly completed share transfer form executed on behalf of the Scheme Participants (which may be a master share transfer form) to transfer all the Scheme Shares to Holdco;
 - (ii) Holdco duly executing this transfer form and delivering this transfer form to Benitec for registration; and
 - (iii) the extent applicable, Benitec effecting a valid transfer of Scheme Shares under section 1074D of the Corporations Act.
- (b) As soon as practicable after receipt of the transfer form or completion of the transfer procedure, Benitec must enter the name and address of Holdco in the Register as the holder of the Scheme Shares.

- (c) To the extent permitted by law, the Scheme Shares will be transferred to Holdco free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind.

5. Scheme Consideration

5.1 Provision of Scheme Consideration

- (a) Benitec must use its best endeavours to procure that, in consideration for the transfer to Holdco of the Scheme Shares held by each Scheme Participant under the terms of this Scheme, Holdco issues to each Scheme Participant (other than an Ineligible Foreign Shareholder, a Selling Shareholder or a Scheme Participant in respect of their entitlement to a Fractional Holdco Share) the Scheme Consideration.
- (b) Subject to clauses 5.2, 5.3 and 5.4, the transactions which form part of this Scheme will be implemented in the following sequence on the Implementation Date:
 - (i) each Scheme Participant will receive the Scheme Consideration for the Scheme Shares held by that Scheme Participant on the Record Date; and
 - (ii) in exchange, all Scheme Shares will be transferred to Holdco.

5.2 Share Sale Facility

- (a) Where a Scheme Participant is an Ineligible Foreign Shareholder, a Selling Shareholder or is entitled to a Fractional Holdco Share, the number of Holdco Shares or Fractional Holdco Shares to which that Scheme Participant would otherwise have been entitled to under this Scheme will be issued to the Sale Agent and sold under the Share Sale Facility. If the number of Fractional Holdco Shares is, in aggregate, not a whole number, then the nearest whole number of aggregate Fractional Holdco Shares will be issued to the Sale Agent.
- (b) Benitec will procure that, after the Implementation Date, the Sale Agent:
 - (i) sells on Nasdaq all of the Holdco Shares issued to the Sale Agent in accordance with clause 5.2(a) in such manner, at such price and on such other terms as the Sale Agent determines in good faith, and at the risk of the Ineligible Foreign Shareholders, Selling Shareholders or the Scheme Participants who are otherwise entitled to Fractional Holdco Shares (as applicable); and
 - (ii) remits the Share Sale Facility Proceeds to each Ineligible Foreign Shareholder, Selling Shareholder or Scheme Participant who is otherwise entitled to a Fractional Holdco Share (as applicable) in the amount to which they are entitled, calculated on a volume weighted average basis so that all Ineligible Foreign Shareholders, Selling Shareholders and Scheme Participants who are entitled to Fractional Holdco Shares receive the same price (or part thereof) for each whole Holdco Share sold.

5.3 Obligations of Scheme Participants

Each Scheme Participant who will be issued Holdco Shares under the Scheme agrees:

- (a) to become a stockholder of Holdco;
- (b) to have their name and address entered into the register of stockholders maintained by or on behalf of Holdco; and

- (c) to be bound by the certificate of incorporation and by-laws of Holdco in force from time to time in respect of the Holdco Shares.

5.4 Joint holders

In the case of Scheme Shares held in joint names, any Scheme Consideration will be issued to and registered in the names of the joint holders and holding statements or notices confirming the issue of the Scheme Consideration will be forwarded to the holder whose name appears first in the Register as at the Record Date.

6. Determination of Scheme Participants

- (a) Each Scheme Participant will be entitled to participate in the Scheme.
- (b) For the purpose of determining who is a Scheme Participant, dealings in Benitec Shares will only be recognised if:
 - (i) in the case of dealings of the type to be effected by CHESS, the transferee is registered in the Register as the holder of the relevant Benitec Shares by the Record Date; and
 - (ii) in all other cases, share transfer forms in registrable form or transmission applications in respect of those dealings are received by the Benitec or its share registry by the Record Date.

6.2 Benitec's obligation to register

Benitec must register any registrable transfers or transmission applications of the kind referred to in clause 6(b) by the Record Date.

6.3 Transfers after the Record Date

- (a) If the Scheme becomes Effective, a Benitec Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Benitec Shares or any interest in them after the Record Date (other than a transfer to Holdco in accordance with the Scheme and any subsequent transfers by Holdco or its successors in title).
- (b) Benitec will not accept for registration, nor recognise for any purpose, any transfer or transmission application in respect of Benitec Shares received after the Record Date (other than a transfer to Holdco in accordance with the Scheme and any subsequent transfers by Holdco or its successors in title).

6.4 Maintenance of Register

For the purpose of determining entitlements to the Scheme Consideration, Benitec will, until the Scheme Consideration has been issued to Scheme Participants, maintain or procure the maintenance of the Register in accordance with this clause 6. The Register in this form will solely determine entitlements to the Scheme Consideration.

6.5 Effect of certificates and holding statements

- (a) Any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Holdco and its successors in title).
- (b) After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of Holdco or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

6.6 Information to be made available to Holdco

As soon as reasonably practicable after the Record Date and in any event at least two Business Days before the Implementation Date, Benitec will give to Holdco or as it directs or procure that Holdco be given or as it directs, details of the name, address and number of Scheme Shares held by each Scheme Participant as shown in the Register at the Record Date in the form Holdco reasonably requires.

7. Quotation of Benitec Shares

- (a) Benitec will apply to ASX for suspension of trading of Benitec Shares on ASX with effect from the close of trading on the Effective Date.
- (b) Benitec will apply to Nasdaq for suspension of trading of ADS on Nasdaq with effect from the close of trading on the Effective Date.
- (c) If the Scheme has been fully implemented in accordance with its terms, on the date determined by Holdco, Benitec will:
 - (i) apply to ASX for the termination of the official quotation of Benitec Shares on ASX and to have Benitec removed from the official list of ASX; and
 - (ii) apply to Nasdaq for the termination of the quotation of ADS on Nasdaq.

8. General Scheme provisions

8.1 Appointment of Benitec as agent and attorney

- (a) Each Scheme Participant, without the need for any further act, irrevocably appoints Benitec and each of the directors and officers of Benitec (jointly and severally) as its agent and attorney for the purpose of doing all things and executing all deeds, instruments, transfers and other documents that may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it, including but not limited to:
 - (i) enforcing the Deed Poll against Holdco;
 - (ii) in the case of Scheme Shares in a CHESS holding:
 - (A) causing a message to be transmitted to ASPL in accordance with the ASX Settlement Rules to transfer the Scheme Shares held by the Scheme Participant from the CHESS subregister of Benitec to the issuer sponsored subregister operated by Benitec or its share registry at any time after Holdco has issued the Scheme Consideration which is due under this Scheme to Scheme Participants; and
 - (B) completing and signing on behalf of Scheme Participants any required form of transfer of Scheme Shares;
 - (iii) in the case of Scheme Shares registered in the issuer sponsored subregister operated by Benitec or its share registry, completing and signing on behalf of Scheme Participants any required form of transfer; and
 - (iv) in all cases, executing any document or doing any other act necessary or desirable to give full effect to this Scheme and the transactions contemplated by it, including executing a proper instrument of transfer of Scheme Shares for the purposes of section 1071B of the Corporations Act (which may be a master transfer).

- (b) Benitec may sub-delegate its functions, authorities or powers under clause 8.1(a) as agent and attorney of each Scheme Participant to any or all of its directors or officers.

8.2 Agreement by Scheme Participants

Subject to provision of the Scheme Consideration contemplated in clause 5.1, each Scheme Participant agrees to:

- (a) the transfer of its Scheme Shares together with all rights and entitlements attaching to those Scheme Shares to Holdco in accordance with the terms of the Scheme; and
- (b) the variation, cancellation or modification (if any) of the rights attached to its Benitec Shares constituted by or resulting from the Scheme.

8.3 Warranty by Scheme Participants

Each Scheme Participant is deemed to have warranted to Benitec, and is deemed to have authorised Benitec to warrant to Holdco as agent and attorney for the Scheme Participant, that:

- (a) all of its Scheme Shares (including all rights and entitlements attaching to them) transferred to Holdco under the Scheme will, on the date of the transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind; and
- (b) it has full power and capacity to sell and transfer its Scheme Shares (including all rights and entitlements attaching to them) to Holdco.

8.4 Title to Scheme Shares

On and from the Implementation Date, subject to provision of the Scheme Consideration contemplated in clause 5.1, pending registration by Benitec of Holdco in the Register as the holder of the Scheme Shares, Holdco will be beneficially entitled to the Scheme Shares.

8.5 Appointment of Holdco as sole proxy

- (a) On and from the Implementation Date and subject to provision of the Scheme Consideration contemplated in clause 5.1, until registration by Benitec of Holdco in the Register as the holder of the Scheme Shares, each Scheme Participant:
 - (i) without the need for any further act irrevocably appoints Benitec and each of its directors, officers and secretaries (jointly and each of them separately) as its agent and attorney to appoint an officer or agent nominated by Holdco as its sole proxy and where applicable, corporate representative to:
 - (A) attend shareholders' meetings of Benitec;
 - (B) exercise the votes attached to the Scheme Shares registered in the name of the Scheme Participant; and
 - (C) sign any shareholders' resolution of Benitec;
 - (ii) undertakes not to attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than under this clause 8.5;
 - (iii) must take all other actions in the capacity of a registered holder of Scheme Shares as Holdco reasonably directs; and

- (iv) acknowledges and agrees that in exercising the powers referred to in this clause 8.5, Holdco and each of the directors, officers and secretaries of Holdco may act in the best interests of Holdco as the intended registered holder of the Scheme Shares.
- (b) Benitec undertakes in favour of each Scheme Participant that it will appoint the officer or agent nominated by Holdco as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 8.5(a).

8.6 Scheme alterations and conditions

If the Court proposes to approve the Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act, Benitec may, by its counsel or solicitors, and with the consent of Holdco, consent to those alterations or conditions on behalf of all persons concerned, including, for the avoidance of doubt, all Scheme Participants.

8.7 Effect of Scheme

The Scheme binds Benitec and all Scheme Participants (including those who do not attend the Scheme Meeting, do not vote at the meeting or vote against the Scheme) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Benitec.

8.8 No liability when acting in good faith

Neither Benitec nor Holdco, nor any of their respective officers or agents, will be liable to a Benitec Shareholder for anything done or omitted to be done in the performance of the Scheme in good faith.

8.9 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Benitec, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Benitec's registered office or the address of its share registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Benitec Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

8.10 Further assurances

Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Scheme and the transactions contemplated by this Scheme.

8.11 Costs and stamp duty

Holdco will pay all stamp duty (if any) and any related fines, penalties and interest payable on the transfer by Scheme Participants of the Scheme Shares to Holdco.

8.12 Governing law and jurisdiction

This Scheme is governed by the laws of Victoria. Each party irrevocably and unconditionally:

- (a) submits to the exclusive jurisdiction of the courts of Victoria; and

- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Annexure B – Warrant Scheme

Scheme of Arrangement – Warrant Scheme

Benitec Biopharma Limited

The holders of Benitec Warrants as at the Record Date

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Scheme of Arrangement – Warrant Scheme

Details

Parties

Benitec Benitec Biopharma Limited ACN 068 943 662, an Australian public company incorporated under the laws of Australia of Level 14, 114 William Street, Melbourne, Victoria 3000

Scheme Participants Each holder of Benitec Warrants as at the Record Date

1. Definitions and interpretation

1.1 In this document, unless the context requires otherwise:

ADS means an American Depositary Share representing 200 Benitec Shares, which trade on the Nasdaq under the ticker code “BNTC”.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

ASX Settlement Rules means the ASX Settlement Operating Rules.

Benitec Share means a fully paid ordinary share issued in the capital of Benitec.

Benitec Warrant means a warrant to acquire an ADS with an exercise price of US\$55.00 per warrant, which trade on the Nasdaq under the ticker code “BNTCW”.

Benitec Warrant Holder means each person who is registered in the Register as a holder of a Benitec Warrant.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

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

Court means a court of competent jurisdiction under the Corporations Act as agreed between the parties.

Deed Poll means the deed poll executed by Holdco substantially in the form of Annexure D of the Scheme Implementation Agreement or as otherwise agreed by Benitec and Holdco under which Holdco covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

Effective, when used in relation to a Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under

section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 5.00 pm on 30 June 2020 or such other date and time agreed in writing between the parties.

Holdco means Benitec Biopharma Inc.

Holdco Warrant means a warrant to acquire Holdco Shares, to be issued on materially the same terms as a Benitec Warrant, other than any terms which are required to be adjusted to implement this Scheme or the Share Scheme, including any adjustments to the exercise price and number of Holdco Shares issued upon exercise as a result of the consolidation under the Share Scheme.

Fractional Holdco Warrant has the meaning given to that term in the Scheme Implementation Agreement.

Implementation Date means the fifth Business Day following the Record Date or such other date as is agreed by the parties.

Ineligible Foreign Warrant Holder a Scheme Participant whose address, as shown in the Register (as at the Record Date), is in a place outside Australia, New Zealand or the United States, unless Holdco is satisfied, acting reasonably, that the laws of that place permit the offer and issue of Holdco Warrants to that Scheme Participant and, in Holdco's sole discretion, is not unduly onerous or impracticable for Holdco.

Nasdaq means Nasdaq, Inc. or the Nasdaq Capital Market, as the context requires.

Sale Agent has the meaning given to that term in the Scheme Implementation Agreement.

Record Date means 7.00 pm on the fifth Business Day after the Effective Date.

Register means the register of holders of Benitec Warrants maintained by or on behalf of Benitec.

Share Scheme has the meaning given under the Scheme Implementation Agreement.

Scheme means this scheme of arrangement between Benitec and the Scheme Participants under which all of the Scheme Warrants will be transferred to Holdco under Part 5.1 of the Corporations Act as described in this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Benitec and Holdco in accordance with clause 8.6.

Scheme Consideration means the consideration payable by Holdco for the transfer of Scheme Warrants to Holdco under the terms of this Scheme, being, in respect of each Scheme Warrant, one Holdco Warrant, subject to any adjustments as a result of the consolidation under the Share Scheme.

Scheme Implementation Agreement means the scheme implementation agreement dated 27 November 2019 between Benitec and Holdco.

Scheme Meeting means the meeting of Benitec Warrant Holders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme.

Scheme Warrant means a Benitec Warrant held by a Scheme Participant as at the Record Date.

Second Court Date means the first day on which the Court hears the application for the order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme, or if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application is heard.

Warrant Sale Facility has the meaning given to that term in the Scheme Implementation Agreement.

Warrant Sale Facility Proceeds has the meaning given to that term in the Scheme Implementation Agreement.

1.2 Interpretation

In this document:

- (a) unless the context requires otherwise, a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document or instrument is a reference to that document or instrument as amended, consolidated, supplemented, novated or replaced;
 - (iv) to a clause, paragraph, Schedule or Annexure is to a clause, paragraph, Schedule or Annexure of or to this document;
 - (v) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
 - (vi) to any time is to Melbourne, Australia time;
 - (vii) to "\$" is to the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect interpretation of this document;
- (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

2. Preliminary

2.1 Benitec

- (a) Benitec is:
 - (i) a public company limited by shares;
 - (ii) incorporated in Australia and taken to be registered in Western Australia;

- (iii) admitted to the official list of ASX and Benitec Shares are quoted on ASX;
and
 - (iv) admitted to Nasdaq and ADSs and Benitec Warrants are quoted on Nasdaq.
- (b) As at [date], there are [57,500] Benitec Warrants on issue.

2.2 Holdco

Holdco is a corporation formed under the laws of Delaware, United States of America. Its principal executive office is at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

2.3 Effect of Scheme

If the Scheme becomes Effective:

- (a) Benitec will procure the issue of the Scheme Consideration to Scheme Participants in accordance with the terms of the Scheme; and
- (b) subject to provision of the Scheme Consideration, all of the Scheme Warrants, together with all rights and entitlements attaching to the Scheme Warrants at the Implementation Date, will be transferred to Holdco and Benitec will enter Holdco in the Register as the holder of the Scheme Warrants.

2.4 Scheme Implementation Agreement

Benitec and Holdco have entered into the Scheme Implementation Agreement which sets out the terms on which Benitec and Holdco have agreed to implement this Scheme.

2.5 Deed Poll

Holdco has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform Holdco's obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3. Conditions precedent

3.1 Conditions precedent to Scheme

The Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.2 of the Scheme Implementation Agreement (other than the condition precedent in clause 3.2(b) of the Scheme Implementation Agreement) having been satisfied or (other than the condition precedent in clause 3.2(a) of the Scheme Implementation Agreement, which cannot be waived) waived in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Benitec and Holdco having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and

- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme,

and clauses 4, 5, 6 and 7 will not come into effect unless and until each of these conditions precedent has been satisfied.

3.2 Certificate in relation to conditions precedent

- (a) Benitec and Holdco must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 (other than the conditions precedent in clauses 3.1(c) and 3.1(d)) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificate referred to in this clause 3.2 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 (other than the conditions precedent in clauses 3.1(c) and 3.1(d)) have been satisfied or waived as at 8.00am on the Second Court Date.

3.3 Effective Date

Subject to clause 3.4, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.4 End Date

The Scheme will lapse and have no further force or effect if the Effective Date has not occurred on or before the End Date.

4. Implementation of Scheme

4.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 (other than the condition precedent in clause 3.1(d)) are satisfied, Benitec must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Benitec and Holdco agree in writing.

4.2 Transfer of Scheme Warrants

- (a) Subject to the Scheme becoming Effective and the provision of the Scheme Consideration in accordance with clause 5.1, on the Implementation Date the Scheme Warrants, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Holdco without the need for any further act by any Scheme Participant by:
 - (i) Benitec delivering to Holdco a duly completed warrant transfer form executed on behalf of the Scheme Participants (which may be a master warrant transfer form) to transfer all the Scheme Warrants to Holdco; and
 - (ii) Holdco duly executing this transfer form and delivering this transfer form to Benitec for registration.
- (b) As soon as practicable after receipt of the transfer form or completion of the transfer procedure, Benitec must enter the name and address of Holdco in the Register as the holder of the Scheme Warrants.

- (c) To the extent permitted by law, the Scheme Warrants will be transferred to Holdco free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind.

5. Scheme Consideration

5.1 Provision of Scheme Consideration

- (a) Benitec must use its best endeavours to procure that, in consideration for the transfer to Holdco of the Scheme Warrants held by each Scheme Participant under the terms of this Scheme, Holdco issues to each Scheme Participant (other than an Ineligible Foreign Warrant Holder or a Scheme Participant in respect of their entitlement to a Fractional Holdco Warrant) the Scheme Consideration.
- (b) Subject to clauses 5.2, 5.3 and 5.4, the transactions which form part of this Scheme will be implemented in the following sequence on the Implementation Date:
 - (i) each Scheme Participant will receive the Scheme Consideration for the Scheme Warrants held by that Scheme Participant on the Record Date; and
 - (ii) in exchange, all Scheme Warrants will be transferred to Holdco.

5.2 Warrant Sale Facility

- (a) Where a Scheme Participant is an Ineligible Foreign Warrant Holder or is entitled to a Fractional Holdco Warrant, the number of Holdco Warrants or Fractional Holdco Warrants to which that Scheme Participant would otherwise have been entitled to under this Scheme will be issued to the Sale Agent and sold under the Warrant Sale Facility. If the number of Fractional Holdco Warrants is, in aggregate, not a whole number, then the nearest whole number of aggregate Fractional Holdco Warrants will be issued to the Sale Agent.
- (b) Benitec will procure that, after the Implementation Date, the Sale Agent:
 - (i) sells on Nasdaq all of the Holdco Warrants issued to the Sale Agent in accordance with clause 5.2(a) in such manner, at such price and on such other terms as the Sale Agent determines in good faith, and at the risk of the Ineligible Foreign Warrant Holders or the Scheme Participants who are otherwise entitled to Fractional Holdco Warrants (as applicable); and
 - (ii) remits the Warrant Sale Facility Proceeds to each Ineligible Foreign Warrant Holder or Scheme Participant who is otherwise entitled to a Fractional Holdco Warrant (as applicable) in the amount to which they are entitled, calculated on a volume weighted average basis so that all Ineligible Foreign Warrant Holders and Scheme Participants who are entitled to Fractional Holdco Warrants receive the same price (or part thereof) for each whole Holdco Warrant sold.

5.3 Obligations of Scheme Participants

Each Scheme Participant who will be issued Holdco Warrants under the Scheme agrees:

- (a) to become a warrant holder of Holdco; and
- (b) to have their name and address entered into the register of warrant holders maintained by or on behalf of Holdco.

5.4 Joint holders

In the case of Scheme Warrants held in joint names, any Scheme Consideration will be issued to and registered in the names of the joint holders and holding statements or notices confirming the issue of the Scheme Consideration will be forwarded to the holder whose name appears first in the Register as at the Record Date.

6. Determination of Scheme Participants

- (a) Each Scheme Participant will be entitled to participate in the Scheme.
- (b) Benitec will not accept for registration or recognise for any purpose any exercise of Benitec Warrants received after the date which is two Business Days prior to the Record Date and, after such time, the Benitec Warrants shall not be capable of exercise notwithstanding any terms on which such Benitec Warrants were granted.

6.2 Benitec's obligation to register

Benitec must register any registrable transfers or transmission applications of the kind referred to in clause 6(b) by the Record Date.

6.3 Transfers after the Record Date

- (a) If the Scheme becomes Effective, a Benitec Warrant Holder (and any person claiming through that holder) must not exercise, dispose of, or purport or agree to dispose of, any Benitec Warrants or any interest in them after the Record Date (other than a transfer to Holdco in accordance with the Scheme and any subsequent transfers by Holdco or its successors in title).
- (b) Benitec will not accept for registration, nor recognise for any purpose, any exercise, transfer or transmission application in respect of Benitec Warrants received after the Record Date (other than a transfer to Holdco in accordance with the Scheme and any subsequent transfers by Holdco or its successors in title).

6.4 Maintenance of Register

For the purpose of determining entitlements to the Scheme Consideration, Benitec will, until the Scheme Consideration has been issued to Scheme Participants, maintain or procure the maintenance of the Register in accordance with this clause 6. The Register in this form will solely determine entitlements to the Scheme Consideration.

6.5 Effect of certificates and holding statements

- (a) Any statements of holding in respect of Scheme Warrants will cease to have effect after the Record Date as documents of title in respect of those warrants (other than statements of holding in favour of Holdco and its successors in title).
- (b) After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of Holdco or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

6.6 Information to be made available to Holdco

As soon as reasonably practicable after the Record Date and in any event at least two Business Days before the Implementation Date, Benitec will give to Holdco or as it directs or procure that Holdco be given or as it directs, details of the name, address and number of Scheme Warrants held by each Scheme Participant as shown in the Register at the Record Date in the form Holdco reasonably requires.

7. Quotation of Benitec Warrants

- (a) Benitec will apply to Nasdaq for suspension of trading of Benitec Warrants on Nasdaq with effect from the close of trading on the Effective Date.
- (b) If the Scheme has been fully implemented in accordance with its terms, on the date determined by Holdco, Benitec will apply to Nasdaq for the termination of the quotation of Benitec Warrants on Nasdaq.

8. General Scheme provisions

8.1 Appointment of Benitec as agent and attorney

- (a) Each Scheme Participant, without the need for any further act, irrevocably appoints Benitec and each of the directors and officers of Benitec (jointly and severally) as its agent and attorney for the purpose of doing all things and executing all deeds, instruments, transfers and other documents that may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it, including but not limited to:
 - (i) enforcing the Deed Poll against Holdco; and
 - (ii) executing any document necessary or expedient to give effect to this Scheme including any warrant transfer form (which may be a master warrant transfer form).
- (b) Benitec may sub-delegate its functions, authorities or powers under clause 8.1(a) as agent and attorney of each Scheme Participant to any or all of its directors or officers.

8.2 Agreement by Scheme Participants

Subject to provision of the Scheme Consideration contemplated in clause 5.1, each Scheme Participant agrees to:

- (a) the transfer of its Scheme Warrants together with all rights and entitlements attaching to those Scheme Warrants to Holdco in accordance with the terms of the Scheme; and
- (b) the variation, cancellation or modification (if any) of the rights attached to its Benitec Warrants constituted by or resulting from the Scheme.

8.3 Warranty by Scheme Participants

Each Scheme Participant is deemed to have warranted to Benitec, and is deemed to have authorised Benitec to warrant to Holdco as agent and attorney for the Scheme Participant, that:

- (a) all of its Scheme Warrants (including all rights and entitlements attaching to them) transferred to Holdco under the Scheme will, on the date of the transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind; and
- (b) it has full power and capacity to sell and transfer its Scheme Warrants (including all rights and entitlements attaching to them) to Holdco.

8.4 Title to Scheme Warrants

On and from the Implementation Date, subject to provision of the Scheme Consideration contemplated in clause 5.1, pending registration by Benitec of Holdco in the Register as the holder of the Scheme Warrants, Holdco will be beneficially entitled to the Scheme Warrants.

8.5 Scheme alterations and conditions

If the Court proposes to approve the Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act, Benitec may, by its counsel or solicitors, and with the consent of Holdco, consent to those alterations or conditions on behalf of all persons concerned, including, for the avoidance of doubt, all Scheme Participants.

8.6 Effect of Scheme

The Scheme binds Benitec and all Scheme Participants (including those who do not attend the Scheme Meeting, do not vote at the meeting or vote against the Scheme) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Benitec.

8.7 No liability when acting in good faith

Neither Benitec nor Holdco, nor any of their respective officers or agents, will be liable to a Benitec Warrant Holder for anything done or omitted to be done in the performance of the Scheme in good faith.

8.8 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Benitec, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Benitec's registered office.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Benitec Warrant Holder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

8.9 Further assurances

Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Scheme and the transactions contemplated by this Scheme.

8.10 Costs and stamp duty

Holdco will pay all stamp duty (if any) and any related fines, penalties and interest payable on the transfer by Scheme Participants of the Scheme Warrants to Holdco.

8.11 Governing law and jurisdiction

This Scheme is governed by the laws of Victoria. Each party irrevocably and unconditionally:

- (a) submits to the exclusive jurisdiction of the courts of Victoria; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Annexure C – Share Scheme Deed Poll

Deed Poll – Share Scheme

By Benitec Biopharma Inc.

in favour of each Scheme Participant

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Deed Poll – Share Scheme

Date [insert date]

Parties

By: Benitec Biopharma Inc., a corporation formed under the laws of Delaware, United States of America of Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801 (**Holdco**)

in favour of: Each holder of issued fully paid ordinary shares in Benitec Biopharma Limited (ACN 068 943 662) (**Benitec**) as at the Record Date (**Scheme Participant**)

- Recitals**
- A. Benitec and Holdco are parties to a scheme implementation agreement dated 27 November 2019 (**Scheme Implementation Agreement**).
 - B. Holdco is entering into this Deed Poll for the purpose of covenanting in favour of Scheme Participants to perform certain of its obligations under the Scheme Implementation Agreement and certain steps attributed to it under the Scheme, including ensuring that the Scheme Consideration is issued to Scheme Participants.
 - C. The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Holdco in consideration for the Scheme Consideration.
-

1. Operative Provisions

1.1 Definitions and interpretation Definitions

Deed Poll means this deed poll.

Scheme means the scheme of arrangement between Benitec and the Scheme Participants under which all of the Scheme Shares will be transferred to Holdco under Part 5.1 of the Corporations Act as described in the Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Benitec and Holdco in accordance with the Scheme.

1.2 Interpretation

- (a) Words and phrases defined in the Scheme have the same meanings in this Deed Poll unless the context requires otherwise.
- (b) Clause 1.2(a) of the Scheme applies to the interpretation of this Deed Poll except that references to “this document” in that clause are to be read as references to “this Deed Poll”.

2. Nature of Deed Poll

Holdco acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms, even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints Benitec and each of the directors and officers of Benitec (jointly and severally) as its agent and attorney to enforce this Deed Poll against Holdco.

3. Conditions precedent and termination

3.1 Conditions precedent

Holdco's obligations under clause 4 in relation to the Scheme are subject to the Scheme becoming Effective.

3.2 Termination

Holdco's obligations under this Deed Poll will automatically terminate and the terms of this Deed Poll will have no further force or effect if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms prior to the occurrence of the Effective Date for the Scheme; or
- (b) the Scheme does not become Effective on or before the End Date,

unless Holdco and Benitec otherwise agree in writing.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available:

- (a) Holdco is released from its obligations to further perform this Deed Poll, except for any obligations which by their nature survive termination; and
- (b) each Scheme Participant, retains the rights it has against Holdco in respect of any breach of this Deed Poll which occurred before its termination.

4. Provision of Scheme Consideration

Subject to clause 3, Holdco undertakes to each Scheme Participant:

- (a) to issue to each Scheme Participant (or, in accordance with the terms of the Scheme, to the Sale Agent where such Scheme Participant is an Ineligible Foreign Shareholder, Selling Shareholder or has an entitlement to receive a Fractional Holdco Share) the Scheme Consideration;
- (b) that the Holdco Shares to be issued to Scheme Participants in accordance with the terms of the Scheme rank equally in all respects with all other Holdco voting shares of common stock on issue as at the Implementation Date; and
- (c) to undertake all other actions attributed to it under, and otherwise comply with its obligations in, the Scheme as if it were a party to the Scheme,

subject to and in accordance with the provisions of the Scheme.

5. Representations and warranties

Holdco represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this Deed Poll, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Deed Poll do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this Deed Poll, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this Deed Poll are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not insolvent.

6. Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Holdco having fully performed its obligations under this Deed Poll; and
- (b) the termination of this Deed Poll under clause 3.2.

7. Notices

- (a) Any notice or other communication given to Holdco under or in connection with this Deed Poll must be:
 - (i) in legible writing and in English;
 - (ii) addressed to Holdco at the address or email address set out below:

Address:	Level 14, 114 William Street, Melbourne, Victoria 3000
Email:	jbanks@benitec.com
Attention:	Mr Jerel Banks
 - (iii) signed by the sender or a person duly authorised by the sender; and
 - (iv) sent to Holdco by hand, prepaid post (airmail if to or from a place outside Australia) or email.

- (b) Without limiting any other means by which a party may be able to prove that a notice has been received by Holdco, a notice will be considered to have been received:
 - (i) if sent by hand, when left at the address of Holdco;
 - (ii) if sent by pre-paid post, three Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting; or
 - (iii) if sent by email, when the sender receives an automated message confirming delivery or four hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever occurs first,
 - (iv) but if a notice is served by hand, or is received by email, on a day that is not a Business Day, or after 5.00 pm (Holdco's local time) on a Business Day, the notice will be considered to have been received by Holdco at 9.00 am (Holdco's local time) on the next Business Day.

8. General

8.1 Stamp duty

Holdco:

- (a) must pay all stamp duty (if any) and any related fines, penalties and interest in respect of the Scheme and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under this Deed Poll; and
- (b) indemnifies each Scheme Participant on demand against any liability arising from failure to comply with clause 8.1(a).

8.2 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed Poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed Poll.
- (b) No waiver of a breach of any term of this Deed Poll will operate as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.
- (c) Nothing in this Deed Poll obliges a party to exercise a right to waive any conditional term of this Deed Poll that may be in its power.
- (d) A provision of or right under this Deed Poll may not be waived except in writing signed by the person granting the waiver.

8.3 Variation

A provision of this Deed Poll may not be varied unless the variation is agreed to in writing by Holdco and Benitec, and the Court indicates that the variation would not of itself preclude approval of the Scheme. A variation which complies with this clause is effective when Holdco enters into a further deed poll in favour of each Scheme Participant giving effect to the amendment.

8.4 Rights cumulative

The rights, powers and remedies of Holdco and of each Scheme Participant under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.

8.5 Assignment

The rights and obligations of Holdco and of each Scheme Participant under this Deed Poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity.

8.6 Further assurances

Holdco must, at its own expense, whenever requested by Benitec, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Deed Poll and the transactions contemplated by this Deed Poll.

8.7 Governing law and jurisdiction

This Deed Poll is governed by the laws of Victoria.

Holdco irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.

Signing page

Executed as a deed poll.

**Signed, sealed and delivered by Benitec
Biopharma Inc.** by authorised officer, in the
presence of:

Signature of Witness

Signature of Authorised Signatory

Name of Witness

Name of Authorised Signatory

Annexure D – Warrant Scheme Deed Poll

Deed Poll – Warrant Scheme

By Benitec Biopharma Inc.

in favour of each Scheme Participant

Jones Day
Riverside Centre, Level 31
123 Eagle Street
Brisbane QLD 4000, Australia
Tel: 61 7 3085 7000
Fax: 61 7 3085 7099
www.jonesday.com

AUI-930766161v1

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Deed Poll – Warrant Scheme

Date [insert date]

Parties

By: Benitec Biopharma Inc., a corporation formed under the laws of Delaware, United States of America of Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801 (**Holdco**)

in favour of: Each holder of Benitec Warrants as at the Record Date (**Scheme Participant**)

- Recitals**
- A. Benitec Biopharma Limited (ACN 068 943 662) (**Benitec**) and Holdco are parties to a scheme implementation agreement dated 27 November 2019 (**Scheme Implementation Agreement**).
 - B. Holdco is entering into this Deed Poll for the purpose of covenanting in favour of Scheme Participants to perform certain of its obligations under the Scheme Implementation Agreement and certain steps attributed to it under the Scheme, including ensuring that the Scheme Consideration is issued to Scheme Participants.
 - C. The effect of the Scheme will be that the Scheme Warrants, together with all rights and entitlements attaching to them, will be transferred to Holdco in consideration for the Scheme Consideration.
-

1. Operative Provisions

1.1 Definitions and interpretation Definitions

Deed Poll means this deed poll.

Scheme means the scheme of arrangement between Benitec and the Scheme Participants under which all of the Scheme Warrants will be transferred to Holdco under Part 5.1 of the Corporations Act as described in the Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Benitec and Holdco in accordance with the Scheme.

1.2 Interpretation

- (a) Words and phrases defined in the Scheme have the same meanings in this Deed Poll unless the context requires otherwise.
- (b) Clause 1.2(a) of the Scheme applies to the interpretation of this Deed Poll except that references to “this document” in that clause are to be read as references to “this Deed Poll”.

2. Nature of Deed Poll

Holdco acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms, even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints Benitec and each of the directors and officers of Benitec (jointly and severally) as its agent and attorney to enforce this Deed Poll against Holdco.

3. Conditions precedent and termination

3.1 Conditions precedent

Holdco's obligations under clause 4 in relation to the Scheme are subject to the Scheme becoming Effective.

3.2 Termination

Holdco's obligations under this Deed Poll will automatically terminate and the terms of this Deed Poll will have no further force or effect if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms prior to the occurrence of the Effective Date for the Scheme; or
- (b) the Scheme does not become Effective on or before the End Date,

unless Holdco and Benitec otherwise agree in writing.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available:

- (a) Holdco is released from its obligations to further perform this Deed Poll, except for any obligations which by their nature survive termination; and
- (b) each Scheme Participant, retains the rights it has against Holdco in respect of any breach of this Deed Poll which occurred before its termination.

4. Provision of Scheme Consideration

Subject to clause 3, Holdco undertakes to each Scheme Participant:

- (a) to issue to each Scheme Participant (or, in accordance with the terms of the Scheme, to the Sale Agent where such Scheme Participant is an Ineligible Foreign Warrant Holder or has an entitlement to receive a Fractional Holdco Warrant) the Scheme Consideration; and
- (b) to undertake all other actions attributed to it under, and otherwise comply with its obligations in, the Scheme as if it were a party to the Scheme,

subject to and in accordance with the provisions of the Scheme.

5. Representations and warranties

Holdco represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this Deed Poll, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Deed Poll do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this Deed Poll, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this Deed Poll are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not insolvent.

6. Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Holdco having fully performed its obligations under this Deed Poll; and
- (b) the termination of this Deed Poll under clause 3.2.

7. Notices

- (a) Any notice or other communication given to Holdco under or in connection with this Deed Poll must be:
 - (i) in legible writing and in English;
 - (ii) addressed to Holdco at the address or email address set out below:

Address:	Level 14, 114 William Street, Melbourne, Victoria 3000
Email:	jbanks@benitec.com
Attention:	Mr Jerel Banks
 - (iii) signed by the sender or a person duly authorised by the sender; and
 - (iv) sent to Holdco by hand, prepaid post (airmail if to or from a place outside Australia) or email.

- (b) Without limiting any other means by which a party may be able to prove that a notice has been received by Holdco, a notice will be considered to have been received:
 - (i) if sent by hand, when left at the address of Holdco;
 - (ii) if sent by pre-paid post, three Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting; or
 - (iii) if sent by email, when the sender receives an automated message confirming delivery or four hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever occurs first,
 - (iv) but if a notice is served by hand, or is received by email, on a day that is not a Business Day, or after 5.00 pm (Holdco's local time) on a Business Day, the notice will be considered to have been received by Holdco at 9.00 am (Holdco's local time) on the next Business Day.

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Biopharma Inc.** by authorised officer, in the
presence of:

Signature of Witness

Signature of Authorised Signatory

Name of Witness

Name of Authorised Signatory