

**BENITEC LIMITED**  
**(ACN 068 943 662)**

# **RIGHTS ISSUE PROSPECTUS**

A non-renounceable rights issue of 1 New Share for every 3.142 Shares held at 3 cents each together with 1 New Option for every 1 New Share

**THIS PROSPECTUS IS IMPORTANT AND SHOULD BE READ IN ITS ENTIRETY**

If you do not understand the contents of this Prospectus, you should consult your stockbroker, accountant or other professional adviser before making an investment decision.

This Prospectus is dated 1 April 2009. A copy of this Prospectus was lodged with the Australian Securities & Investments Commission (“ASIC”) on that date. Neither ASIC nor its officers take any responsibility for the contents of this Prospectus.

## **CORPORATE DIRECTORY**

### **Directors**

Mr Peter Francis (Chairman, Non-Executive Director)

Ms Sue MacLeman (Managing Director, Chief Executive Officer)

Mr Mel Bridges (Non-Executive Director)

Dr Ken Reed (Non-Executive Director)

### **Secretary**

Mr John Rawling

### **Registered Office**

Level 16, 356 Collins Street

Melbourne, Victoria 3000

### **Share Registry**

Computershare Investor Services Pty Limited

Yarra Falls, 452 Johnston Street, Abbotsford

Victoria 3067

PH: 1300 787 272

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# Important Notices

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## 1. Important Information

This Prospectus is dated 1 April 2009 and was lodged with ASIC on that date. Neither ASIC nor the ASX, nor any of their officers, take any responsibility for the contents of this Prospectus or for the merits of the investment to which this Prospectus relates.

New Shares and New Options issued pursuant to this Prospectus will be issued on the terms and conditions set out in this Prospectus. Investors considering taking up their entitlement under this Prospectus in Benitec should be aware that their investment decision involves specific and general risk factors which are set out in section 2 of this Prospectus.

## 2. Investment Decisions

The information in this Prospectus does not constitute financial product advice. This Prospectus does not take into account the investment objectives, financial situation, tax position and particular needs of individual investors. Investors should obtain their own independent advice and consider the appropriateness of the offer of New Shares and New Options pursuant to this Prospectus having regard to their objectives, financial situation, tax position and needs.

## 3. Future Performance

Except as required by law, and only then to the extent so required, neither Benitec nor any other person warrants the future performance of Benitec, or any return on any investment made pursuant to this Prospectus. An investment in the New Shares and New Options offered by this Prospectus should be considered speculative.

## 4. Continuously Quoted Securities

Benitec's securities are continuously quoted securities within the meaning of the Corporations Act 2001 ("the Corporations Act"). This is a Prospectus for an offer of continuously quoted securities (as defined in the Corporations Act) of Benitec and has been prepared in accordance with section 713 of the Corporations Act. Accordingly, this Prospectus does not contain the same level of disclosure as an initial public offering prospectus.

## 5. Terms of the Rights Issue

Subject to compliance with the Corporations Act, the Listing Rules and any other applicable laws, the Directors reserve the right to withdraw the Rights Issue and Prospectus at any time in their absolute discretion. In either case, the relevant application monies will be refunded (without interest).

## Chairman's Letter

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Dear Shareholders

I am pleased to take this opportunity to update you on the progress of Benitec since our last capital raising in early 2007 and the road the Benitec team see ahead for the Company. The last 24 months have been a challenging but exciting time for Benitec in which a number of significant achievements have been made in stabilising the Company and redirecting its focus and operational model.

Major achievements over the past 24 months include:

- The successful resolution of the Nucleonics litigation in the US Supreme Court with the writ of certiorari being denied.
- Sub-licensee Tacere Therapeutics entering into a \$145M deal with Pfizer Inc to commercialise Tacere's RNA interference (RNAi) – based Hepatitis C virus (HCV) compound TT-033.
- Sub-licensee Tacere partnering with Oncolys BioPharma Inc to form a license agreement to commercialise the same Hepatitis C drug throughout Asia.
- City of Hope project – commencement of human clinical trials and the securing of additional exclusive commercialisation rights.
- Appointment of Scientific Advisory Board.
- Strengthening of the Benitec Board with the appointment of Mel Bridges.

Benitec is continuing its collaboration with the City of Hope Center in California where a HIV/AIDS lymphoma drug candidate is in human trials. This study has been fully enrolled for several months and interim results are encouraging. Papers detailing the progress have been presented by:

- Dr John Rossi at the Cambridge Healthtech Institute's RNAi for Therapeutics Conference in Boston in October 2008;
- Dr Amrita Krishnan at the American Society of Hematology Conference in San Francisco in December 2008; and
- Dr David DiGiusto at the Stem Cell World Congress in Palm Springs in January 2009.

The City of Hope IPCP T cell project has progressed to the point where we expect the filing of the IND in the near future and the commencement of the pilot Phase 1 feasibility trial mid year.

The other key activity for the Company has been ongoing patent prosecution and maintenance. The ongoing patent re-examination in the United States of America has shown some progress. Benitec was notified on 26 March 2009 that the USPTO has issued an Advisory Action indicating that the amendments, arguments and evidence proposed by Benitec and CSIRO will not be entered on procedural grounds. The Advisory Action does not substantively address the extensive arguments presented in support of patentability, does not substantively address evidence in the form of a declaration from a technical expert, and provides no explanation for why the proposed amendments would not place the application in condition for allowance. We believe this to be improper. We intend to seek recourse initially within the USPTO and will receive further advice on other available options before ultimately deciding whether to proceed with an Appeal if necessary.

Benitec and its partner CSIRO are fully committed to this patent and will take this matter to Appeal with the USPTO Board if necessary.

In the foreseeable future, Benitec will continue to focus its resources on exploiting its Gene Silencing intellectual property portfolio through licensing and collaborations. It is also a priority to progress our proprietary projects. We will also continue business development and commercialisation activities.

The business and technical strategy that has been put in place by the Board is designed to deliver a more cost effective operational model.

In January 2009, the Company completed an interim capital raising of \$1 million following the approval of members. This raising was completed at a premium to the current market price in an environment when very few companies have been able to raise capital. This demonstrates the strong level of the commitment to Benitec by our major shareholder.

Following the Annual General Meeting in November 2008, the Company announced the implementation of a broad program of cost reduction initiatives designed to significantly reduce the ongoing cash burn. These steps resulted in a major staff reduction, the suspension of various projects and a change to the Company's office arrangements. These measures were designed to ensure that Benitec is able to maintain sufficient funding to finance its near term key activities including intellectual property prosecution and maintenance of the Benitec fully owned patents and the City of Hope collaboration.

As previously announced Benitec and the Commonwealth Scientific and Research Organisation ("CSIRO") had been in the process or renegotiating aspects of the agreements which govern the current Benitec-CSIRO relationship. In 2007, Benitec approached CSIRO with an equity offer to be provided in exchange for removal of the Capital Growth Agreement and benefit-sharing terms of the Commercial Agreement. At the Annual General Meeting in November 2008, the Company announced it had reached an in-principle agreement with CSIRO. Recently Benitec announced that it had withdrawn from these negotiations. The Board subsequently determined that it is in shareholders' best interests not to pursue this agreement at this time, but rather focus on capital raising and moving the City of Hope stem cell and T cell programs forward and continue to pursue potential collaborations in the areas on infectious diseases and cancer. The Capital Growth Agreement expires in December 2010. CSIRO and Benitec are strong partners with aligned interests and once the financial markets have improved Benitec has indicated that it will revisit negotiations with CSIRO. In the interim, the company will focus on rebuilding shareholder value and, together with CSIRO, continue to prosecute our important intellectual property (IP) assets

We have previously indicated to shareholders that we would need to undertake a further recapitalisation of Benitec to fund ongoing operations and current and future projects. On behalf of the Board of Benitec, I am pleased to offer you an opportunity to participate in a non-renounceable Rights Issue. This Rights Issue gives you the right to acquire one New Share for every 3.142 Shares that you hold at the close of business on 9 April 2009 ("**the Record Date**"). The issue price of the New Shares will be three cents (\$0.03). For every one (1) New Share successfully subscribed for, you will receive one New Option having an exercise price of ten cents (\$0.10) and an expiry date of 8 April 2014. No brokerage or other charges will apply to New Shares acquired through the Rights Issue. Our major shareholder Dr Chris Bremner has indicated to the company that he intends to take up his full entitlement. This continued support for this sophisticated investor is greatly appreciated and provides a lead for other shareholders. The Company is also happy to speak with other shareholders who would like to take up any shortfall in addition to their entitlement. The Company will also be presenting this potential shortfall opportunity to external investors.

The details of the Rights Issue and its effect on Benitec are set out in this Prospectus.

I thank you for your continued support for Benitec.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Francis', with a long horizontal line extending to the right.

Peter Francis  
Non-Executive Chairman

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# 1 Details of the Rights Issue

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## 1.1 Purpose

The purpose of the Rights Issue is to provide working capital for the ongoing funding of Benitec's projects and operations.

## 1.2 The Rights Issue

Benitec offers its Shareholders, as recorded on the share registry records on the Record Date, the right to participate in a non-renounceable rights issue of one New Share held for every 3.142 Shares held at an issue price of three cents (\$0.03) together with one New Option for every New Share successfully subscribed for ("**the Rights Issue**"). Each New Option will have an exercise price of ten cents (\$0.10) and an expiry date of 8 April 2014.

In addition to being able to apply for New Shares in the manner described above, Shareholders also will have the opportunity to apply for New Shares that are not subscribed for under the Rights Issue ("**Shortfall Shares**"). The Shortfall Shares will be issued at the same price and on the same terms as the New Shares (including the right to receive New Options as described above).

Shortfall Shares will only be issued to the extent necessary to make up any shortfall in subscriptions. If Benitec receives applications for Shortfall Shares that would result in the Rights Issue being oversubscribed then it will not accept such oversubscriptions and will reject applications at its absolute discretion. Application monies received but not applied towards subscriptions will be refunded as soon as practicable. No interest will be paid on application monies held and returned. Furthermore, Benitec will not issue Shortfall Shares where to do so would result in a breach of the Corporations Act 2001 or the ASX Listing Rules.

The Rights Issue is non-renounceable. This means the right of each shareholder to subscribe for his or her entitlement pursuant to the Rights Issue may not be transferred to another person. Fractional entitlements will be rounded down.

## 1.3 Funds Raised

The Rights Issue is not underwritten. However our major shareholder Dr Chris Bremner has indicated to the Company that he intends to take up his full entitlement. The continued support from this sophisticated investor is greatly appreciated and provides a lead for other shareholders. The Company is also happy to speak with other shareholders who would like to take up any shortfall in addition to their entitlement. The Company will also be presenting this potential shortfall opportunity to external investors.

If all existing Options capable of being exercised are exercised before the Record Date, the maximum amount raised upon completion of the Rights Issue will be \$3,899,000. If none of the existing Options are exercised before the Record Date, the maximum amount raised upon completion of the Rights Issue will be \$3,000,000.

## 1.4 Use of Funds

The funds raised by the Rights Issue as detailed in Section 1.3 of this Prospectus will be applied towards the costs of the Rights Issue which will approximate \$40,000 and the general working capital requirements of Benitec including:

- (a) Intellectual property prosecution and maintenance including continuing activities associated with the US patent re-examination. Benitec has a substantial patent estate of 98 patents and patent applications in the RNAi area. Benitec will continue to review options for in-licensing and out-licensing of this estate.

- (b) Support of the two City of Hope collaboration programs including the next human trial for the stem cell HIV project and the filing of an IND and commencement of human trials for the T cell HIV project.
- (c) Support of the Benitec proprietary R&D program including further evaluation of the Hepatitis B and cancer projects
- (d) Support of operations and ongoing corporate communication to support business development and licensing activities.

## 1.5 Capital Structure

At the date of this Prospectus the Company has issued 314,199,323 Shares and 99,899,006 Options.

The percentage shareholding in the Company of Shareholders who do not take up all of their rights pursuant to the Rights Issue will be diluted, unless they purchase Shares on ASX. Shareholders who take up all of their rights pursuant to the Rights Issue will not have their percentage shareholding in Benitec diluted by reason of the Rights Issue.

A table setting out details in respect of the Options is set out in Section 1.6. If all 94,132,340 of the Options capable of being exercised are exercised before the Record Date the number of Shares on issue at the Record Date will be 408,331,663 Shares and a total of up to 129,959,154 New Shares will be issued (subject to rounding). In such an instance the total Shares in the issued capital of the Company upon completion of the Rights Issue would be 538,290,817. If none of the existing Options are exercised before the Record Date a total of up to 100,000,000 New Shares will be issued (subject to rounding), and the total Shares in the issued capital of the Company upon completion of the Rights Issue would be 414,199,323.

## 1.6 Options

The Company has the following Options on issue:

<i>Description</i>	<i>Number of Securities (Options)</i>	<i>Expiry Date</i>	<i>Exercise Price</i>
Listed options	56,081,915	3 April 2011	\$0.15
Employee share options plan options	100,000	28 July 2009	\$0.500
Employee share options plan options	100,000	28 July 2009	\$1.000
Employee share options plan options	150,000	28 July 2009	\$1.500
Employee share options plan options	150,000	28 July 2009	\$2.000
Employee share options plan options	3,000,000	4 September 2011	\$0.0224
Employee share options plan options	1,000,000	14 December 2011	\$0.0599
Employee share options plan options	1,000,000	8 October 2012	\$0.114
Employee share options plan options	4,666,666	31 December 2012	\$0.131
Employee share options plan options	3,325,000	31 December 2013	\$0.115
Unlisted Options	17,560	30 September 2013	\$0.030
Unlisted Options	1,953,125	23 October 2015	\$0.17
Unlisted options	22,244,444	31 December 2012	\$0.10
Ex Strategic Advisor Warrants	6,126,962	4 August 2014	\$0.900
<b>Total Options</b>	<b>99,899,006*</b>		

\*Depending on the number of existing Options that are exercised before the Record Date between up to 100,000,000 and up to 129,959,154 New Options will be issued pursuant to the Rights Issue.

## 1.7 Indicative Timetable

Lodgement of Appendix 3B at ASX; and despatch letter to Option Holders	Wednesday 1 April 2009
Lodgement of Prospectus at ASIC	Wednesday 1 April 2009
Despatch of Notice to shareholders containing the information in Appendix 3B	Thursday 2 April 2009
Securities quoted on 'ex' basis	Friday 3 April 2009
Record Date for determining Entitlements under the Rights Issue	Thursday 9 April 2009
Despatch of Prospectus to shareholders and announce despatch to ASX	Tuesday 14 April 2009
Closing Date for acceptances of New Shares	Wednesday 29 April 2009
Securities quoted on a deferred settlement basis	Thursday 30 April 2009
Notify ASX of under subscriptions	Monday 4 May 2009
Despatch Date	Thursday 7 May 2009

**These dates are indicative only and may be subject to change. Subject to the Corporations Act, the Listing Rules and other applicable laws, the Directors reserve the right to vary the dates, including to extend the Rights Issue or accept late applications (either generally or in particular cases), without prior notice. You are encouraged to submit your Entitlement and Acceptance Form as soon as possible. The commencement of trading in the New Shares and New Options is subject to ASX confirmation.**

## 1.8 Choices Available

Shareholders may either:

- exercise their rights to participate in the Rights Issue in part or in full; or
- exercise their rights to participate in the Rights Issue in full and subscribe for Shortfall Shares; or
- take no action under this Rights Issue.

All acceptances for New Shares, Shortfall Shares and New Options offered under this Prospectus must be made on the personalised Entitlement and Acceptance Form accompanying this Prospectus in accordance with instructions set out in the form. A Shareholder may only make an application for Shortfall Shares if the Shareholder applies for their maximum entitlement of New Shares under the Rights Issue.

Payment must be made by cheque or by electronic funds transfer. Cheques should be made payable to "Benitec Limited - Share Application A/C" and crossed "Not Negotiable". Shareholders wishing to pay by electronic funds transfer should follow the procedure set out in the personalised Entitlement and Acceptance Form.

All payments must be in Australian currency. The amount payable on application will be deemed not to have been received until Benitec's receipt of clear funds.

Completed Entitlement and Acceptance Forms (and, if paying by cheque a cheque for the application monies) must be mailed to the postal address, or delivered by hand to the delivery address set out below:

**POSTAL DELIVERY**

**ComputerShare Investor Services Pty Limited**  
GPO Box 505  
Melbourne, Vic, 8060, Australia

**HAND DELIVERY**

**ComputerShare Investor Services Pty Limited**  
452 Johnston Street, Abbotsford, VIC 3067

All acceptances must be received by 5:00pm Melbourne, Australia time on 29 April 2009 being the Closing Date of the Rights Issue.

The Directors may at their discretion issue New Shares and New Options in response to Entitlement and Acceptance Forms received after the above date and time, but are under no obligation to do so.

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## **2 Risk Factors**

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### **2.1 Specific Risk Factors**

(a) **Re-examination of US Patents and Intellectual Property Risk**

The US Patent and Trade Mark Office's re-examination of Benitec's key patents remains unresolved as at the date of this Prospectus. Benitec believes it has strong arguments for overcoming the art of record. The Directors' Report forming part of the Company's 2009 half year financial statements, lodged with ASX on 27 February 2009, and the Company's further announcement to the ASX on 26 March 2009 contain further information in relation to the re-examination.

Benitec has 98 patent applications or patents and this represents a significant estate in the RNAi space. Benitec will continue to prosecute its patents in key jurisdictions and, where appropriate, file new applications to further strengthen this estate.

Successful third party challenges to Benitec's intellectual property portfolio or its licence arrangements may however, have an adverse effect on the value of the securities of Benitec.

(b) **Competition Risks**

Other competitive projects may obtain regulatory approval in respect of new technologies before Benitec. Competitors may develop "next generation" therapeutics or diagnostics for a condition that Benitec is pursuing. Whilst Benitec monitors scientific publications and the publication of new patent applications no assurance can be given that products developed by other medical research establishments and private enterprises will not reach the market sooner.

(c) **The Inherently Speculative Nature of Benitec's Activities**

Benitec is involved in an inherently speculative activity, namely seeking to identify suitable candidate projects and technologies in the biotechnology field for further development and potential commercialisation. Benitec may not identify suitable candidate projects and technologies. Candidate projects and technologies may not be advanced to potential commercialisation. Potential commercialisation partners may not wish to enter commercial arrangements with Benitec.

(d) **Funding**

To capitalise on investment opportunities and grow its business Benitec may seek to raise additional capital in the future. There is no assurance that such funding will be secured on acceptable terms.

(e) **Regulatory Changes**

Benitec's focus on the gene silencing therapeutics renders it is susceptible to regulatory changes by government bodies. Government bodies may introduce rules that effect gene-silencing activities. Such changes may equally impact upon Benitec's competitors, which may provide some mitigation with respect to the effect on Benitec's activities.

(f) **Share Price**

The Share price of Benitec has fluctuated significantly over the six months prior to lodgement of the prospectus to a low of \$0.022 on 27 March 2009 and a high of \$0.55 on 23 October 2008. There is no guarantee that the Share price will maintain its existing level. The price of Shares may fall as well as rise.

## 2.2 **General Investment Risks**

The price of Shares may fall as well as rise. If an investor sells Shares, the amount received may be higher or lower than the amount originally invested. Many factors will affect the price of the Shares and Options, including variations in the general markets for stocks listed on the ASX and/or other international stock markets, which may lead to fluctuations in the price of Shares; general economic conditions, long-term inflation rates, exchange rates and interest rates, and adverse changes to government regulations and policies.

The above summary of general risks is not exhaustive.

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## 3 **Additional Information**

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### 3.1 **Continuous Disclosure Obligations**

Benitec has issued this Prospectus in accordance with the provisions of the Corporations Act 2001 ("the Corporations Act") applicable to a prospectus for continuously quoted securities.

Section 713 of the Corporations Act enables a company to issue a special prospectus where the securities offered under the prospectus are continuously quoted securities within the meaning of the Corporations Act to acquire continuously quoted securities. This generally means that the relevant securities are in a class of securities that were quoted enhanced disclosure securities at all times during the three months before the date of the prospectus and, as such, the issuing company was subject to the continuous disclosure regime provided for under the Corporations Act and the rules of a recognised stock exchange.

In the past three months Benitec's securities have been continuously quoted securities within the meaning of the Corporations Act.

Special prospectuses are required to contain information in relation to the effect of the Rights Issue of securities on Benitec and the rights and liabilities attaching to the securities. It is not necessary to include general information in relation to all of the assets and liabilities, financial position, profits and losses or prospects of the issuing company.

Benitec believes that it has complied with the general and specific requirements of ASX when and as applicable from time to time throughout the 12 months before the date of this Prospectus which require notification of information about specified events or matters as they arise for the purpose of making that information available to the stock market conducted by ASX. For the purpose of satisfying Section 713(5) of the Corporations Act 2001 a prospectus must also incorporate information if such information:

- (a) has been excluded from a continuous disclosure notice in accordance with the Listing Rules; and

- (b) is information that investors and their professional advisors would reasonably require for the purpose of making an informed assessment of:
- (i) the assets and liabilities, financial position and performance, profit and losses and prospects of the body; and
  - (ii) the rights and liabilities attaching to the securities being offered.

The prospectus must contain this information only to the extent to which it is reasonable for investors and their professional advisors to expect to find such information in the prospectus. Benitec is not aware of any matters that need to be disclosed under this section of the Corporations Act 2001 that have not been previously disclosed or which have not been set out in this Prospectus. The Company has from time to time entered into and continues confidential discussions and/or negotiations with potential commercial partners regarding its vaccine and diagnostic technologies. While the Company continues to seek potential commercial partners and to advance discussions or negotiations, there is no certainty that any arrangement(s) will be finalised on particular terms, at a specific time, or at all. The Company will make further announcements in respect of any such discussions or negotiations in accordance with its disclosure obligations as developments occur.

Benitec, as a disclosing entity under the Corporations Act states that:

- (a) it is subject to regular reporting and disclosure obligations;
- (b) copies of documents lodged with ASIC in relation to Benitec may be obtained from, or inspected at, the offices of ASIC; and
- (c) any person may request, and Benitec will provide free of charge, a copy of each of the following documents during the application period of this Prospectus:
  - (i) the annual financial report for the year ended 30 June 2008 lodged with ASIC on September 2008;
  - (ii) the half year financial report for the six months ended 31 December 2008 lodged with ASX on 27 February 2009; and
  - (iii) any continuous disclosure notices given by Benitec since the lodgement of the annual financial report referred to in (i) above and before lodgement of this Prospectus (such notices are listed below).

Given that the Company is a disclosing entity it may be required to release information to the market during the period between the date of this Prospectus and the Closing Date. Prospective investors are advised to refer to the ASX's website at [www.asx.com.au](http://www.asx.com.au) for updated releases about specified events or matters affecting Benitec.

Benitec has made the following announcements (continuous disclosure notices) to ASX since lodging its Annual Report for the year ended 30 June 2008 with ASIC:

<b>Date</b>	<b>Headline</b>
09-Oct-08	2008 Annual Report
17-Oct-08	Graham Gene Silencing Patent Granted in New Zealand
20-Oct-08	Notice of Annual General Meeting and Proxy Form
22-Oct-08	Private Placement Raises \$1.97M
23-Oct-08	City of Hope Human Trial Update
30-Oct-08	Appendix 4C - Quarterly Cash Flow Report
06-Nov-08	Benitec Double-Stranded Patent Granted in Singapore
06-Nov-08	Appendix 3B - Share Placement
11-Nov-08	Change in Substantial Holding
19-Nov-08	Results of Meeting
19-Nov-08	CEO Presentation to AGM
19-Nov-08	Chairman's Address to Shareholders
20-Nov-08	Benitec Announces Prudent Cash Management Strategy

21-Nov-08	US Patent Re-exam Update
28-Nov-08	US Patent Re-exam Further Update
08-Dec-08	Notice of General Meeting/Proxy Form
08-Dec-08	City of Hope Human Trial Update
07-Jan-09	Results of General Meeting
30-Jan-09	Appendix 4C - Quarterly Cash Flow Report
09-Feb-09	City of Hope Human Trial Update
09-Feb-09	Benitec confirms Capital Raising
10-Feb-09	Change in Substantial Holding
27-Feb-09	Half Year Report and Accounts
12-Mar-09	Benitec withdraws from renegotiations with CSIRO
24-Mar-09	Movements in Benitec Shares and Options
26-Mar-09	Benitec US Re-exam Update

Any person may request, and Benitec will provide free of charge, a copy of any of the above announcements during the application period of this Prospectus.

### 3.2 Overseas Shareholders

This Prospectus and the accompanying Entitlement and Acceptance Form do not constitute a Rights Issue in any jurisdiction in which, or to any persons to whom, it would not be lawful to make such a Rights Issue.

Shareholders holding Shares on behalf of persons who are resident overseas (except in New Zealand) are responsible for ensuring that taking up Rights under the Rights Issue does not breach regulations in the relevant overseas jurisdiction. Return of a duly completed Entitlement and Acceptance Form or payment will be taken by Benitec to constitute a representation that there has been no breach of such regulations. Shareholders who are nominees are therefore advised to seek independent advice as to how they should proceed. The Rights Issue has not been, and will not be, registered under the US Securities Act and has not been made in the United States or to persons resident in the United States.

### 3.3 Rights attaching to Shares

The rights attaching to the New Shares are set out in Benitec's Constitution (“**the Constitution**”). The Constitution is in a form common to public companies in Australia. A broad summary (although not an exhaustive or definitive statement) of the rights and liabilities attaching to the New Shares is outlined below. The Constitution has been lodged with ASIC and is taken to be included in this Prospectus by operation of the Corporations Act. The Company will give a copy of the Constitution to any person who requests a copy of it during the offer period of this Prospectus, free of charge.

#### (a) Same Class

All Shares currently on issue and offered under this Prospectus are of the same class and rank equally in all respects.

#### (b) Voting

At a meeting of the Shareholders, every Shareholder present in person or by proxy, representative or attorney has one vote on a show of hands and one vote per Share on a poll.

A poll may be demanded by the Chairperson of the meeting, any five (5) Shareholders entitled to vote present in person or by proxy, attorney or representative or by any one or more Shareholders holding not less than five percent (5%) of the total voting rights of all Shareholders.

#### (c) Meetings of Shareholders

Each Shareholder is entitled to receive notice of and, except in certain circumstances, to attend and vote at meetings of members of Benitec. Each Shareholder is entitled to receive all financial

reports, notices and other documents required to be sent to Shareholders under Benitec's Constitution, the Corporations Act or the Listing Rules.

(d) **Dividends**

Dividends are payable out of the profits and are declared by the Directors or by the Company in general meeting if and only if Directors have recommended a dividend.

A dividend as declared shall, subject to, among other things, the rights of any Shareholder of any Shares created or raised under any special arrangement as to dividends, be payable on all Shares at a fixed amount per Share.

(e) **Issue of Further Shares**

The Directors may, subject to any restrictions imposed by the Constitution, the Listing Rules and the Corporations Act, increase, divide, consolidate or reduce its share capital on such terms and conditions as they see fit.

(f) **Transfer of Shares**

Shareholders may transfer Shares by market transfer in accordance with any computerised or electronic system established or recognised by the Listing Rules or the Corporations Act for the purpose of facilitating dealings in Shares including a transfer that may be effected pursuant to the SCH Business Rules or by an instrument in writing in a form approved by the ASX or in any other usual form or in any form approved by the Directors and as otherwise permitted by the Corporations Act.

The Directors may refuse to register any transfer of Shares other than a market transfer where permitted or required by the Listing Rules or SCH Business Rules. Benitec must not prevent, delay or interfere with a Proper SCH Transfer or the registration of a paper based transfer in registrable form in a manner contrary to the Listing Rules or SCH Business Rules.

(g) **Winding Up**

Once all the liabilities of Benitec are satisfied, a liquidator may, with the authority of a special resolution, divide the whole or any part of any surplus assets of Benitec. With the authority of a special resolution, the liquidator can vest the whole or any part of such property in trustees upon such trusts for the benefit of Shareholders as the liquidator thinks fit, but no Shareholder can be compelled to accept any shares or other securities in respect of which there is any liability.

(h) **Directors**

Benitec must at all times have at least a minimum number of Directors specified by the Constitution, which is three (3), at least two (2) of whom must ordinarily reside in Australia; and the number of Directors must not exceed ten (10).

(i) **Listing Rules**

During any period in which Benitec is admitted to the Official List, and despite anything in the Constitution, if the Listing Rules prohibit an act being done, that act must not be done. Nothing in the Constitution prevents an act being done that the Listing Rules require to be done. If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be). If the Listing Rules require the Constitution to contain a provision or not to contain a provision, the Constitution is deemed to contain that provision or not to contain that provision (as the case may be). If a provision of the Constitution is or becomes inconsistent with the Listing Rules, the Constitution is deemed not to contain that provision to the extent of the inconsistency.

### 3.4 **Rights Attaching to New Options**

The New Options will be issued subject to the following terms:

- (a) The New Options shall expire at 5.00 pm Eastern Standard Time on 8 April 2014 (the "**Expiry Date**") and may be transferred at any time prior to the Expiry Date.
- (b) The New Options may be exercised at any time up to and including the Expiry Date and shall be exercisable wholly or in part by executing and forwarding to Benitec the appropriate option exercise form together with payment of the relevant exercise price.
- (c) The exercise price for each New Option (the "**Exercise Price**") shall be \$0.10.
- (d) Shares issued pursuant to the exercise of the New Options will rank equally with the then issued Shares of Benitec.
- (e) There are no participating rights or entitlements inherent in the New Options to participate in new issues of capital that may be offered to shareholders during the currency of the New Options. However, Option holders have the right to exercise their New Options prior to the date of determining entitlements to any capital issues to the existing shareholders of Benitec made during the currency of the New Options.
- (f) In the event of any reconstruction (including consolidation, sub-division, reduction or return) of the issued capital of Benitec, the number of New Options or the Exercise Price of the New Options or both shall be reconstructed in a manner which will not result in any additional benefits being conferred on Option holders which are not conferred on shareholders.
- (g) Shares allocated and issued pursuant to the exercise of the New Options will be allocated and issued not more than fourteen (14) days after the receipt by Benitec of a properly executed exercise form and the receipt of the application monies applicable thereto at the Exercise Price for each Option.
- (h) If there is more than one Option on a certificate and prior to the Expiry Date those Options are exercised in part, the Company will issue another certificate for the balance of the Options held and not yet exercised.

### 3.5 **ASX Listing**

Application will be made to the ASX within seven days after the date of issue of this Prospectus for quotation of the New Shares. If the application for quotation is unsuccessful, all application monies will be repaid to applicants without interest

The Board will, subject to being able to satisfy any requirements imposed by the ASX Listing Rules, make an application to quote the New Options that are to be issued pursuant to the Rights Issue. No application monies will be repaid to applicants in the event that the New Options are not quoted.

### 3.6 **Allotments**

The Directors will issue the New Shares and New Options as soon as possible after the close of subscription lists.

If Benitec receives applications for Shortfall Shares that would result in the Rights Issue being oversubscribed then it will not accept any such oversubscriptions and will reject applications at its absolute discretion. Application monies received but not applied towards subscriptions under the Rights Issue will be refunded as soon as practicable. No interest will be paid on application monies held and returned.

Benitec reserves the right to issue any Shortfall Shares that are not successfully subscribed for at its discretion within three months following the closure of the Rights Issue at an issue price not less than the price being offered under this Prospectus. The Company may pay fees or commissions determined at the

time of offering or issuing New Shares and New Options from the shortfall. Recipients of Shortfall Shares (and attaching New Options) need not be shareholders of Benitec.

### 3.7 Directors' Interests

The Directors of Benitec or their associates have a beneficial interest in the following Shares and Options in Benitec at the date of this Prospectus.

Director	Shares		Options	
	Direct	Indirect*	Direct	Indirect*
Mr. Peter Francis	-	474,350	-	2,474,350
Ms. Sue MacLeman	-	-	-	6,000,000
Dr. Ken Reed	1,011,000	-	1,333,333	-
Mr. Mel Bridges	-	200,000	1,333,333	-

*\*Indirect holdings held by associates of the Directors*

### 3.8 Participation by Directors in Rights Issue

The Directors are entitled to participate in the Rights Issue without the need for Shareholder approval though they are not obliged to. Shareholder approval would however, be required for the Directors to apply for any Shortfall Shares and the Directors have determined not to call a meeting for the purposes of obtaining the requisite consent. If the Directors each participate to the maximum extent permissible then their respective interests will increase and upon issue of the New Shares and New Options they will have the following holdings (assuming that they do not exercise any of their Options prior to the Record Date):

Director	Shares		Options	
	Direct	Indirect*	Direct	Indirect*
Mr. Peter Francis	-	625,321	-	3,261,858
Ms Sue MacLeman	-	-	-	7,909,612
Dr. Ken Reed	1,332,770	-	1,757,691	-
Mr Mel Bridges	-	263,654	1,757,691	-

*\* Indirect holdings held by associates of the Directors*

Other than set out above or elsewhere in this Prospectus:

- No Director of Benitec and no firm in which a Director of Benitec is or was at the relevant time a partner, has or has had in the two years before lodgement of this Prospectus, any interest in the promotion of, or in any property proposed to be acquired by, Benitec.
- No amounts, whether in cash or Shares or otherwise, have been paid or agreed to be paid to any Director of Benitec (or to any firm in which he is or was a partner) either to induce him to become, or to qualify him as a Director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of Benitec.
- At the date of the Prospectus the Directors and/or their associates do not have any securities that are the subject of any escrow provisions.

Francis Abourizk Lightowlers, a law firm of which Mr Peter Francis is a partner, has provided services to Benitec and been paid the sum of \$452,284 over the past 2 years.

### 3.9 Interests of Advisers

Except as set out elsewhere in this Prospectus, no person named in this Prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Prospectus, or a promoter or stockbroker to Benitec has, or had within two years before lodgement of this Prospectus with ASX any interest in:

- (a) the formation or promotion of Benitec;
- (b) property acquired or proposed to be acquired by Benitec in connection with its formation, promotion or the Rights Issue; or
- (c) the Rights Issue;

and no amounts have been paid or agreed to be paid and no benefits have been given or agreed to be given to any of those persons for services rendered by him or her in connection with the formation or promotion of Benitec or the Rights Issue.

### 3.10 Payments to Directors

Under Benitec's Constitution the Non-Executive Directors may be paid, as remuneration for their services, a sum determined from time to time by Benitec in general meeting, with that sum to be divided amongst the Non-Executive Directors in such manner and proportion as they agree. The maximum amount which has been approved by Shareholders for payment to each Non-Executive Directors as director fees is currently \$300,000 per annum.

The total amounts paid to current Directors as fees and executive service remuneration in the 2 year period prior to lodgement of this Prospectus are:

Director	Period			Total
	1 Apr 2007– 30 Jun 2007	1 Jul 2007 – 30 Jun 2008	1 Jul 2008 – 31 Mar 2009	
Mr. Peter Francis	\$11,250	\$63,861	\$45,000	\$120,111
Ms Sue MacLeman	\$99,352	\$431,447	\$269,240	\$800,039
Dr. Ken Reed	\$11,250	\$55,603	\$41,256	\$108,109
Mr Mel Bridges	\$-	\$45,684	\$41,256	\$86,940

The Corporations Act limits the extent to which insurance cover and/or indemnities may be provided or given to Directors in relation to claims arising out of the discharge of their duties as Directors. The Company's Constitution does not provide any additional restrictions on the provision of insurance or indemnity. Benitec has Directors and Officers Liability insurance, but has not granted any additional right of indemnity to its Directors.

### 3.11 Consents

ComputerShare Investor Services Pty Limited (ACN 078 279 277) has given, and not withdrawn before the lodgement of this Prospectus, its written consent to being named in the Prospectus as the Share Registry. ComputerShare Investor Services Pty Limited was not involved in the preparation of any part of this Prospectus and expressly disclaims and takes no responsibility for any part of this Prospectus.

### 3.12 **Electronic Prospectus**

A copy of the Prospectus is available from the website of Benitec at [www.benitec.com](http://www.benitec.com). Applications for New Shares and New Options offered pursuant to this Prospectus can only be submitted on an original personalised Entitlement and Acceptance Form, which accompanies this Prospectus.

### 3.13 **Privacy**

If you complete an application for New Shares and New Options, you will be providing personal information to Benitec. Benitec collects, holds and will use that information to assess your application, service your needs as a Shareholder, facilitate distribution payments and corporate communications to you as a Shareholder and carry out administration.

The information may also be used from time to time and disclosed to persons inspecting the register, bidders for your securities in the context of takeovers, regulatory bodies, including the Australian Taxation Office, authorised securities brokers, print service providers, mail houses and Benitec's share registry.

You can access, correct and update the personal information that we hold about you. Please contact Benitec or its registry if you wish to do so.

Collection, maintenance and disclosure of certain personal information is governed by legislation including the Privacy Act 1988 (Cth) (as amended), the Corporations Act and certain rules such as the SCH Business Rules. You should note that if you do not provide the information required on the application for New Shares and New Options, Benitec may not be able to accept or process your application.

### 3.14 **Taxation**

Participants should seek and obtain their own taxation advice before participating in the Rights Issue so that they may first satisfy themselves of any taxation implications associated with participating in the Rights Issue and any subsequent sale of the New Shares acquired pursuant to the Rights Issue.

### 3.15 **General**

The Expiry Date of the Prospectus is 30 April 2010. No securities will be allotted or issued on the basis of this Prospectus after the Expiry Date.

No person is authorised to give information or to make any representation in connection with this Prospectus which is not contained in the Prospectus. Any information or representation not so contained may not be relied on as having been authorised by Benitec in connection with this Prospectus.

In making representations in this Prospectus regard has been had to the fact that Benitec is a disclosing entity for the purposes of the Corporations Act and certain matters may reasonably be expected to be known to investors and professional advisers whom potential investors may consult.

### 3.17 **Directors' Responsibility Statement**

The Directors of Benitec have authorised the lodgement of this Prospectus with ASIC.



Mr. Peter Francis  
Non-Executive Chairman

## 4 Glossary

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“**ASIC**” means Australian Securities and Investments Commission.

“**ASX**” means ASX Limited ACN 008 624 691.

“**Benitec**” means Benitec Limited ACN 068 943 662.

“**Company**” means Benitec.

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

“**Entitlement**” means the entitlement of a Shareholder to apply for New Shares and New Options pursuant to the Rights Issue.

“**Entitlement and Acceptance Form**” means a form addressed to a Shareholder setting out the Shareholder’s entitlement to New Shares and New Options which is attached to or accompanies this Prospectus.

“**New Option**” means one free attaching option to acquire one fully paid ordinary share in the capital of Benitec at an exercise price of \$0.10 and otherwise on the terms described in Section 3.7 of the Prospectus.

“**New Shares**” means ordinary shares offered to Shareholders pursuant to this Prospectus.

“**Option**” means all listed and unlisted options and warrants to acquire one fully paid ordinary share in the capital of Benitec.

“**Prospectus**” means this prospectus dated 1 April 2009.

“**Record Date**” means 5:00 pm Melbourne, Australia time 9 April 2009 for the purpose of identifying the persons who are entitled to New Shares and New Options pursuant to the Rights Issue.

“**R&D**” means research and development.

“**Rights**” means the rights of Shareholders to participate in the non-renounceable pro-rata rights issue described in this Prospectus and subscribe for New Shares and New Options;

“**Rights Issue**” means the rights issue described in section 1.2 of this Prospectus.

“**Shareholders**” means holders of ordinary Shares in the issued capital of Benitec.

“**Shares**” means ordinary fully paid shares in the capital of Benitec.

“**Shortfall Shares**” means the New Shares that are not applied for by Shareholders exercising their entitlement under the Rights Issue which may be applied for in accordance with the terms described in Section 1.2 of the Prospectus.