
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): April 27, 2021

BENITEC BIOPHARMA INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-39267
(Commission
File Number)

84-462-0206
(IRS Employer
Identification No.)

3940 Trust Way, Hayward, California
(Address of Principal Executive Offices)

94545
(Zip Code)

Registrant's Telephone Number, Including Area Code: (510)780-0819

(Former Name or Former Address, if Changed Since Last Report): Not Applicable

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001	BNTC	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter)

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On April 27, 2021, Benitec Biopharma Inc. (the "Company") entered into an amended and restated underwriting agreement (the "Underwriting Agreement") with H.C. Wainwright & Co., LLC (the "Underwriter"), relating to the sale of 3,036,066 shares of the Company's common stock, par value \$0.0001 per share ("Common Stock"), in an upsized, firm-commitment public offering pursuant to the Company's effective registration statement on Form S-3 (File No. 333-253259) and related prospectus and prospectus supplement, in each case filed with the Securities and Exchange Commission (the "Offering"). The public offering price is \$4.25 per share, less underwriting discounts and commissions. In addition, the Company granted the Underwriter an option to purchase, for a period of 30 days from the date of the Underwriting Agreement, up to an additional 455,454 shares of Common Stock at the same public offering price.

In connection with the Offering, the Company agreed to pay the Underwriter an underwriting discount equal to 8.0% of the gross proceeds of the offering and a management fee equal to 1.0% of the gross proceeds of the offering. The Company has also agreed to pay the Underwriter (a) \$50,000 for non-accountable expenses, (b) up to \$100,000 for reasonable, documented fees and expenses of legal counsel and other reasonable out-of-pocket expenses and (c) clearing and settlement fees of \$15,950.

The Company estimates that the net proceeds from the Offering will be approximately \$11.3 million, or approximately \$13.1 million if the Underwriter exercises in full its option to purchase additional shares of Common Stock, in each case after deducting underwriting discounts and commissions and estimated offering expenses. The Company intends to use the net proceeds from the Offering for the continued advancement of development activities for its product pipeline, general corporate purposes, and strategic growth opportunities. The Offering is expected to close on or about April 30, 2021, subject to satisfaction of customary closing conditions.

The Underwriting Agreement contains representations, warranties, indemnification and other provisions customary for transactions of this nature. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties. Pursuant to the Underwriting Agreement, the Company and its directors and officers agreed, for a period of 90 days, subject to certain exceptions, not to offer, sell, pledge or otherwise dispose of the common stock and other Company securities, without the prior written consent of the Underwriter.

The foregoing summary of the Underwriting Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the Underwriting Agreement, which is attached hereto as Exhibit 1.1 and incorporated herein by reference.

A copy of the opinion of Proskauer Rose LLP as to the legality of the shares of Common Stock to be issued in the Offering and related consent is attached hereto as Exhibit 5.1 to this Current Report on Form 8-K.

Item 8.01 Other Events.

On April 27, 2021, the Company issued press releases announcing the Offering and the upsizing of the Offering pursuant to the Underwriting Agreement. Copies of each press release are attached hereto as Exhibit 99.1 and Exhibit 99.2, respectively, and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

No.	Description
1.1	<u>Amended and Restated Underwriting Agreement, dated April 27, 2021, between Benitec Biopharma Inc. and H.C. Wainwright & Co., LLC</u>
5.1	<u>Opinion of Proskauer Rose LLP</u>
23.1	<u>Consent of Proskauer Rose LLP (included in Exhibit 5.1)</u>
99.1	<u>Press Release of Benitec Biopharma Inc. dated April 27, 2021</u>
99.2	<u>Press Release of Benitec Biopharma Inc. dated April 27, 2021</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BENITEC BIOPHARMA INC.

Date: April 29, 2021

/s/ Jerel A. Banks

Name: Jerel A. Banks

Title: Chief Executive Officer

3,036,366 Shares of Common Stock

Benitec Biopharma Inc.

AMENDED AND RESTATED UNDERWRITING AGREEMENT

April 27, 2021

H.C. Wainwright & Co., LLC
430 Park Avenue, 4th Floor
New York, New York 10022

Ladies and Gentlemen:

Benitec Biopharma Inc., a Delaware corporation (the "Company"), proposes to issue and sell to H.C. Wainwright & Co., LLC (the "Underwriter") an aggregate of 3,036,366 shares (the "Firm Shares") of the common stock, par value \$0.0001 per share, of the Company ("Common Stock"). The amount of the Firm Shares to be purchased by the Underwriter is set forth opposite its name on **Schedule I** hereto. The Company also proposes to sell to the Underwriter, at the option of the Underwriter, up to an additional 455,454 shares of Common Stock (the "Option Shares"). The Firm Shares and the Option Shares are hereinafter referred to collectively as the "Shares". This Amended and Restated Underwriting Agreement amends, restates and supersedes in its entirety the underwriting agreement, dated as of April 27, 2021, between the Company and the Underwriter.

The Company confirms as follows its agreements with the Underwriter.

1. The Company represents and warrants to, and agrees with, the Underwriter that, as of the date hereof and as of the Closing Date and each Option Closing Date, if any:

(i) The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-253259) under the Securities Act of 1933, as amended (the "Securities Act"), and the rules and regulations (the "Rules and Regulations") of the Commission promulgated thereunder, and such amendments to such registration statement as may have been required to the date of this Agreement. Such registration statement has been declared effective by the Commission. Such registration statement, at any given time, including amendments thereto at such time, the exhibits and any schedules thereto at such time, the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act at such time and the documents and information otherwise deemed to be a part thereof or included therein by Rule 430B under the Securities Act or otherwise pursuant to the Rules and Regulations at such time, is herein called the "Registration Statement." The Registration Statement at the time it originally became effective is herein called the "Original Registration Statement."

The Company proposes to file with the Commission pursuant to Rule 424 under the Securities Act a final prospectus supplement relating to the offering of the Shares to

the form of prospectus included in the Registration Statement in the form heretofore delivered to the Underwriters. Such prospectus in the form in which it appears in the Registration Statement is hereinafter called the "Base Prospectus." Such supplemental form of prospectus, in the form in which it shall be filed with the Commission pursuant to Rule 424(b) (including the Base Prospectus as so supplemented) is hereinafter called the "Prospectus." Any preliminary form of Prospectus which is filed or used prior to filing of the Prospectus is hereinafter called a "Preliminary Prospectus." Any reference herein to the Base Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act as of the date of such prospectus.

For purposes of this Agreement, all references to the Registration Statement, the Base Prospectus, any Preliminary Prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR"). All references in this Agreement to amendments or supplements to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to mean and include the subsequent filing of any document under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which is deemed to be incorporated by reference therein or otherwise deemed by the Rules and Regulations to be a part thereof.

As used in this Agreement:

"Time of Sale" means 9:30 p.m. (Eastern Time) on the date of this Agreement.

"Pricing Disclosure Package" means the Issuer General Free Writing Prospectus(es) issued at or prior to the Time of Sale, the Base Prospectus, as amended or supplemented immediately prior the Time of Sale, the Preliminary Prospectus, the information included in Section 3(a) of this Agreement, and any information set forth in Schedule I to this Agreement, considered together.

"Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 under the Securities Act, relating to the offering of the Shares that (A) is required to be filed with the Commission by the Company, or (B) is exempt from filing pursuant to Rule 433(d)(5) (i) under the Securities Act because it contains a description of the Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act.

"Issuer General Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule II to this Agreement.

"Issuer Limited-Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Free Writing Prospectus.

(ii) Each of the Registration Statement and any post-effective amendment thereto has become effective under the Securities Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no order preventing or suspending the use of any Preliminary Prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, threatened by the Commission. The Company has complied with each request (if any) from the Commission for additional information. At the time the Original Registration Statement was filed with the Commission, the Company met the then-applicable requirements for use of Form S-3 under the Securities Act. The Company meets the requirements for use of Form S-3 under the Securities Act. Pursuant to General Instruction I.B.6. of Form S-3, the issuance of the Shares is eligible to be registered pursuant to the Prospectus filed as part of the Company's effective Registration Statement and the Company, has not issued in the last 12 months, any securities pursuant to the limitations of General Instruction I.B.6 of Form S-3. Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the Securities Act and the Rules and Regulations. Each preliminary prospectus (if any), the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the Securities Act and the Rules and Regulations. Each Preliminary Prospectus (if any) delivered to the Underwriter for use in connection with this offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(iii) Neither the Registration Statement nor any amendment thereto, at its effective time, at all other subsequent times until the expiration of the Prospectus Delivery Period (as hereinafter defined) or at the Closing Date and on any Option Closing Date, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Pricing Disclosure Package did not, as of the Time of Sale, include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date or date of first use within the meaning of the Rules and Regulations, at the time of any filing with the Commission pursuant to Rule 424(b) under the Securities Act, at all other subsequent times until the expiration of the Prospectus Delivery Period or at the Closing Time, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement (or any amendment thereto), the Pricing Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by the Underwriter expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the Underwriter Information (as defined below).

(iv) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the Prospectus Delivery Period or until any earlier date that the Company notified or notifies the Underwriters as described in Section 5(a)(iii)(B), did not, does not and will not include any information that conflicted, conflicts or will conflict in any material respect with the information contained in the Registration Statement, any Preliminary Prospectus or the Base Prospectus.

(v) The documents incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, at the time they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder, and none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the Pricing Disclosure Package, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Exchange Act and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(vi) Each of the Company and its subsidiaries (each a "Subsidiary") has been duly organized and is validly existing as a corporation or other entity in good standing under the laws of its jurisdiction or organization, with power and authority (corporate and other) to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, and, in the case of the Company, to enter into and perform its obligations under this Agreement, and have been duly qualified as a foreign corporation or other entity for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except where the failure to so qualify or be in good standing would not have a material adverse effect on the general affairs, business, prospects, management, properties, operations, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole (a "Material Adverse Effect"). Except as set forth in Exhibit 21.1 to the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2020, the Company has no subsidiaries and, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, does not own any equity interest in any other entity.

(vii) The Company has an authorized capitalization as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the caption "Description of Capital Stock", and all of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable and conform to the descriptions thereof contained in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus and none of the issued and outstanding shares of capital stock of the Company are subject to any preemptive or similar rights granted by the Company.

(viii) The Shares which may be issued and sold by the Company to the Underwriter hereunder have been duly authorized and, when issued, delivered and paid for by the Underwriter in accordance with the terms of this Agreement will be validly issued and fully paid and non-assessable and will conform in all material respects to the descriptions thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the caption "Description of Capital Stock"; and, except as otherwise stated in the Registration Statement, in the Pricing Disclosure Package and in the Prospectus, the issuance of such Shares is not subject to any preemptive or similar rights granted by the Company.

(ix) This Agreement has been duly authorized, executed and delivered by the Company. This Agreement constitutes the legal, valid and binding obligation of the Company and is enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and except as enforceability of any indemnification or contribution provision may be limited under foreign, federal or state securities laws.

(x) The issue and sale of the Shares to be sold by the Company hereunder, the execution hereof and thereof by the Company and the compliance by the Company with all of the provisions hereof and thereof and the consummation of the transactions herein and therein contemplated will not (1) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is bound or to which any of the material property or assets of the Company or any of the Subsidiaries is subject, (2) result in any violation of the provisions of the certificate or articles of incorporation or by-laws (or other organization documents) of the Company or any of the Subsidiaries or any statute or any order, rule or regulation of any federal or foreign court or governmental agency or body (each, a "Governmental Authority") having jurisdiction over the Company or any of the Subsidiaries or any of their material properties or (3) require the consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body for the issue and sale of the Shares to be sold by the Company hereunder or the consummation by the Company of the transactions contemplated hereby and thereby, except the registration under the Securities Act of the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities, Blue Sky laws or the rules and regulations of the Nasdaq Stock Market, LLC or the Financial Industry Regulatory Authority in connection with the purchase and distribution of the Shares by the Underwriter.

(xi) To the Company's knowledge, each of Baker Tilly US, LLP ("Baker Tilly"), the successor to Squar Milner LLP, and Grant Thornton Audit Pty Ltd ("Grant Thornton"), the accounting firms (or successor to such firm) that certified the financial statements included or incorporated by reference in the Registration Statement, the Pricing

Disclosure Package and the Prospectus, is an independent registered public accounting firm as required by the Securities Act, the Rules and Regulations and the Public Company Accounting Oversight Board, and neither of them is in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002.

(xii) The financial statements, together with related schedules and notes, included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, comply in all material respects with the requirements of the Securities Act and present fairly the consolidated financial position, results of operations and changes in financial position of the Company on the basis stated therein at the respective dates or for the respective periods to which they apply; such statements and related notes have been prepared in accordance with United States generally accepted accounting principles (“GAAP”) consistently applied throughout the periods involved, except as disclosed therein; and the summary financial data, if any, included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the financial statements included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus. The pro forma financial statements of the Company and the related notes thereto included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, if any, present fairly the information shown therein, have been prepared in all material respects in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

(xiii) Neither the Company nor any Subsidiary has sustained since the date of the latest audited financial statements included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and, since the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (1) there has not been any change in the capital stock (other than the issuance of shares of Common Stock upon the exercise or conversion of securities, or the grant of options, restricted stock or other equity-based awards under the Company’s existing equity compensation plans) or long-term debt of the Company or any of the Subsidiaries, (2) there has not been any Material Adverse Effect, or any development that would reasonably be expected to result in a Material Adverse Effect, in or affecting the general affairs, business, prospects, management, financial position, shareholders’ equity or results of operations of the Company and the Subsidiaries, taken as a whole, (3) there have been no transactions entered into by, and no obligations or liabilities, contingent or otherwise, incurred by the Company or any of the Subsidiaries, whether or not in the ordinary

course of business, which are material to the Company and the Subsidiaries, taken as a whole or (4) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, in each case, otherwise than as set forth or contemplated in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(xiv) Neither the Company nor any of the Subsidiaries is (1) in violation of its certificate or articles of incorporation or by-laws (or other organization documents) or (2) in violation of any law, ordinance, administrative or governmental rule or regulation applicable to the Company or any of the Subsidiaries, or (3) in violation of any decree of any court or governmental agency or body having jurisdiction over the Company or any of the Subsidiaries, or (4) in default in the performance of any obligation, agreement or condition contained in any bond, debenture, note or any other evidence of indebtedness or in any agreement, indenture, lease or other instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound, except, in the case of clauses (2), (3) and (4), where any such violation or default, individually or in the aggregate, would not have a Material Adverse Effect;

(xv) Each of the Company and each Subsidiary has good and marketable title to all real and tangible property described in the Registration Statement, the Pricing Disclosure Package and the Prospectus as being owned by it, in each case free and clear of all liens, encumbrances and defects except such as are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or are not material to the business of the Company or any Subsidiary; and any real property and buildings described in the Registration Statement, the Pricing Disclosure Package and the Prospectus as being held under lease by the Company or any Subsidiary are held under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company or any Subsidiary.

(xvi) Other than as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of the Subsidiaries is a party or of which any property of the Company or any of the Subsidiaries is the subject which, if determined adversely to the Company or the Subsidiary, individually or in the aggregate, would have or may reasonably be expected to have a Material Adverse Effect, or would prevent or impair the consummation of the transactions contemplated by this Agreement, or which are required to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus; and, to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(xvii) The Company and the Subsidiaries possess all permits, licenses, approvals, consents and other authorizations issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the businesses now operated by them, except where the failure to possess such permits could not reasonably be expected to result in Material Adverse Effect (collectively, "Permits"); the Company and the Subsidiaries are in compliance with the terms and conditions of all such Permits and all of the Permits are valid and in full force and effect, except, in each case, where the failure so to comply or where the

invalidity of such Permits or the failure of such Permits to be in full force and effect, individually or in the aggregate, would not have a Material Adverse Effect; and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or material modification of any such Permits.

(xviii) No material labor dispute with the employees of the Company or the Subsidiaries exists, or, to the knowledge of the Company, is imminent. The Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any Subsidiary's principal suppliers, manufacturers, customers or contractors, which, individually or in the aggregate, may reasonably be expected to result in a Material Adverse Effect.

(xix) The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; neither the Company nor any Subsidiary has been refused any insurance coverage sought or applied for; and the Company has no reason to believe that either it or any Subsidiary will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(xx) The Company and each of its Subsidiaries have made and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect in all material respects the transactions and dispositions of the assets of the Company and its Subsidiaries. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (1) transactions are executed in accordance with management's general or specific authorizations; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (5) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus is in conformity with GAAP and is updated as necessary to comply in all material respects with the requirements of the Securities Act and the Commission's rules and guidelines applicable thereto and present fairly the consolidated financial position, results of operations and changes in financial position of the Company and the Subsidiaries on the basis stated in or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus at the respective dates or for the respective periods to which they apply.

(xxi) Other than as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since the date of the latest audited financial statements included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (a) the Company has not been advised of (1) any significant deficiencies in the design or operation of internal controls that could adversely affect the ability of the Company and each of its Subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls and (2) any fraud, whether or not material,

that involves management or other employees who have a significant role in the internal controls of the Company and each of its Subsidiaries, and (b) since that date, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(xxii) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 (e) of the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(xxiii) All U.S. federal income tax returns of the Company and the Subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company and the Subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law, except insofar as the failure to file such returns, individually or in the aggregate, would not result in a Material Adverse Effect, and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company or any Subsidiary except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Company and the Subsidiaries in respect of any income and corporation tax liability for any years not finally determined are adequate in all material respects to meet any assessments or re-assessments for additional income tax for any years not finally determined.

(xxiv) There are no statutes, regulations, documents or contracts of a character required to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus or to be filed as an exhibit to the Registration Statement which are not described or filed as required.

(xxv) Neither the Company nor any of the Subsidiaries is in violation of any statute or any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, production, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "environmental laws"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim, individually or in the aggregate, would have a Material Adverse Effect; and the Company is not aware of any pending investigation which would reasonably be expected to lead to such a claim.

(xxvi) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained, administered or contributed to by the Company or any Subsidiary for employees or former employees of the Company and its affiliates has been maintained in compliance with its

terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “Code”), except to the extent that failure to so comply, individually or in the aggregate, would not have a Material Adverse Effect. No prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code has occurred with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption.

(xxvii) Neither the Company nor any of its Subsidiaries, or any director, officer, nor, to the Company’s knowledge, agent, employee or other person associated with or acting on behalf of the Company or any of its Subsidiaries, has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(xxviii) Solely to the extent that the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated in connection therewith (the “Sarbanes-Oxley Act”), including Section 402 related to loans and Sections 302 and 906 related to certifications, are or have been applicable to the Company, there is and has been no failure on the part of the Company or any of the Company’s directors or officers, in their capacities as such, to comply in all material respects with any applicable provisions of the Sarbanes-Oxley Act.

(xxix) Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company owns or has valid, binding and enforceable licenses or other rights under the patents, patent applications, licenses, inventions, copyrights, know how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property necessary for, or used in the conduct, or the proposed conduct, of the business of the Company in the manner described in the Registration Statement, the Pricing Disclosure Package and the Prospectus (collectively, the “Intellectual Property”), except where the failure to own, possess or have such right is not reasonably likely to result in a Material Adverse Effect; the patents, trademarks, and copyrights, if any, included within the Intellectual Property are valid, enforceable, and subsisting; other than as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (A) the Company is not obligated to pay a material royalty, grant a license to, or provide other material consideration to any third party in connection with the Intellectual Property, (B) the Company has not received any notice of any claim of infringement, misappropriation or conflict with any asserted rights of others with respect to any of the Company’s drug candidates, services, conduct of the business, processes or Intellectual Property, (C) to the knowledge of the Company, neither the conduct of the business, sale nor use of any of the discoveries, inventions, drug candidates, services or processes of the Company referred to in the Registration Statement, the Pricing Disclosure Package or the Prospectus do or will infringe, misappropriate or violate any right or valid patent claim of any third party, (D) none of the technology employed by the Company has been obtained or is being used by the Company in material violation of any contractual obligation binding on the Company or, to the Company’s knowledge, upon any of its officers, directors or employees or otherwise in

violation of the rights of any persons, (E) to the knowledge of the Company, no third party has any ownership right in or to any Intellectual Property that is owned by the Company, other than any co-owner of any patent constituting Intellectual Property who is listed on the records of the U.S. Patent and Trademark Office (the "USPTO") and any co-owner of any patent application constituting Intellectual Property who is named in such patent application, and, to the knowledge of the Company, no third party has any ownership right in or to any Intellectual Property in any field of use that is exclusively licensed to the Company, other than any licensor to the Company of such Intellectual Property, (F) to the Company's knowledge there is no infringement by third parties of any Intellectual Property, (G) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's rights in or to any Intellectual Property, and (H) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any Intellectual Property. The Company is in material compliance with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company, and all such agreements are in full force and effect.

(xxx) All material patents and patent applications owned by or licensed to the Company or under which the Company has rights have, to the knowledge of the Company, been duly and properly filed and maintained; to the knowledge of the Company, the parties prosecuting such patent applications have complied with their duty of candor and disclosure to the USPTO in connection with such applications; and the Company is not aware of any facts required to be disclosed to the USPTO that were not disclosed to the USPTO and which would preclude the grant of a patent in connection with any such application or would reasonably be expected to form the basis of a finding of invalidity with respect to any patents that have issued with respect to such applications. To the Company's knowledge, all material patents and patent applications owned by the Company and filed with the USPTO or any foreign or international patent authority (the "Company Patent Rights") and all patents and patent applications in-licensed by the Company and filed with the USPTO or any foreign or international patent authority (the "In-licensed Patent Rights") have been duly and properly filed; the Company believes it has complied with its duty of candor and disclosure to the USPTO for the Company Patent Rights and, to the Company's knowledge, the licensors of the In-licensed Patent Rights have complied with their duty of candor and disclosure to the USPTO for their In-licensed Patent Rights.

(xxxi) Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company: (A) is and at all times has been in material compliance with all statutes, rules and regulations of the FDA and other comparable Governmental Entities applicable to the ownership, testing (including clinical trials and pre-clinical studies), development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product under development, manufactured, sold or distributed by the Company ("Applicable Laws"); (B) has not received any FDA Form 483, notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the FDA or any Governmental Authority (as defined herein) alleging or asserting material noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, exemptions, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("Authorizations"); (C) possesses all material Authorizations and such Authorizations are valid and in full force and effect and the

Company is not in material violation of any term of any such Authorizations; (D) has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from the FDA or any Governmental Authority or third party alleging that any product operation or activity is in material violation of any Applicable Laws or Authorizations and has no knowledge that the FDA or any Governmental Authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (E) has not received notice that the FDA or any Governmental Authority has taken, is taking or intends to take action to materially limit, suspend, modify or revoke any material Authorizations and has no knowledge that the FDA or any Governmental Authority is considering such action; and (F) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission);

(xxxii) To the extent applicable, the Company has operated and currently is in compliance with all applicable health care laws, rules and regulations (except where such failure to operate or non-compliance would not, singly or in the aggregate, result in a Material Adverse Effect), including, without limitation, (i) the Federal, Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq.) and the rules and regulations promulgated thereunder (collectively, "FFDCA"); (ii) all applicable federal, state, and local and all applicable similar foreign healthcare laws, including, without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the U.S. Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to healthcare fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, the healthcare fraud criminal provisions under the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. Section 1320d et seq.); (iii) HIPAA, as amended by the Health Information Technology for Economic Clinical Health Act (42 U.S.C. Sections 17921 - 17931); ; (iv) the regulations promulgated pursuant to such laws; and (vii) any other similar local, state, federal, or foreign laws applicable to the Company (collectively, the "Health Care Laws"). The Company has not received written notice or other communication of any claim, action, suit, audit, survey, proceeding, hearing, enforcement, investigation, arbitration or other action ("Action") from any court or arbitrator or Governmental Authority or regulatory authority or credible third party alleging that any product operation or activity is in violation of any Health Care Laws, and, to the Company's knowledge, no such Action is threatened. The Company is not a party to and does not have any ongoing reporting obligations pursuant to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, plan of correction or similar agreement imposed by any Governmental Authority. Additionally, neither the Company, nor to the Company's actual knowledge, any of its employees, officers or directors, has been excluded, suspended or debarred from participation in any U.S. state or federal health care program or human clinical research pursuant to 42 U.S.C. § 1320a-7, 21 U.S.C. § 335a, or similar laws, or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action that could reasonably be expected to result in debarment, suspension, or exclusion.

(xxxiii) The non-clinical studies and clinical trials conducted by or, to the Company's knowledge, on behalf of the Company were and, if still ongoing, are being conducted in all material respects in accordance with applicable experimental protocols, procedures and controls pursuant to accepted professional scientific standards, current good clinical practices and current good laboratory practices as required under applicable Health Care Laws and all Authorizations and Applicable Laws, including, without limitation, the FDCA, and the International Conference on Harmonization Guidelines; the descriptions of the results of such studies and clinical trials contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus are, to the Company's knowledge, accurate and complete in all material respects and fairly present the material data derived from such studies and clinical trials; except to the extent disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company is not aware of any studies or clinical trials, the results of which the Company believes reasonably call into question the study or trial results described or referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus when viewed in the context in which such results are described and the clinical state of development; and, except to the extent disclosed in the Registration Statement, the Pricing Disclosure Package or the Prospectus, the Company has not received any notices or correspondence from the FDA or any Governmental Entity requiring the termination or suspension of any studies or clinical trials conducted by or on behalf of the Company, other than ordinary course communications with respect to modifications in connection with the design and implementation of such clinical trials.

(xxxiv) Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, or as otherwise disclosed to the Underwriter, there are no persons with registration rights or other similar rights to have securities registered pursuant to the Registration Statement or otherwise registered by the Company under the Securities Act.

(xxxv) The Company is not and, after giving effect to the offering and sale of the Shares as contemplated herein and the application of the net proceeds therefrom as described in the Pricing Disclosure Package and the Prospectus, will not be an "investment company", as such term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act").

(xxxvi) The Company has not distributed and, prior to the later to occur of the Closing Date (as defined in Section 4 hereof) and completion of distribution of the Shares, will not distribute any offering materials in connection with the offering and sale of the Shares, other than the Pricing Disclosure Package and the Prospectus and, subject to compliance with Section 6 hereof, any Issuer Free Writing Prospectus; and the Company has not taken and will not take, directly or indirectly, any action designed to cause or result in, or which constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Shares. The Company (a) has not alone engaged in any Testing-the-Waters Communication and (b) has not authorized anyone other than the Underwriter to engage in Testing-the-Waters Communications. The Company reconfirms that the Underwriter has been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications. "Written Testing-the-Waters Communication" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

(xxxvii) The statistical and market and industry-related data included in the Registration Statement, the Pricing Disclosure Package and the Prospectus are based on or derived from sources which the Company believes to be reliable and accurate or represent the Company's good faith estimates that are made on the basis of data derived from such sources, and the Company has obtained the written consent to the use of such data from sources to the extent required.

(xxxviii) Any certificate signed by any officer of the Company delivered to the Underwriter or to counsel for the Underwriter shall be deemed a representation and warranty by the Company to the Underwriter as to the matters covered thereby.

2. (a) Subject to the terms and conditions herein set forth, the Company agrees to sell to the Underwriter and the Underwriter agrees to purchase from the Company, at a purchase price per Firm Share of \$3.91 (a "Purchase Price"), the Firm Shares and (b) in the event and to the extent that the Underwriter shall exercise the election to purchase Option Shares as provided below, the Company agrees to sell to the Underwriter, and the Underwriter agrees to purchase from the Company, at the Purchase Price per Option Share, the Option Shares.

(b) The Company hereby grants to the Underwriter the right to purchase at its election up to 455,454 Option Shares at the Purchase Price per Option Share. The Underwriter may exercise its option to acquire Option Shares in whole or in part from time to time only by written notice from the Underwriter to the Company, given within a period of thirty (30) calendar days after the date of this Agreement and setting forth the number of Option Shares to be purchased and the date on which such Option Shares are to be delivered, as determined by the Underwriter but in no event earlier than the Closing Date or, unless the Underwriter and the Company otherwise agree in writing, earlier than two or later than ten business days after the date of such notice. The Underwriter may exercise its option to acquire Option Shares for the sole purpose of covering sales in excess of the Firm Shares.

3. It is understood that the Underwriter proposes to offer the Shares for sale to the public upon the terms and conditions set forth in the Prospectus.

4. The Company will deliver the Firm Shares to the Underwriter through the facilities of the Depository Trust Company ("DTC") for the account of the Underwriter, against payment of the purchase price therefor in immediately available funds by wire transfer to the Company at 10:30 a.m., New York time, at the office of Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, on April 30, 2021, or at such other time not later than seven full business days thereafter as the Underwriter and the Company determine, such time being herein referred to as the "Closing Date". If the Underwriter so elects, delivery of the Shares may be made by credit through full fast transfer to the account at The Depository Trust Company designated by the Underwriter. For purposes of Rule 15c6-1 under the Exchange Act, the Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of the Firm Shares.

Each time for the delivery of and payment for the Option Shares, being herein referred to as an Option Closing Date", which may be the Closing Date, shall be determined by the Underwriter as provided above. The Company will deliver the Option Shares being purchased on each Option Closing Date to the Underwriter through the facilities of DTC for the account of the Underwriter, against payment of the purchase price therefor in Federal (same day) funds by official bank check or checks or wire transfer drawn to the order of the Company at the above office of Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, at 10:30 a.m., New York time on the applicable Option Closing Date.

At the Closing Date and any Option Closing Date, the Company shall pay the Underwriter a management fee equal to 1.0% of the gross proceeds raised at the Closing Date and each Option Closing Date, by deduction from the proceeds of the sale of the Shares contemplated herein.

5. The Company covenants and agrees with the Underwriter as follows:

(a)(i) During the period beginning on the date hereof and ending on the later of the Closing Date (or the latest Option Closing Date, if applicable) or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered (or in lieu thereof the notice referred to in Rule 173(a) under the Securities Act is no longer required to be provided), in connection with sales by an underwriter or dealer (the "Prospectus Delivery Period"), prior to amending or supplementing the Registration Statement, the Pricing Disclosure Package or the Prospectus, the Company shall furnish to the Underwriters for review a copy of each such proposed amendment or supplement, and the Company shall not file any such proposed amendment or supplement to which the Underwriters reasonably object in writing.

(ii) During the Prospectus Delivery Period, the Company shall promptly advise the Underwriters in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, (iii) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending its use or the use of any Preliminary Prospectus, the Pricing Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its reasonable efforts to obtain the lifting of such order as soon as reasonably practicable. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A and 430B, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b) or Rule 433 were received in a timely manner by the Commission.

(iii) (A) During the Prospectus Delivery Period, the Company will comply as far as it is able with all requirements imposed upon it by the Securities Act, as now and hereafter amended, and by the Rules and Regulations, as from time to time in force, and by the Exchange Act so far as necessary to permit the continuance of sales of or dealings in the Shares as contemplated by the provisions hereof, the Pricing Disclosure Package, and the Registration Statement and the Prospectus. If during such period any event occurs as a result of which the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Pricing Disclosure Package) would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary or appropriate in the opinion of the Company or its counsel or the Underwriters or counsel to the Underwriters to amend the Registration Statement or supplement the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Pricing Disclosure Package) to comply with the Securities Act or to file under the Exchange Act any document which would be deemed to be incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, the Company will promptly notify the Underwriters and will amend the Registration Statement or supplement the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Pricing Disclosure Package) or file such document (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(B) If at any time following issuance of any Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company has promptly notified or promptly will notify the Underwriters and has promptly amended or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(b) The Company will use its reasonable best efforts to qualify the Shares for offering and sale under the securities laws of such jurisdictions as you may reasonably request and to comply with such laws in all material respects so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Shares, provided that nothing in this Section 5(b) shall require the Company to qualify as a foreign corporation in any jurisdiction in which it is not already so qualified, to file a general consent to service of process in any jurisdiction, or subject itself to taxation in any jurisdiction if it is not otherwise so subject.

(c) The Company has furnished or, upon written request, will deliver to the Underwriter, without charge, a signed copy of each Registration Statement as originally filed, any Rule 462(b) Registration Statement, each Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, and of each amendment to each (including exhibits filed therewith or incorporated by reference therein) and signed copies of all consents and certificates of experts (which copies may be in electronic form), and will also, upon your written request, deliver to the

Underwriter, without charge, a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) the Underwriter. The copies of such documents and each amendment thereto furnished to the Underwriter will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the Securities Act.

(e) The Company will use the net proceeds received by it from the sale of the Shares in the manner specified in the Pricing Disclosure Package and the Prospectus under the heading "Use of Proceeds".

(f) The Company has not taken or will take and, to the Company's knowledge, none of its employees, officers or directors has taken or will take, directly or indirectly, any action designed to or which might reasonably be expected to cause or result in, or which has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(g) Except as contemplated herein, the Company will not incur any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(h) During the Prospectus Delivery Period, the Company will file on a timely basis with the Commission such periodic and current reports as are required by the Exchange Act and the rules and regulations promulgated thereunder.

(i) Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company will maintain such controls and other procedures, including without limitation those applicable to the Company and required by Sections 302 and 906 of the Sarbanes-Oxley Act and the applicable regulations thereunder, that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and its principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure, to ensure that material information relating to Company, is made known to them by others within those entities.

(j) The Company will substantially comply with all effective applicable provisions of the Sarbanes-Oxley Act.

(k) The Company will use its reasonable best efforts to maintain the listing for quotation of the Common Stock on the Nasdaq Capital Market. As of the Closing Date, such shares will have been duly authorized for listing on the Nasdaq Capital Market subject to official notice of issuance.

(j) During a period of ninety (90) days from the date of the Prospectus, the Company will not, without the prior written consent of the Underwriter, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, or announce the issuance or proposed issuance of, any Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, other than (1) the Shares to be sold hereunder, (2) the issuance of equity-based awards granted pursuant to the Company's benefit plans existing on the date hereof that are referred to in the Pricing Disclosure Package and the Prospectus, or pursuant to benefit plans which will be approved by the Company's stockholders, as such plans may be amended, (3) the issuance of shares of Common Stock upon the exercise of any such equity-based awards, (4) the issuance of shares of Common Stock pursuant to warrant agreements outstanding at the time of this Agreement, or (5) the issuance of equity-based securities in connection with collaborations, partnerships or other strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such transaction shall only be with an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities; provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the prohibition period in this Section 5(j) (the issuances described in clauses (2), (3), (4) and (5) above, "Exempt Issuances"). For the avoidance of doubt, nothing in this Agreement will prevent or delay the Company from filing a registration statement with the Commission to register the resale of the shares of Common Stock underlying the warrants referenced in clause (4) above and having such registration statement declared effective by the Commission.

(k) From the date hereof until the 12-month anniversary of the Closing Date, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its subsidiaries of Common Stock or any securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction, other than an Exempt Issuance, in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or

other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price, provided that, for the avoidance of doubt, the presence of a customary anti-dilution protection provision shall not, in itself, cause a transaction to be deemed a Variable Rate Transaction. Notwithstanding the foregoing, on the ninety (90) day anniversary of the date of the Prospectus, the Company may enter into at-the-market offering facilities with the Underwriter.

6. (a) The Company represents and agrees that, without the prior consent of the Underwriter, it has not made and will not make any offer relating to the Shares that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act; the Underwriter represents and agrees that, without the prior consent of the Company, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus; any such free writing prospectus the use of which has been consented to by the Company and the Underwriter is listed on Schedule II hereto.

(b) The Company has complied and will comply with the requirements of Rule 433 under the Securities Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending; the Company represents that it has satisfied and agrees that it will satisfy the conditions under Rule 433 under the Securities Act to avoid a requirement to file with the Commission any electronic road show.

(c) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, the Pricing Disclosure Package or the Prospectus or, when considered together with the information in the Pricing Disclosure Package and other Issuer Free Writing Prospectuses, would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances then prevailing, not misleading, the Company will give prompt notice thereof to the Underwriter and, if requested by the Underwriter, will prepare and furnish without charge to the Underwriter an Issuer Free Writing Prospectus or other document which will correct such conflict, statement or omission; provided, however, that this covenant shall not apply to any statements or omissions in an Issuer Free Writing Prospectus made in reliance upon and in strict conformity with information furnished in writing to the Company by an Underwriter through the Underwriter expressly for use therein.

7. Subject to Section 10 hereof, the Company covenants and agrees with the Underwriter that, whether or not the transactions contemplated by this Agreement are consummated, (a) the Company will pay or cause to be paid (i) \$50,000 for non-accountable expenses, (ii) up to \$100,000 for reasonable, documented fees and expenses of legal counsel and other reasonable, out-of-pocket expenses, and (iii) for the services of an escrow agent and any

actual out-of-pocket cost of such clearing agent settlement and financing, so long as the cost does not exceed \$15,950; provided, however, that such reimbursement amount in no way shall limit the indemnification and contribution provisions of this Agreement.

8. The obligation of the Underwriter hereunder to purchase the Shares on the Closing Date or each Option Closing Date, as the case may be, are subject to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act within the applicable time period prescribed for such filing by the Rules and Regulations and in accordance with Section 5(a); all material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act shall have been filed with the Commission within the applicable time period prescribed for such filing by Rule 433 under the Securities Act; if the Company has elected to rely upon Rule 462(b) under the Securities Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 p.m., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof or the Prospectus or any part thereof or any Issuer Free Writing Prospectus shall have been issued and no proceeding for that purpose shall have been initiated or, to the knowledge of the Company, threatened by the Commission or any state securities commission; and all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the staff of the Commission.

(b) The representations and warranties of the Company contained herein are true and correct on and as of the Closing Date or the Option Closing Date, as the case may be, as if made on and as of the Closing Date or the Option Closing Date, as the case may be, and the Company shall have materially complied with all agreements and all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or the Option Closing Date, as the case may be.

(c) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or the Option Closing Date, as the case may be, there shall not have occurred any downgrading, nor shall any notice have been given of (i) any downgrading, (ii) any intended or potential downgrading or (iii) any review or possible change that does not indicate an improvement, in the rating accorded any securities of or guaranteed by the Company or any Subsidiary by any "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act.

(d) (i) Neither the Company nor any Subsidiary shall have sustained since the date of the latest audited financial statements included in the Pricing Disclosure Package any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Disclosure Package and the Prospectus and except as described in the Registration Statement and the Pricing Disclosure Package, that has had or is reasonably expected to have a Material Adverse Effect, and (ii) since the respective dates as of which information is given in the Registration Statement and the Pricing Disclosure Package, (1) there shall not have been any change in the capital stock

or long-term debt of the Company or any Subsidiary or (2) there shall not have been any Material Adverse Effect, or any development involving a prospective Material Adverse Effect, in or affecting the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company and the Subsidiaries, considered as one enterprise, the effect of which, in any such case described in clause (i) or (ii), is in the judgment of the Underwriter so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Closing Date or Option Closing Date, as the case may be, on the terms and in the manner contemplated in the Pricing Disclosure Package.

(e) The Underwriter shall have received on and as of the Closing Date or the Option Closing Date, as the case may be, a certificate of an executive officer of the Company, reasonably satisfactory to the Underwriter, to the effect (1) set forth in Sections 8(b) (with respect to the respective representations, warranties, agreements and conditions of the Company) and 8(c), (2) that none of the situations set forth in clause (i) or (ii) of Section 8(d) shall have occurred and (3) that no stop order suspending the effectiveness of the Registration Statement has been issued and to the knowledge of the Company, no proceedings for that purpose have been instituted or are pending or contemplated by the Commission.

(f) On the Closing Date or Option Closing Date, as the case may be, Proskauer Rose LLP, counsel for the Company, shall have furnished to the Underwriter their favorable written opinion and negative assurance letter, dated the Closing Date or the Option Closing Date, as the case may be, in form and substance reasonably satisfactory to counsel for the Underwriter.

(g) On the date of the Prospectus, Baker Tilly and Grant Thornton shall each have furnished to the Underwriter a letter, dated the date of delivery thereof, in form and substance satisfactory to the Underwriter, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus.

(h) On the Closing Date or Option Closing Date, as the case may be, the Underwriter shall have received from each of Baker Tilly and Grant Thornton a letter, dated the Closing Date or such Option Closing Date, as the case may be, to the effect that they reaffirm the statements made in the letter or letters furnished pursuant to Section 8(g), except that the specified date referred to shall be a date not more than three business days prior to the Closing Date or such Option Closing Date, as the case may be.

(i) On the Closing Date or Option Closing Date, as the case may be, Lowenstein Sandler LLP, counsel for the Underwriter, shall have furnished to the Underwriter the negative assurance letter of Lowenstein Sandler LLP, counsel for the Underwriter, dated the Closing Date and such Option Closing Date, respectively, and addressed to the Underwriter, in form and substance reasonably satisfactory to the Underwriter.

(j) On the Closing Date or Option Closing Date, as the case may be, Jones Day, Australian counsel for the Company, shall have furnished to the Underwriter their favorable written opinion, dated the Closing Date or the Option Closing Date, as the case may be, in form and substance reasonably satisfactory to counsel for the Underwriter.

(k) The Shares to be delivered on the Closing Date or Option Closing Date, as the case may be, shall have been approved for listing on the Nasdaq Capital Market, subject to official notice of issuance.

(l) FINRA shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and conditions.

(m) The Underwriter shall have received "lock-up" agreements, each substantially in the form of Exhibit A hereto, from each executive officer and director of the Company, and such agreements shall be in full force and effect on the Closing Date or Option Closing Date, as the case may be.

(n) On or prior to the Closing Date or Option Closing Date, as the case may be, the Company shall have furnished to the Underwriter such further information, certificates and documents as the Underwriter shall reasonably request.

(o) On or after the Time of Sale there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the Nasdaq Capital Market; (ii) a suspension or material limitation in trading in the Company's securities on the Nasdaq Capital Market; (iii) a general moratorium on commercial banking activities declared by any of Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the U.S.; (iv) the outbreak or escalation of hostilities involving the U.S. or the declaration by the U.S. of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the U.S. or elsewhere, if the effect of any such event specified in clause (iv) or (v) in the judgment of the Underwriter makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Closing Date or Option Closing Date, as the case may be, on the terms and in the manner contemplated in the Prospectus.

If any condition specified in this Section 8 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated, subject to the provisions of Section 12, by the Underwriter by notice to the Company at any time at or prior to the Closing Date or Option Closing Date, as the case may be, and such termination shall be without liability of any party to any other party, except as provided in Section 12.

9. (a) The Company agrees to indemnify and hold harmless the Underwriter, its affiliates, the directors, officers, employees, counsel and agents of each Underwriter and each person, if any, who controls the Underwriter within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act against any and all losses, liabilities, claims, damages and reasonable expenses whatsoever as incurred (including without limitation, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating,

preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any post-effective amendment thereof, any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, or in any supplement thereto or amendment thereof, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that the Company will not be liable in any such case to the extent that any such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, or any post-effective amendment thereof, any Preliminary Prospectus, the Pricing Disclosure Package or the Prospectus, or in any supplement thereto or amendment thereof, any Issuer Free Writing Prospectus, or any Written Testing-the-Waters Communication in reliance upon and in strict conformity with written information furnished to the Company by or on behalf of the Underwriter expressly for use therein, it being understood and agreed that the only such information furnished by the Underwriter is the information described as such in Section 9(b) below.

(b) The Underwriter agrees to indemnify and hold harmless the Company, each of the directors of the Company, each of the officers of the Company who shall have signed the Registration Statement, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, against any losses, liabilities, claims, damages and reasonable expenses whatsoever as incurred (including without limitation, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any post-effective amendment thereof, or any Preliminary Prospectus, Pricing Disclosure Package or the Prospectus, or in any supplement thereto or amendment thereof, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that any such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in strict conformity with written information furnished to the Company by or on behalf of the Underwriter, it being understood and agreed that the only such information furnished by the Underwriter consists of the following information in the Prospectus furnished on behalf of the Underwriter: the last paragraph at the bottom of the cover page concerning the timing of the

delivery of the shares, the concession figure appearing in the sixth paragraph under the caption "Underwriting" and the information contained in the first and third paragraphs in the section entitled Price Stabilization, Short Positions and Penalty Bids under the caption "Underwriting".

(c) Promptly after receipt by an indemnified party under Section 9(a) or 9(b) of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such Section, notify each party against whom indemnification is to be sought in writing of the commencement thereof (but the failure so to notify an indemnifying party shall not relieve it from any liability which it may have under this Section 9). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and jointly with any other indemnifying party similarly notified, to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnified party). Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by one of the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to have charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) such indemnified party or parties shall have reasonably concluded based on advice from outside counsel that there may be defenses available to it or them which are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events the reasonable fees and expenses of such counsel shall be borne by the indemnifying parties. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, which counsel, in the event of indemnified parties under Section 9(a), shall be selected by the Underwriter. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party. An indemnifying party shall not be liable for any settlement of any action or claim effected without its written consent (which consent will not be unreasonably withheld, conditioned or delayed).

(d) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under Section 9(a) or Section 9(b) in respect of any losses, liabilities, claims, damages or expenses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such

indemnified party as a result of such losses, liabilities, claims, damages or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriter on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriter on the other in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriter on the other from the offering of the Shares shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriter, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriter on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriter agree that it would not be just and equitable if contributions pursuant to this Section 9(d) were determined by pro rata allocation (even if the Underwriter were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 9(d). The amount paid or payable by an indemnified party as a result of the losses, liabilities, claims, damages or expenses (or actions in respect thereof) referred to above in this Section 9(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9(d), the Underwriter shall not be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which the Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriter's obligations in this Section 9(d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the parties to this Agreement contained in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

10. If the Underwriter shall default in its obligations to purchase the Shares hereunder on the Closing Date or the Option Closing Date, as the case may be, and arrangements satisfactory to the Underwriter and the Company for the purchase of such shares of Common

Stock by other persons are not made within forty-eight (48) hours after such default, this Agreement shall terminate; provided, in the event of any termination of this Agreement pursuant to this Section 10, the Company shall not be obligated to reimburse the Underwriter on account of any expenses, including expenses to be paid or reimbursed by it pursuant to Section 7; provided, nothing in this Section 10 shall relieve a party of liability for any material breach hereof prior to termination.

11. Notwithstanding anything herein contained, this Agreement (or the obligations of the Underwriter with respect to any Option Shares which have yet to be purchased) may be terminated, subject to the provisions of Section 12, in the absolute discretion of the Underwriter, by notice given to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date or the Option Closing Date, as the case may be, (a) trading generally on the NYSE American or the New York Stock Exchange or on the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market shall have been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, FINRA or any other governmental or regulatory authority, (b) trading of any securities of or guaranteed by the Company or any Subsidiary shall have been suspended on any exchange or in any over-the-counter market, (c) a general moratorium on commercial banking activities in New York shall have been declared by Federal, New York State or Maryland State authorities or a new restriction materially adversely affecting the distribution of the Firm Shares or the Option Shares, as the case may be, shall have become effective, or (d) there has occurred any material adverse change in the financial markets in the U.S. or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Underwriter, impracticable to market the Shares to be delivered on the Closing Date or Option Closing Date, as the case may be, or to enforce contracts for the sale of the Shares.

If this Agreement is terminated pursuant to this Section 11, such termination will be without liability of any party to any other party except as provided in Section 12 hereof.

12. The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the Underwriter set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of the Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Shares. If this Agreement is terminated pursuant to Section 8 or 11 or if for any reason the purchase of any of the Shares by the Underwriter is not consummated (except as provided in Section 10), the Company shall remain responsible for the actual, out-of-pocket expenses incurred by the Underwriter pursuant to Section 7, the respective obligations of the Company and the Underwriter pursuant to Section 9 and the provisions of Sections 12, 13 and 16 shall remain in effect and, if any Shares have been purchased hereunder the representations and warranties in Section 1 and all obligations under Section 5, and Section 6 shall also remain in effect. If this Agreement shall be terminated by the Underwriter under Section 8 or otherwise because of any failure or refusal on the part of the Company to comply

with the terms or to fulfill any of the conditions of this Agreement (other than solely by reason of the failure of the Underwriter to perform its obligations hereunder), or if for any reason the Company shall be unable to perform its obligations under this Agreement (other than solely by reason of the failure of the Underwriter to perform its obligations hereunder) or any condition of the Underwriter's obligations cannot be fulfilled, the Company agrees to reimburse the Underwriter for all out-of-pocket expenses (including the fees and expenses of its counsel) reasonably incurred by the Underwriter in connection with this Agreement or the offering contemplated hereunder.

13. This Agreement shall inure to the benefit of and be binding upon the Company and the Underwriter, the officers and directors of the Company referred to herein, any controlling persons referred to herein and their respective successors and assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person, firm or corporation any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. No purchaser of Shares from the Underwriter shall be deemed to be a successor or assign by reason merely of such purchase.

14. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt thereof by the recipient if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriter shall be given to the Underwriter, c/o H.C. Wainwright & Co., LLC, Attention: Head of Investment Banking, Fax: 212-214-0803 with a copy to Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, fax: (973) 597-2476, Attention: Steven M. Skolnick. Notices to the Company shall be given to it at Benitec Biopharma Inc., 3940 Trust Way, Hayward, California 94545 (fax no.: +61 (0)3 9966-9923); Attention: CEO; with a copy to Proskauer Rose LLP, 2029 Century Park East, Suite 2400, Los Angeles, CA 90067-3010, Attention Ben D. Orlanski and Matthew O'Loughlin (fax no.: (310) 557-2193).

15. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

16. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAWS.

17. The parties hereby submit to the jurisdiction of and venue in the federal courts located in the City of New York, New York in connection with any dispute related to this Agreement, any transaction contemplated hereby, or any other matter contemplated hereby.

18. The Company acknowledges and agrees that (i) the purchase and sale of the Shares pursuant to this Agreement, including the determination of the public offering price of the Shares and any related discounts and commissions, is an arm's-length commercial transaction between the Company on the one hand, and the Underwriter, on the other, (ii) in connection therewith and with the process leading to such transaction the Underwriter is acting solely as a principal and not the agent or fiduciary of the Company or its stockholders, creditors, employees or any other party, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in

favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Underwriter has advised or is currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in this Agreement, and (iv) the Company has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company agrees that it will not claim that the Underwriter has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

19. The Company acknowledges that the Underwriter's research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that the Underwriter's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriter with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by the Underwriter's investment banking divisions. The Company acknowledges that the Underwriter is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transaction for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

20. Notwithstanding anything herein to the contrary, the Company is authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company relating to that treatment and structure, without the Underwriter imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

21. This Agreement (together with the other agreements and documents being delivered pursuant to or in connection with this Agreement) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and thereof, and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof. Except as otherwise contemplated herein, it is understood and agreed by the parties hereto that all other binding terms and conditions of that certain engagement letter between the Company and H.C. Wainwright & Co., LLC, dated April 20, 2021, shall remain valid and binding on, and enforceable against, the Company and in full force and effect in accordance with the terms thereof.

22. The Company and the Underwriter hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

[Remainder of page intentionally left blank.]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument will become a binding agreement among the Company and the Underwriter.

Very truly yours,

BENITEC BIOPHARMA INC.

By: /s/ Dr. Jerel Banks
Name: Dr. Jerel Banks
Title: Chief Executive Officer

Accepted as of the date hereof:
H.C. WAINWRIGHT & CO., LLC

By: /s/ Mark W. Viklund
Name: Mark W. Viklund
Title: Chief Executive Officer

SCHEDULE I

	Number of Firm Shares	Number of Option Shares
H.C. Wainwright & Co., LLC	<u>3,036,366</u>	<u>455,454</u>

Number of Shares of Firm Shares: 3,036,366

Number of Option Shares: 455,454

Public Offering Price per Share: \$4.25

Underwriting Discount per Share: \$0.34

SCHEDULE II

Free Writing Prospectuses and/or Testing-the-Water Communications

1. Free Writing Prospectus, dated April 27, 2021, filed with the Commission on April 27, 2021
2. Free Writing Prospectus, dated April 27, 2021, filed with the Commission on April 28, 2021

LOCK-UP AGREEMENT

[], 2021

H.C. Wainwright & Co., LLC
430 Park Avenue, 4th Floor
New York, New York 10022

Ladies and Gentlemen:

The undersigned refers to the proposed Underwriting Agreement (the "Underwriting Agreement") between Benitec Biopharma Inc., a Delaware corporation (the "Company"), and the underwriter named therein (the "Underwriter"). As an inducement to the Underwriter to execute the Underwriting Agreement in connection with the proposed public offering (the "Offering") of securities of the Company pursuant to a Registration Statement on Form S-3, the undersigned hereby agrees that from the date hereof and until 90 days after the public offering date set forth on the final prospectus used for the Offering (the "Public Offering Date") pursuant to the Underwriting Agreement (such 90 day period being referred to herein as the "Lock-Up Period"), the undersigned will not (and will cause any immediate family member, any partnership, corporation or other entity within the undersigned's control, and any trustee of any trust that holds shares of common stock, par value \$0.0001 per share ("Common Stock") of the Company or other securities of the Company for the benefit of the undersigned or such immediate family member not to) offer, sell, contract to sell (including any short sale), pledge, hypothecate, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), grant any option, right or warrant for the sale of, purchase any option or contract to sell, sell any option or contract to purchase, or otherwise encumber, dispose of or transfer, or grant any rights with respect to, directly or indirectly, any shares of Common Stock or securities convertible into or exchangeable or exercisable for any shares of Common Stock, enter into a transaction which would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such aforementioned transaction is to be settled by delivery of the Common Stock or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of the Underwriter, which consent may be withheld in the Underwriter's sole discretion. For purposes of this Lock-Up Agreement (the "Agreement"), "immediate family member" shall mean (i) the spouse of the undersigned and (ii) any lineal descendent, stepchild, parent, stepparent, grandparent, sibling, stepsibling, son-in-law, daughter-in-law, brother-in-law, sister-in-law, nephew or niece, including any such relationship by fact of legal adoption, of the undersigned or such spouse, in each case living in the undersigned's household or whose principal residence is the undersigned's household (regardless of whether such immediate family member may at the time be living elsewhere due to educational activities, health care treatment, military service, temporary internship or employment or otherwise).

The foregoing restrictions shall not apply to *bona fide* gifts by the undersigned, provided that (a) each resulting transferee of the Company's securities executes and delivers to the Underwriter an agreement satisfactory to the Underwriter certifying that such transferee is bound by the terms of this Agreement and has been in compliance with the terms hereof since the date first above written as if it had been an original party hereto and (b) to the extent any interest in the Company's securities is retained by the undersigned (or an immediate family member), such securities shall remain subject to the restrictions contained in this Agreement.

In addition, the undersigned agrees that, during the Lock-Up Period, without the prior written consent of the Underwriter (which consent may be withheld in its sole discretion): (a) the undersigned will not request, make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock and (b) the undersigned waives any and all notice requirements and rights with respect to the registration of any such security pursuant to any agreement, understanding or otherwise to which the undersigned is a party.

Any Common Stock received upon exercise of options granted to the undersigned will also be subject to this Agreement. Any acquisition of Common Stock by the undersigned in the open market on or after the Public Offering Date (but not the disposition of such Common Stock) will not be subject to this Agreement. A transfer of Common Stock or other securities of the Company may be made (i) to an immediate family member, (ii) to a trust for the benefit of the undersigned or an immediate family member, (iii) by will or intestate succession upon the death of the undersigned, (iv) pursuant to operation of law, including pursuant to a domestic order or negotiated divorce settlement, and (v) if the undersigned is a corporation, limited liability company, partnership, trust, or other business entity, as part of a distribution, transfer or distribution by the undersigned to its stockholders, members, partners, beneficiaries or other equity holders, provided in each case (i) through (v) that the transferee agrees in writing prior to such transfer to be bound by the terms of this Agreement as if it were a party hereto and further provided that no filing under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock shall be required or shall be voluntarily made during the Lock-Up Period.

The undersigned may also (a) transfer securities of the Company (i) to the Company in connection with the "cashless" exercise of options to purchase shares of Common Stock pursuant to employee benefit plans existing as of the date hereof and disclosed or incorporated by reference in the final prospectus relating to the Offering (provided that the restrictions on transfer set forth in this Agreement shall apply to shares of Common Stock issued upon such exercise, and provided further that no voluntary filing under Section 16(a) of the Exchange Act reporting such transfer shall be made during the Lock-Up Period and that if such filing is required to be made that the filing clearly indicate that such transfer or disposition is related to cashless net exercise) and (ii) pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to all holders of the Company's capital stock involving a change of control of the Company (provided that in the event that the tender offer, merger, consolidation or other similar transaction is not completed, the undersigned's Common Stock shall remain subject to the restrictions contained in this Agreement), (b) exercise any option to purchase Common Stock of the Company granted under any equity incentive plan or stock purchase plan of the

Company existing as of the date hereof and disclosed or incorporated by reference in the final prospectus relating to the Offering (provided that the restrictions on transfer set forth in this Agreement shall apply to shares of Common Stock issued upon such exercise, and provided further that no filing under Section 16(a) of the Exchange Act reporting such exercise shall be made during the Lock-Up Period, and that if such a filing is required to be made that the filing clearly indicate that it is related to such exercise) and (c) enter into a written plan meeting the requirements of Rule 10b5-1 under the Exchange Act relating to the sale or other disposition of securities of the Company (provided that the securities subject to such plan may not be sold or otherwise disposed of until after the expiration of the Lock-Up Period, and that the entry into such plan is not publicly disclosed, including in any filing under the Exchange Act).

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to (a) decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Agreement and (b) place legends and stop transfer instructions on any such shares of Common Stock owned or beneficially owned by the undersigned.

[Signature page follows]

This Agreement is irrevocable and shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law rules. This Agreement shall lapse and become null and void if the Public Offering Date shall not have occurred on or before May 31, 2021.

Very truly yours,

(Name - Please Print)

(Signature)

(Name of Signatory, in the case of entities - Please Print)

(Title of Signatory, in the case of entities - Please Print)

Address:

Accepted and Agreed:
Benitec Biopharma Inc.

By: _____

Name:

Title:



Proskauer Rose LLP 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3010

April 29, 2021

Benitec Biopharma Inc.
3940 Trust Way
Hayward, California 94545

Ladies and Gentlemen:

We have acted as counsel to Benitec Biopharma Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a preliminary prospectus supplement dated April 27, 2021 (the "Preliminary Prospectus Supplement"), and a final prospectus supplement, dated April 29, 2021 (the "Final Prospectus Supplement," and together with the Preliminary Prospectus Supplement, the "Prospectus Supplement"), to the prospectus, included as part of a Registration Statement (the "Registration Statement") on Form S-3 (File No. 333-253259), relating to the offer and sale of (i) 3,036,366 shares (the "Firm Shares") of the common stock, par value \$0.0001 per share, of the Company ("Common Stock"), and (ii) up to an additional 455,454 shares of Common Stock which may be offered pursuant to an underwriters' option to purchase additional shares of Common Stock (the "Option Shares," and together with the Firm Shares, the "Shares"), to be issued to H.C. Wainwright & Co., LLC (the "Underwriter") pursuant to the Amended and Restated Underwriting Agreement, dated April 27, 2021, by and between the Company and the Underwriter (the "Underwriting Agreement").

In connection with rendering this opinion, we have examined originals, certified copies or copies otherwise identified as being true copies of the following:

- (a) the Registration Statement;
- (b) the Prospectus Supplement;
- (b) the Underwriting Agreement;
- (c) the amended and restated certificate of incorporation of the Company, as in effect on the date hereof and as amended to date;
- (d) the amended and restated bylaws of the Company, as in effect on the date hereof and as amended to date;
- (e) corporate proceedings of the Company relating to its proposed issuance of the Shares; and
- (f) such other instruments and documents as we have deemed relevant or necessary in connection with our opinions set forth herein.

We have made such examination of law as we have deemed necessary to express the opinion contained herein. As to matters of fact relevant to this opinion, we have relied upon, and assumed without independent verification, the accuracy of certificates of public officials and officers of the Company. We have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as certified, facsimile or photostatic copies, and the authenticity of the originals of such copies.

Based upon the foregoing, and subject to the limitations, qualifications, exceptions and assumptions expressed herein, we are of the opinion, assuming no change in the applicable law or pertinent facts, that the Shares have been duly authorized for issuance and, when the Shares are issued and paid for in accordance with the terms and conditions of the Underwriting Agreement, the Shares will be validly issued, fully paid and non-assessable.

Beijing | Boca Raton | Boston | Chicago | Hong Kong | London | Los Angeles | New Orleans | New York | Paris | São Paulo | Washington, DC



Benitec Biopharma Inc.
April 29, 2021
Page 2

This opinion is limited in all respects to the General Corporation Law of the State of Delaware, and we express no opinion as to the laws, statutes, rules or regulations of any other jurisdiction. The reference and limitation to the "General Corporation Law of the State of Delaware" includes all applicable Delaware statutory provisions of law and reported judicial decisions interpreting these laws.

We hereby consent to the filing of this opinion letter in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act as Exhibit 5.1 to the Current Report on Form 8-K to be filed by the Company with the Commission on April 29, 2021 and to the reference to our firm under the caption "Legal Matters" in the Prospectus Supplement, and we further consent to the incorporation of this opinion by reference into the Registration Statement and the Prospectus Supplement. In giving the foregoing consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Proskauer Rose LLP

Benitec Biopharma Announces \$7.5 Million Bought Deal Offering of Common Stock

HAYWARD, Calif., April 27, 2021—Benitec Biopharma Inc. (NASDAQ: BNTC) (“Benitec” or “the Company”), a development-stage, gene therapy-focused, biotechnology company developing novel genetic medicines based on the proprietary DNA-directed RNA interference (“ddRNAi”) platform, today announced that it has entered into an underwriting agreement with H.C. Wainwright & Co. under which the underwriter has agreed to purchase on a firm commitment basis 1,764,705 shares of common stock of the Company at a price to the public of \$4.25 per share, less underwriting discounts and commissions. The Company has also granted the underwriter a 30-day option to purchase up to an additional 264,705 shares of common stock at the public offering price, less underwriting discounts and commissions. The offering is expected to close on or about April 30, 2021, subject to satisfaction of customary closing conditions.

H.C. Wainwright & Co. is acting as the sole book-running manager for the offering.

The gross proceeds of the offering are expected to be approximately \$7.5 million, prior to deducting underwriting discounts and commissions and offering expenses payable by the Company and excluding the exercise of the underwriter’s option to purchase additional shares. The Company intends to use the net proceeds from the offering for the continued advancement of development activities for its product pipeline, general corporate purposes, and strategic growth opportunities.

The shares of common stock are being offered pursuant to an effective registration statement on FormS-3 (File No. 333-253259) that was filed with the U.S. Securities and Exchange Commission (“SEC”) on February 18, 2021 and declared effective on February 26, 2021. The shares of common stock may be offered only by means of a prospectus supplement forming a part of the effective registration statement. A preliminary prospectus supplement and accompanying prospectus relating to the offering will be filed with the SEC and will be available on the SEC’s website at www.sec.gov. Electronic copies of the preliminary prospectus supplement and accompanying prospectus relating to the offering, when filed, may also be obtained from H.C. Wainwright & Co., LLC, 430 Park Avenue, New York, NY 10022, by email at placements@hcwco.com or by phone at (212) 856-5711.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction.

About Benitec Biopharma Inc.

Benitec Biopharma Inc. (“Benitec” or the “Company”) is a development-stage biotechnology company focused on the advancement of novel genetic medicines with headquarters in Hayward, California. 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. The Company is developing ddRNAi-based therapeutics for chronic and life-threatening human conditions including Oculopharyngeal Muscular Dystrophy (OPMD) and Chronic Hepatitis B. A comprehensive overview of the Company can be found on Benitec’s website at www.benitec.com.

Forward Looking Statements

Except for the historical information set forth herein, the matters set forth in this press release include forward-looking statements, including statements regarding pertaining to the offering of the Company's securities, including the use of net proceeds therefrom. These forward-looking statements are based on the Company's current expectations and subject to risks and uncertainties that may cause actual results to differ materially, including unanticipated developments in and risks related to: the closing of the public offering, use of proceeds, market and other conditions, unanticipated delays; further research and development and the results of clinical trials possibly being unsuccessful or insufficient to meet applicable regulatory standards or warrant continued development; the ability to enroll sufficient numbers of subjects in clinical trials; determinations made by the FDA and other governmental authorities; the Company's ability to protect and enforce its patents and other intellectual property rights; the Company's dependence on its relationships with its collaboration partners and other third parties; the efficacy or safety of the Company's products and the products of the Company's collaboration partners; the acceptance of the Company's products and the products of the Company's collaboration partners in the marketplace; market competition; sales, marketing, manufacturing and distribution requirements; greater than expected expenses; expenses relating to litigation or strategic activities; the Company's ability to satisfy its capital needs through increasing its revenue and obtaining additional financing; the impact of the current COVID-19 pandemic, the disease caused by the SARS-CoV-2 virus, which may adversely impact the Company's business and preclinical and future clinical trials; the impact of local, regional, and national and international economic and financial markets conditions and events; and other risks detailed from time to time in the Company's reports filed with the Securities and Exchange Commission. The Company disclaims any intent or obligation to update these forward-looking statements.

Media & Investor Relations Contact:

Jay A. Morakis
CEO of M Group Strategic Communications (for Benitec Biopharma, Inc.)
Phone: 646-859-5951
Email: jmorakis@mgroupsc.com

Benitec Biopharma Increases Previously Announced Bought Deal Offering of Common Stock to \$12.9 Million

HAYWARD, Calif., April 27, 2021—Benitec Biopharma Inc. (NASDAQ: BNTC) (“Benitec” or “the Company”), a development-stage, gene therapy-focused, biotechnology company developing novel genetic medicines based on the proprietary DNA-directed RNA interference (“ddRNAi”) platform, today announced that, due to demand, the underwriter has agreed to increase the size of the previously announced offering and purchase on a firm commitment basis 3,036,366 shares of common stock of the Company at a price to the public of \$4.25 per share, less underwriting discounts and commissions. The Company has also granted the underwriter a 30-day option to purchase up to an additional 455,454 shares of common stock at the public offering price, less underwriting discounts and commissions. The offering is expected to close on or about April 30, 2021, subject to satisfaction of customary closing conditions.

H.C. Wainwright & Co. is acting as the sole book-running manager for the offering.

The gross proceeds of the offering are expected to be approximately \$12.9 million, prior to deducting underwriting discounts and commissions and offering expenses payable by the Company and excluding the exercise of the underwriter’s option to purchase additional shares. The Company intends to use the net proceeds from the offering for the continued advancement of development activities for its product pipeline, general corporate purposes, and strategic growth opportunities.

The shares of common stock are being offered pursuant to an effective registration statement on FormS-3 (File No. 333-253259) that was filed with the U.S. Securities and Exchange Commission (“SEC”) on February 18, 2021 and declared effective on February 26, 2021. The shares of common stock are being offered only by means of a prospectus supplement forming a part of the effective registration statement. A preliminary prospectus supplement and accompanying prospectus relating to the offering have been filed with the SEC and are available on the SEC’s website at www.sec.gov. A final prospectus supplement and accompanying prospectus relating to the offering will be filed with the SEC and, upon filing, may be obtained on the SEC’s website at <http://www.sec.gov> or by contacting H.C. Wainwright & Co., LLC, 430 Park Avenue, New York, NY 10022, by email at placements@hcwco.com or by phone at (212) 856-5711.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction.

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