



**Up to 27,793,034 Shares of Common Stock**

This Prospectus Supplement No. 2 (the “**Supplement**”) supplements the prospectus dated April 19, 2021 (the “**Prospectus**”) relating to the resale of up to 27,793,034 shares of common stock of Clene Inc. (the “**Company**”) by the selling shareholders identified in the Prospectus. This Supplement should be read in conjunction with the Prospectus, and this Supplement is not complete without, and may not be delivered or utilized except in connection with, the Prospectus, including any amendments or supplements thereto.

If there is any inconsistency between the information in the Prospectus and this Supplement, you should rely on the information in this Supplement.

This Supplement is being filed to update the information in the Prospectus with the information contained in our Current Reports on Form 8-K (the “**Current Reports**”) filed with the U.S. Securities and Exchange Commission (the “**SEC**”) on May 19, 2021 and May 24, 2021. Copies of the Current Reports are included below.

**Investing in our securities involves risks that are described in the “Risk Factors” section beginning on page 11 of the Prospectus.**

**Neither the SEC nor any state securities commission has approved or disapproved of these securities or determined if this Supplement (or the Prospectus including any supplements or amendments thereto) is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this Prospectus Supplement is May 24, 2021.**

---

---

**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): May 18, 2021

**Clene Inc.**  
(Exact name of registrant as specified in its charter)

<b>Delaware</b> (State or other jurisdiction of incorporation)	<b>001-39834</b> (Commission File Number)	<b>85-2828339</b> (IRS Employer Identification No.)
6550 South Millrock Drive, Suite G50 Salt Lake City, Utah (Address of principal executive offices)		84121 (Zip Code)

Registrant's telephone number, including area code: (801) 676 9695

N/A  
(Former name or former address, if changed since last report.)

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 (see General Instruction A.2. below):

- 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 US\$0.0001 per share	CLNN	The Nasdaq Stock Market LLC
Warrants, to acquire one-half of one share of Common Stock for \$11.50 per share	CLNNW	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 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On May 18, 2021, the stockholders of Clene Inc. (the “Company”) approved an amendment to the Amended and Restated Certificate of Incorporation (the “Certificate”) to increase the number of authorized shares of Common Stock from 100,000,000 to 150,000,000.

The foregoing description of the amendment to the Certificate does not purport to be complete and is qualified in its entirety by reference to the text of the Certificate, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### Item 5.07 Submission of Matters to a Vote of Security Holders.

The 2021 Annual Meeting of Stockholders (the “Annual Meeting”) of Clene Inc. was held on May 18, 2021. At the Annual Meeting, the Company’s stockholders voted on the following three proposals and cast their votes as described below.

1. The following nominees were elected to serve as Class I directors until the expiration of their three-year term at the annual meeting of stockholders in 2024 and until their successors are duly elected and qualified, based upon the following votes:

	<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Broker Non-Vote</b>
Fiona Costello, M.D.	47,303,938	–	562	2,604,577
Jonathon T. Gay	47,302,820	–	1,680	2,604,577
Reed N. Wilcox	47,301,620	–	2,880	2,604,577

2. The Second Amended and Restated Certificate of Incorporation of the Company was adopted, thus increasing the number of authorized shares of Common Stock to 150,000,000, based upon the following votes:

<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Broker Non-Vote</b>
49,763,481	139,169	6,427	–

3. The appointment of Deloitte & Touche LLP as our independent registered public accounting firm for fiscal year 2021 was ratified based upon the following votes:

<b>For</b>	<b>Against</b>	<b>Abstained</b>	<b>Broker Non-Vote</b>
49,891,045	945	17,087	–

### Item 8.01 Other Events.

On May 19, 2021, the Company issued a press release announcing the appointment of David J. Matlin as Chairman of the Board of Directors. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<b>Exhibit Number</b>	<b>Exhibit Description</b>
3.1	<a href="#">Second Amended and Restated Certificate of Incorporation of Clene Inc.</a>
99.1	<a href="#">Press Release dated May 19, 2021 announcing the appointment of David J. Matlin as Chairman of the Board</a>

**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 hereunto duly authorized.

Date: May 19, 2021

**Clene Inc.**

By: /s/ Robert Etherington  
Robert Etherington  
President, Chief Executive Officer and Director

**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
CLENE INC.**

**Article I**

Section 1.1 Name. The name of the Corporation is Clene Inc. (the "Corporation").

**Article II**

Section 2.1 Address. The registered office of the Corporation in the State of Delaware is 9 E. Loockerman Street, Suite 311, Dover, Kent County, Delaware 19901; and the name of the Corporation's registered agent at such address is Registered Agent Solutions, Inc.

**Article III**

Section 3.1 Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the "DGCL"). The Corporation was first incorporated on August 12, 2020.

**Article IV**

Section 4.1 Capitalization. The total number of shares of all classes of stock that the Corporation is authorized to issue is 151,000,000 shares, consisting of (i) 1,000,000 shares of Preferred Stock, par value \$0.0001 per share ("Preferred Stock"), and (ii) 150,000,000 shares of Common Stock, par value \$0.0001 per share ("Common Stock"). The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares of such class or series then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation or any certificate of designation relating to any series of Preferred Stock. The filing of this Certificate of Incorporation shall occur on the closing date of the transactions contemplated by that certain Merger Agreement, dated as of September 1, 2020, by and among Clene Nanomedicine, Inc., Fortis Advisors LLC, Tottenham Acquisition I Ltd., the Corporation (formerly known as Chelsea Worldwide Inc.) and Creative Worldwide Inc.

---

Section 4.2 Preferred Stock.

(A) The Board of Directors of the Corporation (the “Board”) is hereby expressly authorized, subject to any limitations prescribed by the DGCL, by resolution or resolutions, at any time and from time to time, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers (if any) of the shares of such series, and the powers, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designation with respect thereto. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(B) Except as otherwise required by law, holders of a series of Preferred Stock, as such, shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any certificate of designations relating to such series).

Section 4.3 Common Stock.

(A) Voting Rights.

(1) Except as otherwise provided in this Certificate of Incorporation or as provided by law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that to the fullest extent permitted by law, holders of Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.

(2) Except as otherwise provided in this Certificate of Incorporation or required by applicable law, the holders of Common Stock having the right to vote in respect of such Common Stock shall vote together as a single class (or, if the holders of one or more series of Preferred Stock are entitled to vote together with the holders of Common Stock having the right to vote in respect of such Common Stock, as a single class with the holders of such other series of Preferred Stock) on all matters submitted to a vote of the stockholders having voting rights generally.

(B) Dividends and Distributions.

(1) Common Stock. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends and other distributions in cash, stock of any corporation or property of the Corporation, the holders of Common Stock shall be entitled to receive ratably, taken together as a single class, such dividends and other distributions as may from time to time be declared by the Board in its discretion out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(C) Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over the Common Stock as to distributions upon dissolution or liquidation or winding up shall be entitled, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder.

(D) Reservation of Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock a number of shares equal to the number of shares of Common Stock into which the number of shares of then-outstanding Preferred Stock could be converted pursuant to the terms of such Preferred Stock.

#### **Article V**

Section 5.1 By-Laws. In furtherance and not in limitation of the powers conferred by the DGCL, the Board is expressly authorized to make, amend, alter, change, add to or repeal the by-laws of the Corporation (as the same may be amended from time to time, the “By-Laws”) without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation. Notwithstanding anything to the contrary contained in this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote of the stockholders, in addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designation relating to any series of Preferred Stock), by the By-Laws or pursuant to applicable law, the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of Article I, Article II or Article IV of the By-Laws of the Corporation, or to adopt any provision inconsistent therewith and, with respect to any other provision of the By-Laws of the Corporation, the affirmative vote of the holders of at least a majority of the total voting power of all the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any such provision of the By-Laws of the Corporation, or to adopt any provision inconsistent therewith.

#### **Article VI**

##### Section 6.1 Board of Directors.

(A) Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The total number of directors constituting the whole Board shall be determined from time to time by resolution adopted by the Board.

(B) The directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of such directors. Class I directors shall initially serve for a term expiring at the first annual meeting of stockholders following the date of filing of this Certificate of Incorporation (the "Filing Date"), Class II directors shall initially serve for a term expiring at the second annual meeting of stockholders following the Filing Date and Class III directors shall initially serve for a term expiring at the third annual meeting of stockholders following the Filing Date. At each annual meeting of stockholders following the Filing Date, successors to the class of directors whose term expires at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any such additional director of any class elected to fill a newly created directorship resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors remove, or shorten the term of, any incumbent director. Any such director shall hold office until the annual meeting of stockholders at which such director's term expires and until such director's successor shall be elected and qualified, or such director's earlier death, resignation, retirement, disqualification or removal from office. The Board is authorized to assign members of the Board already in office to their respective class.

(C) Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders). Any director elected by the Board to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

(D) Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission permitted by the By-Laws. Any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed only for cause and only upon the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(E) Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) applicable thereto. Notwithstanding Section 6.1(A), the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 6.1(A) hereof, and the total number of directors constituting the whole Board shall be automatically adjusted accordingly.

(F) Directors of the Corporation need not be elected by written ballot unless the By-Laws shall so provide.



## Article VII

Section 7.1 Meetings of Stockholders. Any action required or permitted to be taken by the holders of stock of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders unless such action is recommended or approved by all directors of the Corporation then in office; provided, however, that any action expressly permitted by the certificate of designation relating to one or more series of Preferred Stock to be taken by the holders of such series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant class or series having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation or as otherwise provided in the By-Laws.

## Article VIII

Section 8.1 Limited Liability of Directors. To the fullest extent permitted by law, no director of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this Article VIII shall eliminate, reduce or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing prior to such amendment or repeal.

Section 8.2 Indemnification. To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and agents of the Corporation (and any other persons to which the DGCL permits the Corporation to provide indemnification) through By-law provisions, agreements with such persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others. Any amendment, repeal or modification of the foregoing provisions of this Section 8.2 shall not adversely affect any right or protection of a director, officer, employee, agent or other person existing at the time of, or increase the liability of any such person with respect to any acts or omissions of such person occurring prior to, such amendment, repeal or modification.

## Article IX

Section 9.1 DGCL Section 203 and Business Combinations.

(A) The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

(B) Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act of 1934, as amended (the "Exchange Act"), with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(1) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(2) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock ownership plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(3) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

(C) For purposes of this Article IX, references to:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) "associate" when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) "business combination" when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(a) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section 9.1(B) of this Article IX is not applicable to the surviving entity;

(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(c) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (iii) through (v) of this subsection (c) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(d) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(e) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (a) through (d) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(4) “control” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing Section 9.1(B) of Article IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(5) “interested stockholder” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an Affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the Affiliates and associates of such person; but “interested stockholder” shall not include (x) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided, further, that in the case of clause (x) such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(6) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a person that individually or with or through any of its Affiliates or associates:

(a) beneficially owns such stock, directly or indirectly; or

(b) has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person’s Affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person’s right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(c) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in clause (ii) of subsection (b) above), or disposing of such stock with any other person that beneficially owns, or whose Affiliates or associates beneficially own, directly or indirectly, such stock.

(7) “person” means any individual, corporation, partnership, unincorporated association or other entity.

(8) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(9) “voting stock” means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentages of the votes of such voting stock.

## Article X

### Section 10.1 Competition and Corporate Opportunities.

(A) In recognition and anticipation that members of the Board who are not employees of the Corporation (“Non-Employee Directors”) and their respective Affiliates and Affiliated Entities (each, as defined below) may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

(B) No Non-Employee Director or his or her Affiliates or Affiliated Entities (the Persons (as defined below) above being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 10.1(C) of this Article X. Subject to Section 10.1(C) of this Article X, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

(C) The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered or presented to, or acquired or developed by, such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 10.1(B) of this Article X shall not apply to any such corporate opportunity.

(D) In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation, (iii) is one in which the Corporation has no interest or reasonable expectancy, or (iv) is one presented to any account for the benefit of a member of the Board or such member's Affiliate over which such member of the Board has no direct or indirect influence or control, including, but not limited to, a blind trust.

(E) For purposes of this Article X, (i) "Affiliate" shall mean (a) in respect of a member of the Board, any Person that, directly or indirectly, is controlled by such member of the Board (other than the Corporation and any entity that is controlled by the Corporation) and (b) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; (ii) "Affiliated Entity" shall mean (x) any Person of which a Non-Employee Director serves as an officer, director, employee, agent or other representative (other than the Corporation and any entity that is controlled by the Corporation), (y) any direct or indirect partner, stockholder, member, manager or other representative of such Person or (z) any Affiliate of any of the foregoing; and (iii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(F) To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

(G) Any alteration, amendment, addition to or repeal of this Article X shall require the affirmative vote of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Neither the alteration, amendment, addition to or repeal of this Article X, nor the adoption of any provision of this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article X, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption. This Article X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the By-Laws or applicable law.

## Article XI

Section 11.1 Severability. If any provision of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

## Article XII

Section 12.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, or any claim for aiding and abetting such alleged breach, (iii) any action asserting a claim against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation (a) arising pursuant to any provision of the DGCL, this Certificate of Incorporation (as it may be amended or restated, including by means of certificate of designation relating to preferred stock) or the By-Laws or (b) as to which the DGCL confers jurisdiction on the Delaware Court of Chancery or (iv) any action asserting a claim against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation governed by the internal affairs doctrine of the law of the State of Delaware shall, as to any action in the foregoing clauses (i) through (iv), to the fullest extent permitted by law, be solely and exclusively brought in the Delaware Court of Chancery; provided, however, that the foregoing shall not apply to any claim (a) as to which the Delaware Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Delaware Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within 10 days following such determination), (b) which is vested in the exclusive jurisdiction of a court or forum other than the Delaware Court of Chancery, or (c) arising under the Securities Act of 1933, as amended. Notwithstanding the foregoing, the provisions of this Article XII will not apply to suits brought to enforce any liability or duty created by the Exchange Act, or any other claim for which the federal district courts of the United States of America shall be the sole and exclusive forum. If any action the subject matter of which is within the scope of the forum provisions is filed in a court other than a court located within the State of Delaware (a "foreign action") in the name of any stockholder, such stockholder shall be deemed to have consented to: (x) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the forum provisions (an "enforcement action"); and (y) having service of process made upon such stockholder in any such enforcement action by service upon such stockholder's counsel in the foreign action as agent for such stockholder. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

### **Article XIII**

Section 13.1 Amendments. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, in addition to any vote required by law, the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class: Article V, Article VI, Article VII, Article VIII, Article IX, Article X, Article XII and this Article XIII. Except as expressly provided in the foregoing sentence and the remainder of this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock), this Certificate of Incorporation may be amended by the affirmative vote of the holders of at least a majority of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.



## Clene Appoints David J. Matlin as Chairman of the Board

SALT LAKE CITY, May 19, 2021 -- Clene Inc. (NASDAQ: CLNN) (along with its subsidiaries, “Clene”) and its wholly owned subsidiary Clene Nanomedicine, Inc., a clinical-stage biopharmaceutical company dedicated to the treatment of neurodegenerative disease using bioenergetic nanocatalysis, today announced the appointment of David J. Matlin as Chairman of the Board. He has served as a Director of Clene since 2020.

Mr. Matlin is the Chief Executive Officer of MatlinPatterson Global Advisers, a global private equity firm he co-founded in 2002. Previously, he was a Managing Director at Credit Suisse First Boston and a founding partner of Merrion Group.

He currently serves on the boards of publicly held companies Flagstar Bancorp, U.S. Well Services and MedTech Acquisition Corp, as well as privately held companies DermaSensor, Pristine Surgical, and Traffk. Mr. Matlin holds a JD from the University of California at Los Angeles and a BS in Economics from the Wharton School of the University of Pennsylvania.

“We are honored to have David lead our Board as Chairman,” stated Rob Etherington, President and CEO of Clene. “His guidance as a Director was integral to our successful public listing on Nasdaq. As we advance our clinical pipeline including a registration trial in ALS for which we plan to announce topline results in the first half of 2022, Clene is in a pivotal growth stage and David’s deep capital markets experience with high-value companies will continue to be an asset.”

Mr. Matlin commented, “It is an honor to serve as Chairman of Clene’s Board during this exciting time of growth for the company. Since its entrance into the public market last year, Clene has continued to efficiently execute on its clinical development strategy and remains poised to achieve multiple, potentially transformative 2021 – 2022 milestones. I look forward to working closely with Clene’s management team as the company continues its work developing an entirely new class of therapeutics to meet the needs of patients with neurodegenerative diseases.”

Mr. Matlin is succeeding Shalom Jacobovitz, who has stepped down from Chairman but will continue to serve on the Board.

### About Clene

Clene, a clinical-stage biopharmaceutical company focused on neurodegenerative disease, is leading the way by using nanotechnology to treat bioenergetic failure, which underlies many neurological diseases. Clene has innovated a novel nanotherapeutic platform to create a new class of drugs—bioenergetic nanocatalysts. Clene’s lead drug candidate, CNM-Au8, is a concentrated nanocrystalline gold (Au) suspension that drives critical cellular bioenergetic reactions in the CNS. CNM-Au8 increases cellular energy to accelerate neurorepair and improve neuroprotection. Currently, CNM-Au8 is being investigated for efficacy and safety in a Phase 3 registration trial for ALS and in Phase 2 trials for multiple sclerosis and Parkinson’s disease. Clene has also advanced into the clinic an aqueous solution of ionic zinc and silver for anti-viral and anti-microbial uses. The company is based in Salt Lake City, Utah with R&D and manufacturing operations in Maryland. For more information, please visit [www.clene.com](http://www.clene.com).

---

## **Forward-Looking Statements**

This press release contains “forward-looking statements” which are intended to be covered by the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Clene’s actual results may differ from its expectations, estimates and projections and consequently, you should not rely on these forward-looking statements as predictions of future events. Words such as “expect,” “estimate,” “project,” “budget,” “forecast,” “anticipate,” “intend,” “plan,” “may,” “will,” “could,” “should,” “believes,” “predicts,” “potential,” “might” and “continues,” and similar expressions are intended to identify such forward-looking statements. These forward-looking statements involve significant known and unknown risks and uncertainties, many of which are beyond Clene’s control and could cause actual results to differ materially and adversely from expected results. Factors that may cause such differences include Clene’s ability to demonstrate the efficacy and safety of its drug candidates; the clinical results for its drug candidates, which may not support further development or marketing approval; actions of regulatory agencies, which may affect the initiation, timing and progress of clinical trials and marketing approval; Clene’s ability to achieve commercial success for its marketed products and drug candidates, if approved; Clene’s ability to obtain and maintain protection of intellectual property for its technology and drugs; Clene’s reliance on third parties to conduct drug development, manufacturing and other services; Clene’s limited operating history and its ability to obtain additional funding for operations and to complete the licensing or development and commercialization of its drug candidates; the impact of the COVID-19 pandemic on Clene’s clinical development, commercial and other operations, as well as those risks more fully discussed in the section entitled “Risk Factors” in Clene’s Annual Report on Form 10K, as well as discussions of potential risks, uncertainties, and other important factors in Clene’s subsequent filings with the U.S. Securities and Exchange Commission. Clene undertakes no obligation to release publicly any updates or revisions to any forward-looking statements to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based, subject to applicable law. All information in this press release is as of the date of this press release. The information contained in any website referenced herein is not, and shall not be deemed to be, part of or incorporated into this press release.

### **Media Contact**

Gwendolyn Schanker  
LifeSci Communications  
(269) 921-3607  
gschanker@lifescicomms.com

### **Investor Contact**

Bruce Mackle  
LifeSci Advisors, LLC  
(929) 469-3859  
bmackle@lifesciadvisors.com

Source: Clene Inc.

---

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): May 21, 2021

Clene Inc.  
(Exact name of registrant as specified in its charter)

<u>Delaware</u> (State or other jurisdiction of incorporation)	<u>001-39834</u> (Commission File Number)	<u>85-2828339</u> (IRS Employer Identification No.)
<u>6550 South Millrock Drive, Suite G50</u> <u>Salt Lake City, Utah</u> (Address of principal executive offices)		<u>84121</u> (Zip Code)

Registrant's telephone number, including area code: (801) 676 9695

N/A  
(Former name or former address, if changed since last report.)

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 (see General Instruction A.2. below):

- 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:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value US\$0.0001 per share	CLNN	The Nasdaq Stock Market LLC
Warrants, to acquire one-half of one share of Common Stock for \$11.50 per share	CLNNW	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.

### Loan Agreement

On May 21, 2021 (the “Closing Date”), Clene Inc. (along with its subsidiaries, the “Company”) and its wholly owned subsidiary, Clene Nanomedicine, Inc., entered into a Loan and Security Agreement and related Supplement (the “Loan Agreement”), by and among Avenue Venture Opportunities Fund, L.P. (“Avenue”), a Delaware limited partnership within the Avenue Capital Group, and its affiliates. The Loan Agreement provides for term loans (the “Loans”) in an aggregate principal amount up to \$30 million, with up to \$20 million committed on the Closing Date (“Tranche 1”) and up to \$10 million funded between January 1, 2022 and June 30, 2022 (“Tranche 2”). Avenue’s obligation to fund Tranche 2 is subject to (I) the Company’s written request for Tranche 2; (II) approval by Avenue’s Investment Committee; (III) the Company’s achievement of a statistically significant result on the primary endpoint as defined within the statistical analysis plan for each respective study, or the totality of the results for any study warrant advancement into a subsequent clinical efficacy study, as reasonably determined by the Company and Avenue with respect to at least two of the following studies: (i) RESCUE-ALS or HEALEY-ALS; (ii) REPAIR-PD; or (iii) REPAIR- MS (the “Performance Milestone 1”); and (IV) the Company’s receipt of net proceeds of at least \$30 million from the sale and issuance of the Company’s equity securities (including any private placement or follow-on offering) between May 2, 2021 and June 30, 2022. The purpose of the Loans is to fund the expansion of manufacturing capabilities in the state of Maryland and for general corporate purposes.

On the Closing Date, the Company received \$15 million of funds under the Loan Agreement. Pursuant to the Loan Agreement, the maturity date for the Loans is December 1, 2024 (the “Maturity Date”), with interest payable in monthly installments beginning on July 1, 2021. The Loan principal is repayable in equal monthly installments beginning on July 1, 2022, with the possibility of deferring principal payments an additional 12 to 24 months contingent upon the Company’s achievement of the Performance Milestone 1 and whether the Company has drawn Tranche 2. The Loans bear interest at a variable rate per annum equal to the sum of (i) the greater of (A) the prime rate, as published by the Wall Street Journal from time to time or (B) 3.25%, plus (ii) 6.60%.

The Company may, subject to certain parameters, voluntarily prepay amounts due under the Loan Agreement. If prepayment occurs before the two-year anniversary of the Closing Date, the Company shall pay a fee equal to the principal amount of the Loans prepaid multiplied by 2.00%; and if prepayment occurs after the two-year anniversary of the Closing Date, the Company shall pay a fee equal to the principal amount of the Loans prepaid multiplied by 1.00%.

Pursuant to the Loan Agreement, the Company is subject to a financial covenant related to the maintenance of minimum unrestricted cash and cash equivalents. The covenant will be waived upon the Company’s achievement of the Performance Milestone 1 and upon receiving certain additional equity financing between May 1, 2021 and June 30, 2022. The Loan Agreement also contains various covenants and restrictive provisions that, among other things, limit the ability of the Company and its subsidiaries to (i) incur additional debt, guarantees or liens; (ii) pay any dividends; (iii) enter into certain change of control transactions; (iv) sell, transfer, lease, license, or otherwise dispose of certain assets; (v) make certain investments or loans; and (vi) engage in certain transactions with related persons.

An event of default under the Loan Agreement includes, among other events, (i) failure to pay any principal or interest when due and payable and when such failure continues for three business days; (ii) failure to pay any debts generally as they become due; (iii) sale, transfer or disposition of all or a substantial or material part of the Company’s assets; (iv) failure to perform or observe certain covenants contained in the Loan Agreement (subject to certain grace periods); and (v) create, incur, assume or permit to exist any lien on the Company’s property except certain permitted liens.

The Loan Agreement is collateralized by certain real and personal property and capital stock of the Company and its subsidiaries, in which Avenue is granted continuing security interests. The collateral does not include certain intangible assets of the Company, or greater than 65.00% of the voting capital stock held by the Company in subsidiaries that are controlled foreign corporations (as defined in the Internal Revenue Code).

Pursuant to the Loan Agreement, Avenue also has the right to convert up to \$5 million of the Loan principal outstanding into shares of Clene Inc. common stock (the “*Conversion Right*”) at a price per share equal to 120% of the exercise price of the Warrants (further discussed below) at any time from the first through the third anniversary of the Closing Date, subject to certain terms and conditions.

The foregoing description of the Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the text of the Loan Agreement and Supplement, which are filed as Exhibit 10.1 and Exhibit 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

### **Warrants**

On the Closing Date and pursuant to the funding of Tranche 1 of the Loan Agreement, the Company issued to Avenue warrants to purchase up to 115,851 shares of Clene Inc. common stock (the “*Warrants*”). The Warrants expire on May 21, 2026 (the “*Expiration Date*”) and have an exercise price per share equal to the lower of (i) \$8.63 (which is equal to the five-day volume weighted average price per share, determined as of the end of trading on the last trading day prior to execution of the Loan Agreement), or (ii) the lowest price per share paid by cash investors for Clene Inc. common stock issued in the next bona fide round of equity financing prior to March 31, 2022.

Additionally, pursuant to the draw of Tranche 2 of the Loan Agreement, the Company will issue to Avenue warrants to purchase a number of shares of Clene Inc. common stock equal 5% of the Tranche 2 principal divided by the lower of (i) the five-day volume weighted average price per share, determined as of the end of trading on the last trading day prior to any issuance thereof, or (ii) the lowest price per share paid by cash investors for Clene Inc. common stock issued in the next bona fide round of equity financing prior to March 31, 2022 (the “*Stock Purchase Price*”). The Warrants expire on the Expiration Date and have an exercise price per share equal to the Stock Purchase Price.

Avenue may exercise the Warrants at any time, or from time to time up to and including the Expiration Date, by making a cash payment equal to the exercise price multiplied by the quantity of shares. Avenue may also exercise the Warrants on a cashless or “net issuance” basis by receiving a net number of shares calculated pursuant to the formula set forth in the Warrants. The Warrants are subject to anti-dilution adjustments for stock dividends, stock splits, and reverse stock splits.

The foregoing description of the Warrants does not purport to be complete and is qualified in its entirety by reference to the text of the Warrants, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

### **Private Placement**

On May 24, 2021, the Company entered into subscription agreements (the “*Subscription Agreements*”) with various investors for the private placement of Common Stock (the “*Private Placement*” or “*PIPE*”). Investors in the PIPE included David Matlin, a member of the Company’s Board of Directors; Symbiosis II, LLC, an entity affiliated with WIT, LLC, an investment management entity for which Chidozie Ugwumba, a member of the Company’s Board of Directors, serves as a Managing Director and the Co-Head of the Direct and Impact Investment Group; and Kensington Clene 2021, LLC, an entity in which Alison Mosca, a member of the Company’s Board of Directors, serves as sole manager and a minority investor. Under the Private Placement, 960,540 shares of Clene Inc. common stock (the “*PIPE Shares*”) were sold, resulting in net proceeds of approximately \$9.25 million, based on the offering price of \$9.63 per share, the last reported sale price of Clene Inc. common stock on The Nasdaq Capital Market on May 21, 2021. The closing of the Private Placement occurred substantially concurrently with, and was conditioned upon, the closing of the Loan Agreement. The purpose of the Private Placement is to fund the expansion of manufacturing capabilities in the state of Maryland and for general corporate purposes.

The Company agreed to file with the U.S. Securities and Exchange Commission a registration statement registering the resale of the PIPE Shares within 60 days of the Closing Date.

The foregoing description of the Subscription Agreements does not purport to be complete and is qualified in its entirety by reference to the text of the Form of Subscription Agreement, which is filed as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information included in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03 of this Current Report on Form 8-K.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information included in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02 of this Current Report on Form 8-K.

The Private Placement, Warrants and any shares of common stock issued upon exercise of the Warrants, if applicable, will be issued in reliance on the exemption from the registration requirements of the Securities Act of 1933 (the “*Securities Act*”), as amended, pursuant to Section (4)(a)(2) thereof and Rule 506(b) of Regulation D promulgated thereunder as a transaction by an issuer not involving any public offering, in which the investors are accredited investors and have acquired the securities for investment purposes only and not with a view to or for sale in connection with any distribution thereof. Such securities may not be offered or sold in the United States absent registration or an exemption under the Securities Act and any applicable state securities laws.

None of the securities were sold through an underwriter and, accordingly, there were no underwriting discounts or commissions.

**Item 7.01 Regulation FD Disclosure.**

On May 24, 2021, the Company issued a press release announcing the closing of the Loan Agreement and Private Placement. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information furnished in this Item 7.01, including Exhibit 99.1, shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 (the “*Exchange Act*”), as amended, or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference into any filing made by the Company under the Exchange Act or the Securities Act, regardless of any general incorporation language in any such filings, except as shall be expressly set forth by specific reference in such a filing.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit Number</b>	<b>Exhibit Description</b>
10.1	<a href="#">Loan and Security Agreement, dated as of May 21, 2021, between Clene Inc., Clene Nanomedicine, Inc. and Avenue Venture Opportunities Fund, L.P.</a>
10.2	<a href="#">Supplement to the Loan and Security Agreement, dated as of May 21, 2021, among Client Inc., Clene Nanomedicine, Inc., and Avenue Venture Opportunities Fund, L.P.</a>
10.3	<a href="#">Form of Avenue Venture Opportunities Fund, L.P. Warrant to Purchase Shares of Stock of Clene Inc.</a>
10.4	<a href="#">Form of Subscription Agreement</a>
99.1	<a href="#">Press Release dated May 24, 2021 announcing the closing of the Loan Agreement and Private Placement</a>

**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 hereunto duly authorized.

Date: May 24, 2021

**Clene Inc.**

By: /s/ Robert Etherington  
Robert Etherington  
President, Chief Executive Officer and Director

**LOAN AND SECURITY AGREEMENT**

**Dated as of May 21, 2021**

**among**

**CLENE INC.,  
a Delaware corporation,**

**CLENE NANOMEDICINE, INC.,  
a Delaware corporation,**

**individually and collectively, jointly and severally,  
as "Borrower",**

**and**

**AVENUE VENTURE OPPORTUNITIES FUND, L.P.,  
a Delaware limited partnership, as**

**"Lender"**

---



## LOAN AND SECURITY AGREEMENT

Borrower and Lender have entered or anticipate entering into one or more transactions pursuant to which Lender agrees to make available to Borrower a loan facility governed by the terms and conditions set forth in this document and one or more Supplements executed by Borrower and Lender which incorporate this document by reference. Each Supplement constitutes a supplement to and forms part of this document, and will be read and construed as one with this document, so that this document and the Supplement constitute a single agreement between the parties (collectively referred to as this “**Agreement**”).

Accordingly, the parties agree as follows:

### ARTICLE 1 - INTERPRETATION

**1.1 Definitions.** The terms defined in Article 10 and in the Supplement will have the meanings therein specified for purposes of this Agreement.

**1.2 Inconsistency.** In the event of any inconsistency between the provisions of any Supplement and this document, the provisions of the Supplement will be controlling for the purpose of all relevant transactions.

**1.3 Transparency Pledge.** For the avoidance of doubt and notwithstanding anything to the contrary contained in this Agreement or in the other Loan Documents: (a) Lender shall not be entitled to (i) require Borrower’s investors or members of Borrower’s Board of Directors to make any additional written or verbal commitments of ongoing financial support, or (ii) require Borrower to conduct its banking or hold its deposits at any specific bank or financial institution; and (b) Borrower shall not be required to maintain any minimum tangible net worth, working capital, current ratio, quick asset ratio, liquidity ratio or debt-to-equity ratio or comply with any similar financial covenant, except as set forth in the Supplement.

### ARTICLE 2 - THE COMMITMENT AND LOANS

**2.1 The Commitment.** Subject to the terms and conditions of this Agreement, Lender agrees to make term loans to Borrower from time to time from the Closing Date and to and including the Termination Date in an aggregate principal amount not exceeding the Commitment. The Commitment is not a revolving credit commitment, and Borrower does not have the right to repay and reborrow hereunder; provided that Borrower may prepay the Loans as set forth in the Supplement. Each Loan requested by Borrower to be made on a single Business Day shall be for a minimum principal amount set forth in the Supplement, except to the extent the remaining Commitment is a lesser amount.

**2.2 Notes Evidencing Loans; Repayment.** Each Loan shall be evidenced by a separate Note payable to the order of Lender, in the total principal amount of the Loan. Principal and interest of each Loan shall be payable at the times and in the manner set forth in the Note and regularly scheduled payments thereof shall be effected by automatic debit of the appropriate funds from Borrower’s Primary Operating Account as specified in the Supplement hereto. Repayment of the Loans and payment of all other amounts owed to Lender will be paid by Borrower in the currency in which the same has been provided (i.e., United States Dollars).

#### **2.3 Procedures for Borrowing.**

(a) At least two (2) Business Days prior to the Closing Date and five (5) Business Days prior to any proposed Borrowing Date following the Closing Date (or such lesser period of time as may be agreed upon by Lender in its sole discretion), Lender shall have received from Borrower a written request for a borrowing hereunder (a “**Borrowing Request**”). Each Borrowing Request shall be in substantially the form of **Exhibit “B”** to the Supplement, shall be executed by a responsible executive or financial officer of Borrower, and shall state how much is requested, and shall be accompanied by such other information and documentation as Lender may reasonably request, including the executed Note(s) for the Loan(s) covered by the Borrowing Request.

(b) No later than 1:00 p.m. Pacific Standard Time on the Borrowing Date, if Borrower has satisfied the conditions precedent in Article 4 by 11:00 a.m. Pacific Standard Time on such Borrowing Date, Lender shall make the Loan available to Borrower in immediately available funds.

**2.4 Interest.** Except as otherwise specified in the applicable Note and/or Supplement, Basic Interest on the outstanding principal balance of each Loan shall accrue daily at the Designated Rate from the Borrowing Date. If the outstanding principal balance of such Loan is not paid at maturity, interest shall accrue at the Default Rate until paid in full, as further set forth herein.

#### **2.5 Intentionally Omitted.**

**2.6 Interest Rate Calculation.** Basic Interest, along with charges and fees under this Agreement and any Loan Document, shall be calculated for actual days elapsed on the basis of a 360-day year, which results in higher interest, charge or fee payments than if a 365-day year were used. In no event shall Borrower be obligated to pay Lender interest, charges or fees at a rate in excess of the highest rate permitted by applicable law from time to time in effect.

**2.7 Default Interest.** Any unpaid payments in respect of the Obligations shall bear interest from their respective maturities, whether scheduled or accelerated, at the Default Rate, compounded monthly. Borrower shall pay such interest on demand.

**2.8 Late Charges.** If Borrower is late in making any scheduled payment in respect of the Obligations by more than five (5) days, then Borrower agrees to pay a late charge of five percent (5%) of the payment due, but not less than fifty dollars (\$50.00) for any one such delinquent payment; provided, that Lender shall endeavor to provide Borrower written notice of such late charge; provided further however, that (i) any failure of Lender to provide notice shall not relieve Borrower of the obligation to pay the same; and (ii) Borrower shall only be entitled to such notice from Lender one (1) time per year. This late charge may be charged by Lender for the purpose of defraying the expenses incidental to the handling of such delinquent amounts. Borrower acknowledges that such late charge represents a reasonable sum considering all of the circumstances existing on the date of this Agreement and represents a fair and reasonable estimate of the costs that will be sustained by Lender due to the failure of Borrower to make timely payments. Borrower further agrees that proof of actual damages would be costly and inconvenient. Such late charge shall be paid without prejudice to the right of Lender to collect any other amounts provided to be paid or to declare a default under this Agreement or any of the other Loan Documents or from exercising any other rights and remedies of Lender.

**2.9 Lender's Records.** Principal, Basic Interest and all other sums owed under any Loan Document shall be evidenced by entries in records maintained by Lender for such purpose. Each payment on and any other credits with respect to principal, Basic Interest and all other sums outstanding under any Loan Document shall be evidenced by entries in such records. Absent manifest error, Lender's records shall be conclusive evidence thereof. Upon Borrower's written request therefor, but not more than once per year during the term hereof, Lender shall promptly provide Borrower a copy of such records; provided that any failure to provide such records shall not result in any liability to Lender.

#### **2.10 Grant of Security Interests; Filing of Financing Statements.**

(a) To secure the timely payment and performance of all of Borrower's Obligations, Borrower hereby grants to Lender continuing security interests in all of the Collateral. In connection with the foregoing, Borrower authorizes Lender to prepare and file any financing statements describing the Collateral without otherwise obtaining Borrower's signature or consent with respect to the filing of such financing statements. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect.

(b) In furtherance of Borrower's grant of the security interests in the Collateral pursuant to Section 2.10(a) above, Borrower hereby pledges and grants to Lender a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Closing Date or at any time thereafter following Lender's request, the certificate or certificates for the Shares will be delivered to the Lender, accompanied by an instrument of assignment duly executed in blank by Borrower, unless such Shares have not been certificated. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, and notice (absent exigent circumstances, as reasonably determined by Lender) thereof to Borrower, Lender may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Lender and cause new certificates representing such securities to be issued in the name of Lender or its transferee(s). Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Lender may reasonably request to perfect or continue the perfection of Lender's security interest in the Shares. Except as provided in the following sentence, Borrower shall be entitled to exercise any right to which a holder of such Shares is entitled, including, without limitation, any voting rights with respect to the Shares and receipt of all dividends and other distributions with respect to the Shares that are permitted hereunder and the granting of any consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would constitute a violation of any of the terms of this Agreement. All such rights to vote and receipt of dividends and other distributions with respect to the Shares that are permitted hereunder and the granting of consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default and Lender's written notice to Borrower of Lender's intent to exercise its rights and remedies under this Agreement, including this Section 2.10(b). Lender reserves the right to take such steps as Lender determines to be reasonably necessary to perfect (in the relevant jurisdiction(s)) the security interest in any Shares of a Foreign Subsidiary.

(c) Borrower is and shall remain absolutely and unconditionally liable for the performance of its Obligations, including, without limitation, any deficiency by reason of the failure of the Collateral to satisfy all amounts due Lender under any of the Loan Documents.

(d) All Collateral pledged by Borrower under this Agreement and any Supplement shall secure the timely payment and performance of all Obligations. Except as expressly provided in this Agreement, no Collateral pledged under this Agreement or any Supplement shall be released until such time as all Obligations have been satisfied and paid in full (other than inchoate indemnity obligations).

### ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that, except as set forth in the Supplement or the Schedule of Exceptions hereto, if any, as of the Closing Date and each Borrowing Date:

**3.1 Due Organization.** Borrower is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation, and is duly qualified to conduct business and is in good standing in each other jurisdiction in which its business is conducted or its properties are located, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

**3.2 Authorization, Validity and Enforceability.** The execution, delivery and performance of all Loan Documents executed by Borrower are within Borrower's powers, have been duly authorized, and are not in conflict with Borrower's certificate of incorporation or by-laws, or the terms of any charter or other organizational document of Borrower, as amended from time to time; and all such Loan Documents constitute valid and binding obligations of Borrower, enforceable in accordance with their terms (except as may be limited by bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights in general, and subject to general principles of equity).

**3.3 Compliance with Applicable Laws.** Borrower has complied with all licensing, permit and fictitious name requirements necessary to lawfully conduct the business in which it is engaged, and to any sales, leases or the furnishing of services by Borrower, including without limitation those requiring consumer or other disclosures, in each case, the noncompliance with which would have a Material Adverse Effect.

**3.4 No Conflict.** The execution, delivery, and performance by Borrower of all Loan Documents are not in conflict with any law, rule, regulation, order or directive, or any Material Contract to which Borrower is a party or by which Borrower may be bound or affected. Without limiting the generality of the foregoing, the issuance of the Warrant and the grant of registration rights in connection therewith do not violate any agreement or instrument by which Borrower is bound or require the consent of any holders of Borrower's securities other than consents which have been obtained prior to the Closing Date.

**3.5 No Litigation, Claims or Proceedings.** There is no litigation, tax claim, proceeding or dispute pending, or, to the knowledge of Borrower, threatened in writing against or affecting Borrower, its property or the conduct of its business which, if adversely determined, could reasonably be expected to result in damages or liability in excess of the Threshold Amount.

**3.6 Correctness of Financial Statements.** Borrower's financial statements which have been delivered to Lender fairly and accurately, in all material respects, reflect Borrower's financial condition in accordance with GAAP (except for the absence of footnotes and subject to normal year-end adjustments) as of the latest date of such financial statements; and, since that date there has been no Material Adverse Change.

**3.7 No Subsidiaries.** As of the Closing Date, Borrower is not a majority owner of or in a control relationship with any other business entity, except for the Excluded Subsidiaries.

**3.8 Environmental Matters.** To its knowledge after reasonable inquiry, Borrower has concluded that Borrower is in compliance with Environmental Laws, except to the extent a failure to be in such compliance would not reasonably be expected to have a Material Adverse Effect.

**3.9 No Event of Default.** No Default or Event of Default has occurred and is continuing.

**3.10 Full Disclosure.** None of the representations or warranties made by Borrower in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the written statements contained in any exhibit, report, statement or certificate furnished by or on behalf of Borrower in connection with the Loan Documents (including disclosure materials delivered by or on behalf of Borrower to Lender prior to the Closing Date or pursuant to Section 5.2 hereof), taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; *provided, however*, that any projections, valuations or pro forma financial statements, present a good faith opinion as to such projections, valuations and pro forma condition and results at the time delivered or date referenced thereon, as applicable, and it is understood that any projections, valuations and pro forma condition and results are not a guaranty of future performance, and actual results during the period or periods covered may differ from such projections and forecasts by a material amount.

### **3.11 Specific Representations Regarding Collateral.**

**(a) Title.** Except for the security interests created by this Agreement and Permitted Liens, (i) Borrower is and will be the unconditional legal and beneficial owner of the Collateral, and (ii) the Collateral is genuine and subject to no Liens. There exist no prior assignments or encumbrances of record with the U.S. Patent and Trademark Office or U.S. Copyright Office affecting any Collateral in favor of any third party, other than Permitted Liens.

**(b) Rights to Payment.** The names of the obligors, amount owing to Borrower, due dates and all other information with respect to the Rights to Payment are and will be correctly stated in all material respects in all Records relating to the Rights to Payment. Borrower further represents and warrants, to its knowledge, that each Person appearing to be obligated on a Right to Payment has authority and capacity to contract and is bound as it appears to be.

**(c) Location of Collateral.** As of the Closing Date, Borrower's chief executive office, Inventory, Records, Equipment, and any other offices or places of business are located at the address(es) shown on the Supplement.

**(d) Business Names.** Other than its full corporate name, Borrower has not conducted business using any trade names or fictitious business names except as shown on the Supplement.

### **3.12 Copyrights, Patents, Trademarks and Licenses.**

**(a)** Borrower owns or is licensed or otherwise has the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other similar rights that are reasonably necessary for the operation of its business, without known conflict with the rights of any other Person, except to the extent any such failure could not reasonably be expected to result in a Material Adverse Effect.

**(b)** To Borrower's knowledge, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Borrower infringes upon any rights held by any other Person.

**(c)** No claim or litigation regarding any of the foregoing is pending or, to Borrower's knowledge, threatened in writing, and, to Borrower's knowledge, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or proposed which, in either case, could reasonably be expected to have a Material Adverse Effect.

**3.13 Regulatory Compliance.** To the best of Borrower's knowledge, Borrower has met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not required to be registered as an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied in all material respects with all the provisions of the Federal Fair Labor Standards Act.

**3.14 Shares.** Borrower has full power and authority to create a first priority Lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

**3.15 Compliance with Anti-Corruption Laws.** Borrower has not taken any action that would cause a violation of any anti-corruption law, including but not limited to, the Foreign Corrupt Practices Act, the United Kingdom Bribery Act, and all other applicable anti-corruption laws. Borrower, its employees, agents and representatives have not, directly or indirectly, offered, paid, given, promised or authorized the payment of any money, gift or anything of value to any person acting in an official capacity for any government department, agency or instrumentality, including state-owned or controlled companies or entities, and public international organizations, as well as a political party or official thereof or candidate for political office. None of Borrower's principals or staff are officers, employees or representatives of governments, government agencies, or government-owned or controlled enterprises.

**3.16 Survival.** The representations and warranties of Borrower as set forth in this Agreement survive the execution and delivery of this Agreement and remain in effect until the later of such time as the Loans are paid in full in cash or until termination of this Agreement in accordance with its terms.

#### **ARTICLE 4 - CONDITIONS PRECEDENT**

**4.1 Conditions to First Loan.** The obligation of Lender to make its first Loan hereunder is, in addition to the conditions precedent specified in Section 4.2 and in any Supplement, subject to the fulfillment of the following conditions and to the receipt by Lender of the documents described below, duly executed and in form and substance satisfactory to Lender and its counsel:

**(a) Resolutions.** A certified copy of the resolutions of the Board of Directors of Borrower authorizing the execution, delivery and performance by Borrower of the Loan Documents.

**(b) Incumbency and Signatures.** A certificate of the secretary (or other duly authorized officer) of Borrower certifying the names of the officer or officers of Borrower authorized to sign the Loan Documents, together with a sample of the true signature of each such officer.

**(c) Legal Opinion.** The opinion of legal counsel for Borrower as to such matters as Lender may reasonably request, in form and substance reasonably satisfactory to Lender.

**(d) Charter Documents.** Copies of the organizational and charter documents of Borrower (e.g., Articles or Certificate of Incorporation and Bylaws), as amended through the Closing Date, certified by an officer of Borrower as being true, correct and complete.

**(e) This Agreement.** Counterparts of this Agreement and the initial Supplement, with all schedules completed and attached thereto, and disclosing such information as is acceptable to Lender.

**(f) Financing Statements.** Filing copies (or other evidence of filing satisfactory to Lender and its counsel) of such UCC financing statements, collateral assignments, account control agreements, and termination statements, with respect to the Collateral as Lender shall request.

**(g) Reserved.**

**(h) Lien Searches.** UCC lien, judgment, bankruptcy and tax lien searches of Borrower from such jurisdictions or offices as Lender may reasonably request, all as of a date reasonably satisfactory to Lender and its counsel.

**(i) Good Standing Certificate.** A certificate of status or good standing of Borrower as of a date acceptable to Lender from the jurisdiction of Borrower's organization and any foreign jurisdictions where Borrower is qualified to do business.

**(j) Warrant.** The Warrant issued by Borrower exercisable for such number, type and class of shares of Borrower's capital stock, and for an initial exercise price as is specified therein.

**(k) Insurance Certificates.** Insurance certificates showing Lender as loss payee or additional insured.

**(l) Other Documents.** Such other documents and instruments as Lender may reasonably request to effectuate the intents and purposes of this Agreement.

**4.2 Conditions to All Loans.** The obligation of Lender to make its initial Loan and each subsequent Loan is subject to the following further conditions precedent that:

**(a) No Default.** No Default or Event of Default has occurred and is continuing or will result from the making of any such Loan, and the representations and warranties of Borrower contained in Article 3 of this Agreement and Part 3 of the Supplement are true and correct in all material respects as of the Borrowing Date of such Loan.

**(b) No Material Adverse Change.** No event has occurred that has had or could reasonably be expected to have a Material Adverse Change.

**(c) Borrowing Request.** Borrower shall have delivered to Lender a Borrowing Request for such Loan.

**(d) Note.** Borrower shall have delivered an executed Note evidencing such Loan, substantially in the form attached to the Supplement as an exhibit.

**(e) Supplemental Lien Filings.** Borrower shall have executed and delivered such amendments or supplements to this Agreement and additional Security Documents, financing statements and third party waivers as Lender may reasonably request in connection with the proposed Loan, in order to create, protect or perfect or to maintain the perfection of Lender's Liens on the Collateral.

**(f) VCOC Limitation.** Lender shall not be obligated to make any Loan under its Commitment if at the time of or after giving effect to the proposed Loan Lender would no longer qualify as: (i) a "venture capital operating company" under U.S. Department of Labor Regulations Section 2510.3-101(d), Title 29 of the Code of Federal Regulations, as amended; and (ii) a "business development company" under the provisions of federal Investment Company Act of 1940, as amended; and (iii) a "regulated investment company" under the provisions of the Internal Revenue Code of 1986, as amended.

**(g) Financial Projections.** Borrower shall have delivered to Lender Borrower's business plan and/or financial projections or forecasts as most recently approved by Borrower's Board of Directors (the "**Projections**").

## ARTICLE 5 - AFFIRMATIVE COVENANTS

During the term of this Agreement and until its performance of all Obligations (other than inchoate indemnity obligations), Borrower will:

**5.1 Notice to Lender.** Promptly give written notice to Lender of:

**(a)** Any litigation or administrative or regulatory proceeding affecting Borrower where the amount claimed against Borrower is at the Threshold Amount or more, or which could reasonably be expected to have a Material Adverse Effect; or of the acquisition by Borrower of any commercial tort claim, including brief details of such claim and such other information as Lender may reasonably request to enable Lender to better perfect its Lien in such commercial tort claim as Collateral.

**(b)** Any dispute which may exist between Borrower and any governmental or regulatory authority, which could reasonably be expected to have a Material Adverse Effect.

**(c)** The occurrence of any Event of Default.

**(d)** Any change in the location of any of Borrower's places of business or a material portion of the Collateral at least fifteen (15) days in advance of such change, or of the establishment of any new, or the discontinuance of any existing, place of business.

(e) Any dispute or default by Borrower or any other party under any joint venture, partnering, distribution, cross-licensing, strategic alliance, collaborative research or manufacturing, license or similar agreement which could reasonably be expected to have a Material Adverse Effect.

(f) Any other matter which has resulted or could reasonably be expected to result in a Material Adverse Change.

(g) Any Subsidiary Borrower intends to acquire or create.

**5.2 Financial Statements.** Deliver to Lender or cause to be delivered to Lender, in form and detail reasonably satisfactory to Lender the following financial and other information, which Borrower warrants shall be accurate and complete in all material respects; provided, however, that no representation or warranty is made as to the impact of future general economic conditions or as to whether Borrower's and its Subsidiaries' projected results as set forth in such financial forecasts will actually be realized, it being recognized by the Lender that any projections as to future events are not to be viewed as facts and that actual results for the periods covered by the financial forecasts may differ materially from the financial forecasts:

(a) **Monthly Financial Statements.** As soon as available but no later than thirty (30) days after the end of each month, Borrower's unaudited balance sheet as of the end of such period, and Borrower's unaudited income statement and cash flow statement for such period and for that portion of Borrower's financial reporting year ending with such period, prepared in accordance with GAAP (except for the absence of footnotes and subject to normal year-end adjustments) and attested by a responsible financial officer of Borrower as being complete and correct in all material respects and fairly present in all material respects Borrower's financial condition and the results of Borrower's operations as of the date(s) and for the period(s) covered thereby.

(b) **Year-End Financial Statements.** As soon as available but no later than ninety (90) days after the end of each financial reporting year, a complete copy of Borrower's audit report, which shall include balance sheet, income statement, statement of changes in equity and statement of cash flows for such year, prepared in accordance with GAAP and certified by an independent certified public accountant selected by Borrower and satisfactory to Lender (the "**Accountant**"). The Accountant's certification shall not be qualified or limited due to a restricted or limited examination by the Accountant of any material portion of Borrower's records. Notwithstanding the foregoing, if Borrower's Board of Directors does not require Borrower's financial statements to be audited for a particular reporting year, then Borrower shall deliver to Lender unaudited financial statements for such year, including the items described in, and in the timeframe specified in, this Section 5.2(b) (other than the Accountant's certification).

(c) **Compliance Certificates.** Simultaneously with the delivery of each set of financial statements referred to in paragraphs (a) and (b) above, a certificate of the chief financial officer of Borrower (or other executive officer) substantially in the form of Exhibit "C" to the Supplement (a "**Compliance Certificate**") stating, among other things, whether any Default or Event of Default exists on the date of such certificate, and if so, setting forth the details thereof and the action which Borrower is taking or proposes to take with respect thereto. If requested by Lender, a Compliance Certificate also shall be delivered to Lender on the Closing Date.

(d) **Government Required Reports.** Promptly after sending, issuing, making available, or filing, copies of all reports, proxy statements, and financial statements that Borrower sends or makes available generally to its stockholders, and, not later than ten (10) days after actual filing or the date such filing was first due, all public registration statements and reports that Borrower files or is required to file with the Securities and Exchange Commission, or any other governmental or regulatory authority having similar authority.

(e) **Other Information.** Such other statements, lists of property and accounts, budgets (as updated), sales projections, forecasts, reports, 409A valuation reports (to the extent prepared and as updated), operating plans, financial exhibits, capitalization tables (as updated) and information relating to equity and debt financings consummated after the Closing Date (including post-closing capitalization table(s)), or other information as Lender may from time to time reasonably request.

(f) **Board Packages.** In addition to the information described in Section 5.2(e), Borrower will promptly provide Lender with copies of all notices, minutes, consents and other materials, financial or otherwise, which Borrower provides to its Board of Directors (collectively, "**Board Packages**"); provided, however, that Borrower need not provide Lender with copies of routine Board actions, such as option and stock grants under Borrower's equity incentive plan in the normal course of business; and provided, further, however, that such Board Packages may be redacted to the extent that (i) Borrower's Board of Directors determines such redaction is reasonably necessary to preserve the attorney-client privilege, to protect highly confidential proprietary information, or for other similar reasons or (ii) such redacted material relates to Lender (or Borrower's strategy regarding the Loans or Lender).

### 5.3 Reserved.

**5.4 Existence.** Maintain and preserve Borrower's existence, present form of business, and all rights and privileges necessary in the normal course of its business; and keep all Borrower's property in good working order and condition, ordinary wear and tear excepted.

**5.5 Insurance.** Obtain and keep in force insurance in such amounts and types as is usual in the type of business conducted by Borrower, with insurance carriers having a policyholder rating of not less than "A" and financial category rating of Class VII in "Best's Insurance Guide," unless otherwise approved by Lender. Such insurance policies must be in form and substance reasonably satisfactory to Lender, and shall list Lender as an additional insured or loss payee, as applicable, on endorsement(s) in form reasonably acceptable to Lender. Borrower shall furnish to Lender such endorsements, and upon Lender's request, copies of any or all such policies.

**5.6 Accounting Records.** Maintain adequate books, accounts and records, and prepare all financial statements in accordance with GAAP (except for the absence of footnotes and subject to normal year-end adjustments), and in compliance with the regulations of any governmental or regulatory authority having jurisdiction over Borrower or Borrower's business; and permit employees or agents of Lender at such reasonable times as Lender may request upon reasonable advance notice (unless an Event of Default has occurred and is continuing), at Borrower's expense (not to exceed \$2,500 in any 12-month period unless an Event of Default has occurred and is continuing), to inspect Borrower's properties, and to examine, review and audit, and make copies and memoranda of Borrower's books, accounts and records. Notwithstanding the foregoing, if no Event of Default has occurred and is continuing, Lender shall limit such inspections to once per calendar year.

**5.7 Compliance with Laws.** Comply with all laws (including Environmental Laws), rules, regulations applicable to, and all orders and directives of any governmental or regulatory authority having jurisdiction over, Borrower or Borrower's business, and with all Material Contracts to which Borrower is a party, in each case except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

**5.8 Taxes and Other Liabilities.** Pay all Borrower's Indebtedness when due. Pay all taxes and other governmental or regulatory assessments, individually or in the aggregate, in excess of Twenty-Five Thousand Dollars (\$25,000), before delinquency or before any penalty attaches thereto, except as may be contested in good faith by the appropriate procedures and for which Borrower shall maintain appropriate reserves; and timely file all required tax returns (subject to any applicable extensions).

### 5.9 Special Collateral Covenants.

**(a) Maintenance of Collateral; Inspection.** Do all things reasonably necessary to maintain, preserve, protect and keep all Collateral in good working order and salable condition, ordinary wear and tear excepted, deal with the Collateral in all commercially reasonable ways as are considered good practice by owners of like property, and use the Collateral lawfully and, to the extent applicable, only as permitted by Borrower's insurance policies. Maintain, or cause to be maintained, complete and accurate Records, in all material respects, relating to the Collateral. Upon reasonable prior notice at reasonable times during normal business hours, Borrower hereby authorizes Lender's officers, employees, representatives and agents to inspect the Collateral and to discuss the Collateral and the Records relating thereto with Borrower's officers and employees, and, in the case of any Right to Payment, after consultation with Borrower, with any Person which is or may be obligated thereon; provided that any such discussions and inspections shall be conducted so as not to interfere unreasonably with the Borrower's operations (unless an Event of Default has occurred and is continuing); provided, further, that unless an Event of Default has occurred and is continuing, only one such inspection shall occur per year.

**(b) Documents of Title.** Not sign or authorize the signing of any financing statement or other document naming Borrower as debtor or obligor, or acquiesce or cooperate in the issuance of any bill of lading, warehouse receipt or other document or instrument of title with respect to any Collateral, except those negotiated to Lender, or those naming Lender as secured party, or if solely to create, perfect or maintain a Permitted Lien.



**(c) Change in Location or Name.** Without at least fifteen (15) days' prior written notice to Lender: (a) not relocate any material portion of the Collateral or Records (except as otherwise permitted by this agreement), its chief executive office, or establish a place of business at a location other than as specified in the Supplement; and (b) not change its name, mailing address, location of Collateral, jurisdiction of incorporation or its legal structure; provided that no notice under this Section 5.9(c) shall be required for any relocation of Collateral or Records between locations for which Lender has received a Waiver pursuant to Section 5.9(e) below.

**(d) Decals, Markings.** At the request of Lender, following the occurrence and during the continuation of an Event of Default, firmly affix a decal, stencil or other marking to designated items of Equipment, indicating thereon the security interest of Lender.

**(e) Agreement with Persons in Possession of Collateral.** Use its commercially reasonable efforts to obtain within forty-five (45) days' of the Closing Date and thereafter maintain such acknowledgments, consents, waivers and agreements (each a "**Waiver**") from the owner, operator, lienholder, mortgagee, landlord or any Person in possession of tangible Collateral in excess of \$100,000 per location within the United States of America as Lender may reasonably require, all in form and substance reasonably satisfactory to Lender. In addition, Lender shall have the right to require Borrower to use its commercially reasonable efforts to provide Lender with a Waiver for any Collateral in excess of \$100,000 per location within the United States of America that is located in a jurisdiction that provides for statutory landlord's Liens and for any location at which the Person in possession of such Collateral has a Lien thereon. Notwithstanding anything to the contrary in this Section 5.9(e), Borrower and Lender acknowledge and agree that all material Intellectual Property and Records that are maintained on items of Collateral for which Borrower is unable to provide a Waiver also shall be maintained or backed up in a manner sufficient that Lender shall be able to have access to such Intellectual Property and Records in accordance with the exercise of Lender's rights hereunder.

**(f) Certain Agreements on Rights to Payment.** Other than in the ordinary course of business, not make any material discount, credit, rebate or other reduction in the original amount owing on a Right to Payment or accept in satisfaction of a Right to Payment less than the original amount thereof.

**5.10 Authorization for Automated Clearinghouse Funds Transfer.** (i) Authorize Lender to initiate debit entries to Borrower's Primary Operating Account, specified in the Supplement hereto, through Automated Clearinghouse ("**ACH**") transfers, in order to satisfy the regularly scheduled payments of principal and interest; (ii) provide Lender at least thirty (30) days' notice of any change in Borrower's Primary Operating Account; and (iii) grant Lender any additional authorizations necessary to begin ACH debits from a new account which becomes the Primary Operating Account.

**5.11 Anti-Corruption Laws.** Provide true, accurate and complete information, in all material respects, in all product orders, reimbursement requests and other communications relating to Borrower and its products.

## ARTICLE 6 - NEGATIVE COVENANTS

During the term of this Agreement and until the performance of all Obligations (other than inchoate indemnity obligations), Borrower will not:

**6.1 Indebtedness.** Be indebted for borrowed money, the deferred purchase price of property, or leases which would be capitalized in accordance with GAAP; or become liable as a surety, guarantor, accommodation party or otherwise for or upon the obligation of any other Person, except:

(a) Indebtedness incurred for the acquisition of supplies, inventory or other property or services on normal trade credit;

(b) Indebtedness incurred pursuant to one or more transactions permitted under Section 6.4;

(c) Indebtedness of Borrower under this Agreement;

(d) Subordinated Debt;

(e) any Indebtedness approved by Lender prior to the Closing Date as shown on Schedule 6.1, including but not limited to the Maryland Indebtedness;

(f) Indebtedness secured by a lien described in clause (c) of the defined term "Permitted Liens" not to exceed \$250,000 in aggregate principal amount outstanding at any time;

(g) Indebtedness incurred under corporate credit cards not to exceed \$100,000 in aggregate principal amount outstanding at any time;

(h) guaranties and similar surety obligations in respect of Indebtedness permitted under this Section 6.1;

(i) Indebtedness incurred in connection with Bank Services, provided that such Indebtedness does not exceed \$100,000 in the aggregate amount outstanding at any time;

(j) letters of credit securing performance of operating leases, real estate leases or appeal bonds and other obligations permitted under this Agreement, provided that such Indebtedness does not exceed \$100,000 in the aggregate amount outstanding at any time;

(k) unsecured Indebtedness to be incurred in an additional aggregate original principal amount (in addition to the Maryland Indebtedness) of up to \$10,000,000 with the state of Maryland or its associated government associations or departments at preferential interest rates in connection with matching funding programs;

(l) Indebtedness secured by a lien described in clause (c) of the defined term "Permitted Liens" to be incurred in an additional aggregate original principal amount (in addition to the Maryland Indebtedness) of up to \$3,000,000 with the state of Maryland or its associated government associations or departments;

(m) other unsecured Indebtedness not to exceed \$ 250,000 in the aggregate principal amount outstanding at any time; and

(n) extensions, refinancings and renewals of any of the foregoing; provided that the principal amount thereof is not increased.

**6.2 Liens.** Create, incur, assume or permit to exist any Lien, or grant any other Person a negative pledge, on any of Borrower's property, except Permitted Liens and any negative pledge in respect of any asset subject to a Lien permitted by clause (c) of the definition of Permitted Liens. Borrower and Lender agree that this covenant is not intended to constitute a lien, deed of trust, equitable mortgage, or security interest of any kind on any of Borrower's real property or intellectual property, and this Agreement shall not be recorded or recordable. Notwithstanding the foregoing, however, violation of this covenant by Borrower shall constitute an Event of Default.

**6.3 Dividends.** Pay any dividends or purchase, redeem or otherwise acquire or make any other distribution with respect to any of Borrower's capital stock, except (a) dividends or other distributions solely of capital stock of Borrower, (b) so long as no Event of Default has occurred and is continuing, repurchases of stock from employees or contractors upon termination of employment or services under reverse vesting or similar repurchase plans not to exceed \$250,000 in any calendar year, (c) the conversion of Borrower's convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, and (d) the purchase, redemption or other acquisition of shares of Borrower's capital stock with the proceeds received from a substantially concurrent issue of new shares of its capital stock.

**6.4 Fundamental Changes.** (a) Liquidate or dissolve; (b) enter into, or permit any of Borrower's Subsidiaries to enter into, any Change of Control; or (c) acquire, or permit any of Borrower's Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. Notwithstanding anything to the contrary in this Section 6.4, Borrower may enter into a transaction that will constitute a Change of Control so long as: (i) the Person that results from such Change of Control (the "**Surviving Entity**") shall have executed and delivered to Lender an agreement in form and substance reasonably satisfactory to Lender, containing an assumption by the Surviving Entity of the due and punctual payment and performance of all Obligations and performance and observance of each covenant and condition of Borrower in the Loan Documents; (ii) all such obligations of the Surviving Entity to Lender shall be guaranteed by any Person that directly or indirectly owns or controls 50% or more of the voting stock of the Surviving Entity; (iii) immediately after giving effect to such Change of Control, no Event of Default or, event which with the lapse of time or giving of notice or both, would result in an Event of Default shall have occurred and be continuing; and (iv) the credit risk to Lender, in its sole discretion, with respect to the Obligations and the Collateral shall not be increased. In determining whether the proposed Change of Control would result in an increased credit risk, Lender may consider, among other things, changes in Borrower's management team, employee base, access to equity markets, venture capital support, financial position and/or disposition of intellectual property rights which may reasonably be anticipated as a result of the Change of Control. In addition, (i) a Subsidiary may merge or consolidate into another Subsidiary and (ii) Borrower may consolidate or merge with any of Borrower's Subsidiaries provided that Borrower is the continuing or surviving Person.

**6.5 Sales of Assets.** Sell, transfer, lease, license or otherwise dispose of (a **“Transfer”**) any of Borrower’s assets except (i) exclusive or non-exclusive licenses or sublicenses of Intellectual Property in the ordinary course of business, provided that such licenses of Intellectual Property neither result in a legal transfer of title of the licensed Intellectual Property nor have the same effect as a sale of such Intellectual Property; (ii) Transfers of worn-out, obsolete or surplus property (each as determined by Borrower in its reasonable judgment); (iii) Transfers of Inventory in the ordinary course of business; (iv) Transfers constituting Permitted Liens; (v) Transfers permitted in Section 6.3, 6.4, 6.6 or 6.7 hereunder; (vi) Transfers of assets (other than Intellectual Property) for fair consideration *and* in the ordinary course of its business; and (vii) to the extent constituting a Transfer, any reorganization, merger, amalgamation or consolidation of a Subsidiary with or into another Subsidiary or Borrower.

**6.6 Loans/Investments.** Make or suffer to exist any loans, guaranties, advances, or investments (**“Investments”**), except:

(a) accounts receivable in the ordinary course of Borrower’s business;

(b) Investments in domestic certificates of deposit issued by, and other domestic investments with, financial institutions organized under the laws of the United States or a state thereof, having at least One Hundred Million Dollars (\$100,000,000) in capital and a rating of at least “investment grade” or “A” by Moody’s or any successor rating agency;

(c) Investments in marketable obligations of the United States of America and in open market commercial paper given the highest credit rating by a national credit agency and maturing not more than one year from the creation thereof;

(d) temporary advances to cover incidental expenses to be incurred in the ordinary course of business;

(e) Investments in joint ventures, strategic alliances, licensing and similar arrangements customary in Borrower’s industry and which do not require Borrower to assume or otherwise become liable for the obligations of any third party not directly related to or arising out of such arrangement or, without the prior written consent of Lender, require Borrower to transfer ownership of non-cash assets to such joint venture or other entity;

(f) Investments in (i) one or more wholly-owned domestic Subsidiaries of Borrower, so long as in accordance with Section 6.14(a) of this Agreement, each such Person has been made a co-borrower hereunder or has executed and delivered to Lender an agreement, in form and substance reasonably satisfactory to Lender, containing a guaranty of the Obligations, (ii) Borrower’s Foreign Subsidiaries, consistent with the Projections (which shall be updated, and provided to and approved by Lender (such approval not to be unreasonably withheld or delayed)), no less frequently than every six (6) months during the term hereof and (iii) without duplication with (ii), Investments in Clene Australia consisting of tax refunds or credits received by such entity and retained for the purpose of funding ongoing operations;

(g) Investments approved by Lender prior to the Closing Date as shown on Schedule 6.6;

(h) Investments accepted in connection with Transfers permitted by Section 6.5;

(i) non-cash loans approved by Borrower’s Board of Directors to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower’s Board of Directors, limited to an aggregate total of \$100,000 at any time outstanding;

(j) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower’s business;

(k) Investments permitted under Section 6.11;

(l) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions to, customers and suppliers in the ordinary course of business;

(m) endorsements of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(n) deferred purchase obligations accepted in connection with transfers expressly permitted under Section 6.5; and

(o) Investments by wholly owned Subsidiaries in other wholly owned Subsidiaries or in Borrower.

**6.7 Transactions with Related Persons.** Directly or indirectly enter into any transaction with or for the benefit of a Related Person on terms more favorable to the Related Person than would have been obtainable in an “arms’ length” dealing, except (a) sales of equity securities by Borrower and incurrence of Subordinated Debt for capital raising purposes, (b) Investments permitted under clauses (d), (f), (i) or (m) of Section 6.6, and (c) customary compensation or severance arrangements with employees, officers, directors and managers.

**6.8 Other Business.** Engage in any material line of business other than the business Borrower conducts as of the Closing Date and any business substantially similar or related or incidental thereto.

**6.9 Financing Statements and Other Actions.** Fail to execute and deliver to Lender all financing statements, notices and other documents (including, without limitation, any filings with the United States Patent and Trademark Office and the United States Copyright Office) from time to time reasonably requested by Lender to maintain a perfected first priority security interest in the Collateral in favor of Lender, subject to Permitted Liens; perform such other acts, and execute and deliver to Lender such additional conveyances, assignments, agreements and instruments, as Lender may at any time reasonably request in connection with the administration and enforcement of this Agreement or Lender’s rights, powers and remedies hereunder.

**6.10 Compliance.** Become required to be registered as an “investment company” or controlled by an “investment company,” within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Loan for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Collateral or the priority of Lender’s Lien on the Collateral, or permit any of its subsidiaries to do any of the foregoing.

**6.11 Other Deposit and Securities Accounts.** Maintain any Deposit Accounts or accounts holding securities owned by Borrower except (i) Deposit Accounts and investment/securities accounts as set forth in the Supplement, and (ii) other Deposit Accounts and securities/investment accounts, in each case, with respect to which Borrower and Lender shall have taken such action as Lender reasonably deems necessary to obtain a perfected first priority security interest therein, subject to Permitted Liens. The provisions of the previous sentence shall not apply to Excluded Accounts.

**6.12 Prepayment of Indebtedness.** Prepay, redeem or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness (other than the Loans and Indebtedness permitted by [Section 6.1](#) hereof). Notwithstanding the foregoing, Lender agrees that the conversion or exchange into Borrower’s equity securities of any Indebtedness (other than the Loans) shall not be prohibited by this Section 6.12.

**6.13 Repayment of Subordinated Debt.** Repay, prepay, redeem or otherwise satisfy in any manner any Subordinated Debt, except in accordance with the terms of any subordination agreement among Borrower, Lender and the holder(s) of such Subordinated Debt. Notwithstanding the foregoing, Lender agrees that the conversion or exchange into Borrower’s equity securities of any Subordinated Debt and the payment of cash in lieu of fractional shares shall not be prohibited by this Section 6.13.

#### **6.14 Subsidiaries.**

**(a)** Acquire or create any Subsidiary, unless such Subsidiary becomes, at Lender’s option, either a co-borrower hereunder or executes and delivers to Lender one or more agreements, in form and substance reasonably satisfactory to Lender, containing a guaranty of the Obligations that is secured by first priority Liens on such Person’s assets, subject to Permitted Liens. For clarity, the parties acknowledge and agree that Lender shall have the exclusive right to determine whether any such Person will be made a co-borrower hereunder or a guarantor of the Obligations. Prior to the acquisition or creation of any such Subsidiary, Borrower shall notify Lender thereof in writing, which notice shall contain the jurisdiction of such Person’s formation and include a description of such Person’s fully diluted capitalization and Borrower’s purpose for its acquisition or creation of such Subsidiary. Notwithstanding the foregoing, solely in the circumstance in which Borrower or any Subsidiary creates or acquires a Foreign Subsidiary in an acquisition permitted hereby or as otherwise approved by Lender, (i) such Foreign Subsidiary shall not be required to guarantee the Obligations of Borrower under the Loan Documents and grant a continuing pledge and security interest in and to the assets of such Foreign Subsidiary, and (ii) Borrower shall not be required to grant and pledge to Lender a perfected security interest in more than sixty five percent (65%) of the Shares of such Foreign Subsidiary, if (A) Borrower demonstrates to the reasonable satisfaction of Lender that such Foreign Subsidiary providing such guarantee or pledge and security interest or Borrower providing a perfected security interest in more than sixty five percent (65%) of the Shares would create a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; (B) no Intellectual Property is held or maintained by such Foreign Subsidiary at any time (unless otherwise consented to in writing by Lender); and (C) subject to Section 6.6(f), the aggregate value of cash and cash equivalents held or maintained by such Foreign Subsidiary does not exceed \$100,000 (or such greater amount as required to be retained in order to comply with applicable local laws and regulations or as otherwise consented to by Lender) at any time. For the avoidance of doubt, it is understood and agreed that no Foreign Subsidiary in existence as of the Closing Date shall be required, as of the Closing Date, to guarantee the Obligations of Borrower under the Loan Documents or grant a continuing pledge and security interest in and to the assets of such Foreign Subsidiary.

(b) Sell, transfer, encumber or otherwise dispose of Borrower's ownership interest in any Subsidiary other than Permitted Liens or any transfer expressly permitted under Section 6.5.

(c) Cause or permit a Subsidiary to do any of the following: (i) grant Liens on such Subsidiary's assets, except for Liens that would constitute Permitted Liens if incurred by Borrower and Liens on any property held or acquired by such Subsidiary in the ordinary course of its business securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided, that such Lien attaches solely to the property acquired with such Indebtedness and that the principal amount of such Indebtedness does not exceed one hundred percent (100%) of the cost of such property; and (ii) issue any additional Shares, except to Borrower or a wholly owned Subsidiary of Borrower.

(d) Notwithstanding any other provision of this Agreement or the Supplement to the contrary, Borrower shall not invest in or loan to, directly or indirectly, or cause or permit any Excluded Subsidiary, to maintain, cash or other assets of a value in excess of such amounts as are expressly permitted under Section 6.6(f) during the term of this Agreement.

**6.15 Leases.** Create, incur, assume, or suffer to exist any obligation as lessee for the rental or hire of any personal property ("**Personal Property Leases**"), except for Personal Property Leases of Equipment in the ordinary course of business that do not in the aggregate require Borrower to make payments (including taxes, insurance, maintenance and similar expenses which Borrower is required to pay under the terms of any such lease) in any calendar year in excess of \$600,000 in aggregate amount. For the avoidance of doubt, this Section 6.15 will not be applicable to Indebtedness otherwise permitted under Section 6.1(f) of this Agreement.

#### **6.16 Anti-Corruption Laws.**

(a) Take any action that would cause a violation of any anti-corruption law, including but not limited to, the Foreign Corrupt Practices Act, the United Kingdom Bribery Act, and all other applicable anti-corruption laws.

(b) Directly or indirectly, offer, pay, give, promise or authorize the payment of any money, gift, or anything of value to any person acting in an official capacity for any government department, agency, or instrumentality, including state-owned or controlled companies or entities, and public international organizations, as well as a political party or official thereof or candidates for political office, except in compliance with applicable law.

### **ARTICLE 7 - EVENTS OF DEFAULT**

**7.1 Events of Default; Acceleration.** Upon the occurrence and during the continuation of any Event of Default, the obligation of Lender to make any additional Loan shall be suspended. The occurrence and continuation of any of the following (each, an "**Event of Default**") shall at the option of Lender (1) make all sums of Basic Interest and principal, as well as any other Obligations and amounts owing under any Loan Documents, immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor or any other notices or demands, and (2) give Lender the right to exercise any other right or remedy provided by contract or applicable law:

(a) Borrower shall fail to pay any principal or interest under this Agreement or any Note, or fail to pay any fees or other charges when due under any Loan Document, and such failure continues for three (3) Business Days or more after the same first becomes due; or an Event of Default as defined in any other Loan Document shall have occurred.

(b) Any representation or warranty made, or financial statement, certificate or other document provided, by Borrower under any Loan Document, taken together with all such representations, warranties, statements, certificates and documents, shall prove to have been false or misleading in any material respect when made or deemed made herein.

(c) The occurrence of a Material Adverse Effect.

(d) (i) Borrower shall fail to pay its debts generally as they become due; or (ii) Borrower shall commence any Insolvency Proceeding with respect to itself, an involuntary Insolvency Proceeding shall be filed against Borrower, or a custodian, receiver, trustee, assignee for the benefit of creditors, or other similar official, shall be appointed to take possession, custody or control of the properties of Borrower, and such involuntary Insolvency Proceeding, petition or appointment is acquiesced to by Borrower or is not dismissed within forty five (45) days; or (iii) the dissolution, winding up, or termination of the business or cessation of operations of Borrower (including any transaction or series of related transactions deemed to be a liquidation, dissolution or winding up of Borrower pursuant to the provisions of Borrower's charter documents); or (iv) Borrower shall take any corporate action for the purpose of effecting, approving, or consenting to any of the foregoing.

(e) Borrower shall be in default beyond any applicable period of grace or cure under any other agreement involving the borrowing of money, the purchase of property, the advance of credit or any other monetary liability of any kind to Lender or to any Person in an amount in excess of the Threshold Amount.

(f) Any governmental or regulatory authority shall take any final and non-appealable judicial or administrative action, or any defined benefit pension plan maintained by Borrower shall have any unfunded liabilities, any of which, in the reasonable judgment of Lender, could reasonably be expected to have a Material Adverse Effect.

(g) Any sale, transfer or other disposition of all or a substantial or material part of the assets of Borrower, including without limitation to any trust or similar entity, shall occur.

(h) Any judgment(s) singly or in the aggregate in excess of the Threshold Amount shall be entered against Borrower which remain unsatisfied, unvacated or unstayed pending appeal for thirty (30) or more days after entry thereof (other than those Borrower has tendered to its insurer and for which the insurer has accepted coverage).

(i) Borrower shall fail to perform or observe any covenant contained in Article 6 of this Agreement.

(j) Borrower shall fail to perform or observe any covenant contained in Article 5 or elsewhere in this Agreement or any other Loan Document (other than a covenant which is dealt with specifically elsewhere in this Article 7) and, if capable of being cured, the breach of such covenant is not cured within 10 days after the sooner to occur of Borrower's receipt of notice of such breach from Lender or the date on which such breach first becomes known to any officer of Borrower (the "Notice Date"); provided, however that if such breach is not capable of being cured within such 10-day period and Borrower timely notifies Lender of such fact and Borrower diligently pursues such cure, then the cure period shall be extended to the date requested in Borrower's notice but in no event more than 30 days from the Notice Date; provided, further, that such 30-day opportunity to cure shall not apply in the case of any failure to perform or observe any covenant which has been the subject of a prior failure within the preceding 180 days or which is a willful and knowing breach by Borrower.

**7.2 Remedies upon Default.** Upon the occurrence and during the continuance of an Event of Default, and upon written notice to Borrower in connection with any exercise of its right to sell the whole or any part of the Shares hereunder unless following an Event of Default specified under Section 7.1(d)(ii) or (iii), Lender shall be entitled to, at its option, exercise any or all of the rights and remedies available to a secured party under the UCC or any other applicable law, and exercise any or all of its rights and remedies provided for in this Agreement and in any other Loan Document. The obligations of Borrower under this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Obligations is rescinded or must otherwise be returned by Lender upon, on account of, or in connection with, the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

**7.3 Sale of Collateral.** Upon the occurrence and during the continuance of an Event of Default, Lender may sell all or any part of the Collateral, at public or private sales, to itself, a wholesaler, retailer or investor, for cash, upon credit or for future delivery, and at such price or prices as Lender may deem commercially reasonable. To the extent permitted by law, Borrower hereby specifically waives all rights of redemption and any rights of stay or appraisal which it has or may have under any applicable law in effect from time to time. Any such public or private sales shall be held at such times and at such place(s) as Lender may determine. In case of the sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Lender until the selling price is paid by the purchaser, but Lender shall not incur any liability in case of the failure of such purchaser to pay for the Collateral and, in case of any such failure, such Collateral may be resold. Lender may, instead of exercising its power of sale, proceed to enforce its security interest in the Collateral by seeking a judgment or decree of a court of competent jurisdiction. Without limiting the generality of the foregoing, if an Event of Default is in existence,

(1) Solely in connection with the exercise of its remedies hereunder, and subject to the rights of any third parties, Lender may license, or sublicense, on a non-exclusive basis, any Copyrights, Patents or Trademarks on such conditions and in such manner as Lender shall in its sole reasonable discretion determine is necessary to dispose of the Collateral, excluding, for clarity's sake any disposition of Intellectual Property collateral that arises solely from the operation of clause (ii)(x) of the definition of "Collateral";

(2) Lender may (without assuming any obligations or liability thereunder), at any time and from time to time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Borrower in, to and under any Copyright Licenses, Patent Licenses or Trademark Licenses and take or refrain from taking any action under any thereof, and Borrower hereby releases Lender from, and agrees to hold Lender free and harmless from and against any claims arising out of, any lawful action so taken or omitted to be taken with respect thereto other than claims arising out of Lender's gross negligence or willful misconduct; and

(3) If, at any time when Lender shall determine to exercise its right to sell the whole or any part of the Shares hereunder, such Shares or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act (or any similar statute), then Lender may, in its discretion (subject only to applicable requirements of law), sell such Shares or part thereof by private sale in such manner and under such circumstances as Lender may deem necessary or advisable, but subject to the other requirements of this Article 7, and shall not be required to effect such registration or to cause the same to be effected. Without limiting the generality of the foregoing, in any such event, Lender in its discretion may (i) in accordance with applicable securities laws proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Shares or part thereof could be or shall have been filed under the Securities Act (or similar statute), (ii) approach and negotiate with a single possible purchaser to effect such sale, and (iii) restrict such sale to a purchaser who is an accredited investor under the Securities Act and who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Shares or any part thereof. In addition to a private sale as provided above in this Article 7, if any of the Shares shall not be freely distributable to the public without registration under the Securities Act (or similar statute) at the time of any proposed sale pursuant to this Article 7, then Lender shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any sale hereunder (including a sale at auction) be conducted subject to restrictions:

(A) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;

(B) as to the content of legends to be placed upon any certificates representing the Shares sold in such sale, including restrictions on future transfer thereof;

(C) as to the representations required to be made by each Person bidding or purchasing at such sale relating to such Person's access to financial information about Borrower or any of its Subsidiaries and such Person's intentions as to the holding of the Shares so sold for investment for its own account and not with a view to the distribution thereof; and

(D) as to such other matters as Lender may, in its discretion, deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the Bankruptcy Code and other laws affecting the enforcement of creditors' rights and the Securities Act and all applicable state securities laws.

(4) Borrower recognizes that Lender may be unable to effect a public sale of any or all the Shares and may be compelled to resort to one or more private sales thereof in accordance with clause (4) above. Borrower also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. Lender shall be under no obligation to delay a sale of any of the Shares for the period of time necessary to permit the applicable Subsidiary to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if Borrower and/or the Subsidiary would agree to do so.

**7.4 Borrower's Obligations upon Default.** Upon the request of Lender after the occurrence and during the continuance of an Event of Default, Borrower will:

(a) Assemble and make available to Lender the Collateral at such place(s) as Lender shall reasonably designate, segregating all Collateral so that each item is capable of identification; and

(b) Subject to the rights of any lessor, permit Lender, by Lender's officers, employees, agents and representatives, to enter any premises where any Collateral is located, to take possession of the Collateral, to complete the processing, manufacture or repair of any Collateral, and to remove the Collateral, or to conduct any public or private sale of the Collateral, all without any liability of Lender for rent or other compensation for the use of Borrower's premises.

## **ARTICLE 8 - SPECIAL COLLATERAL PROVISIONS**

**8.1 Compromise and Collection.** Borrower and Lender recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Rights to Payment; that certain of the Rights to Payment may be or become uncollectible in whole or in part; and that the expense and probability of success of litigating a disputed Right to Payment may exceed the amount that reasonably may be expected to be recovered with respect to such Right to Payment. Borrower hereby authorizes Lender, after and during the continuance of an Event of Default, to compromise with the obligor, accept in full payment of any Right to Payment such amount as Lender shall negotiate with the obligor, or abandon any Right to Payment. Any such action by Lender shall be considered commercially reasonable so long as Lender acts in good faith based on information known to it at the time it takes any such action.

**8.2 Performance of Borrower's Obligations.** Without having any obligation to do so, upon reasonable prior notice to Borrower, Lender may perform or pay any obligation which Borrower has agreed to perform or pay under this Agreement, including, without limitation, the payment or discharge of taxes or Liens levied or placed on or threatened against the Collateral. In so performing or paying, Lender shall determine the action to be taken and the amount necessary to discharge such obligations. Borrower shall reimburse Lender on demand for any amounts paid by Lender pursuant to this Section, which amounts shall constitute Obligations secured by the Collateral and shall bear interest from the date of demand at the Default Rate.

**8.3 Power of Attorney.** For the purpose of protecting and preserving the Collateral and Lender's rights under this Agreement, Borrower hereby irrevocably appoints Lender, with full power of substitution, as its attorney-in-fact with full power and authority, after the occurrence and during the continuance of an Event of Default, to do any act which Borrower is obligated to do hereunder; to exercise such rights with respect to the Collateral as Borrower might exercise; to use such Inventory, Equipment, Fixtures or other property as Borrower might use; to enter Borrower's premises; to give notice of Lender's security interest in, and to collect the Collateral; and before or after Default, to execute and file in Borrower's name any financing statements, amendments and continuation statements, account control agreements or other Security Documents necessary or desirable to create, maintain, perfect or continue the perfection of Lender's security interests in the Collateral. Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue of this appointment.



**8.4 Authorization for Lender to Take Certain Action.** The power of attorney created in Section 8.3 is a power coupled with an interest and shall be irrevocable. The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon Lender to exercise such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and in no event shall Lender or any of its directors, officers, employees, agents or representatives be responsible to Borrower for any act or failure to act, except for gross negligence or willful misconduct. After the occurrence and during the continuance of an Event of Default, Lender may exercise this power of attorney without notice to or assent of Borrower, in the name of Borrower, or in Lender's own name, from time to time in Lender's sole discretion and at Borrower's expense. To further carry out the terms of this Agreement, after the occurrence and during the continuance of an Event of Default, Lender may:

(a) Execute any statements or documents or take possession of, and endorse and collect and receive delivery or payment of, any checks, drafts, notes, acceptances or other instruments and documents constituting Collateral, or constituting the payment of amounts due and to become due or any performance to be rendered with respect to the Collateral.

(b) Sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts; drafts, certificates and statements under any commercial or standby letter of credit relating to Collateral; assignments, verifications and notices in connection with Accounts; or any other documents relating to the Collateral, including without limitation the Records.

(c) Use or operate Collateral or any other property of Borrower for the purpose of preserving or liquidating Collateral.

(d) File any claim or take any other action or proceeding in any court of law or equity or as otherwise deemed appropriate by Lender for the purpose of collecting any and all monies due or securing any performance to be rendered with respect to the Collateral.

(e) Commence, prosecute or defend any suits, actions or proceedings or as otherwise deemed appropriate by Lender for the purpose of protecting or collecting the Collateral. In furtherance of this right, upon the occurrence and during the continuance of an Event of Default, Lender may apply for the appointment of a receiver or similar official to operate Borrower's business.

(f) Prepare, adjust, execute, deliver and receive payment under insurance claims, and collect and receive payment of and endorse any instrument in payment of loss or returned premiums or any other insurance refund or return, and apply such amounts at Lender's sole discretion, toward repayment of the Obligations or replacement of the Collateral.

**8.5 Application of Proceeds.** Any Proceeds and other monies or property received by Lender pursuant to the terms of this Agreement or any Loan Document may be applied by Lender first to the payment of expenses of collection, including without limitation reasonable attorneys' fees, and then to the payment of the Obligations in such order of application as Lender may elect.

**8.6 Deficiency.** If the Proceeds of any disposition of the Collateral are insufficient to cover all costs and expenses of such sale and the payment in full of all the Obligations, plus all other sums required to be expended or distributed by Lender, then Borrower shall be liable for any such deficiency.

**8.7 Lender Transfer.** Upon the transfer of all or any part of the Obligations, Lender may transfer all or part of the Collateral and shall be fully discharged thereafter from all liability and responsibility with respect to such Collateral so transferred, and the transferee shall be vested with all the rights and powers of Lender hereunder with respect to such Collateral so transferred, but with respect to any Collateral not so transferred, Lender shall retain all rights and powers hereby given.

#### **8.8 Lender's Duties.**

(a) Lender shall use reasonable care in the custody and preservation of any Collateral in its possession. Without limitation on other conduct which may be considered the exercise of reasonable care, Lender shall be deemed to have exercised reasonable care in the custody and preservation of such Collateral if such Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not have any responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, declining value, tenders or other matters relative to any Collateral, regardless of whether Lender has or is deemed to have knowledge of such matters; or taking any necessary steps to preserve any rights against any Person with respect to any Collateral. Under no circumstances shall Lender be responsible for any injury or loss to the Collateral, or any part thereof, arising from any cause beyond the reasonable control of Lender.

(b) Lender may at any time deliver the Collateral or any part thereof to Borrower and the receipt of Borrower shall be a complete and full acquittance for the Collateral so delivered, and Lender shall thereafter be discharged from any liability or responsibility therefor.

(c) Neither Lender, nor any of its directors, officers, employees, agents, attorneys or any other person affiliated with or representing Lender shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by Borrower or any other party through the ordinary negligence of Lender, or any of its directors, officers, employees, agents, attorneys or any other person affiliated with or representing Lender.

**8.9 Termination of Security Interests and Loan Documents.** Upon the payment in full of the Obligations (other than inchoate indemnity obligations) and satisfaction of all Borrower's obligations under this Agreement and the other Loan Documents, and if Lender has no further obligations under its Commitment, the security interest granted hereby shall automatically terminate, all rights to the Collateral shall automatically revert to Borrower and this Agreement and the other Loan Documents shall terminate; provided that (i) those obligations, liabilities, covenants and terms that are expressly specified herein and in any other Loan Document as surviving that respective agreement's termination, including without limitation, Borrower's indemnity obligations set forth in this Agreement, shall continue to survive notwithstanding anything to the contrary set forth herein, and (ii) nothing set forth herein shall affect or be deemed to affect those obligations, liabilities, covenants and terms set forth in any warrant instrument issued to Lender's parent company or set forth in any other equity securities or convertible debt securities of Borrower acquired by Lender in connection with this Agreement. Upon any such termination, Lender shall return all Collateral in its possession or control to Borrower and, at Borrower's expense, execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such termination. In connection therewith, Borrower agrees to provide Lender with such information as may be reasonably requested by Lender as to whether the securities issuable upon the exercise of any Warrant issued in connection with this Agreement constitute "qualified small business stock" for purposes of Section 1202(c) of the Internal Revenue Code and Section 18152.5 of the California Revenue and Taxation Code.

## **ARTICLE 9 - GENERAL PROVISIONS**

**9.1 Notices.** Any notice given by any party under any Loan Document shall be in writing and personally delivered, sent by overnight courier, or United States mail, postage prepaid, or sent by e-mail, or other authenticated message, charges prepaid, to the other party's or parties' addresses shown on the Supplement. Each party may change the physical or electronic address to which notices, requests and other communications are to be sent by giving written notice of such change to each other party. Notice given by hand delivery shall be deemed received on the date delivered; if sent by overnight courier, on the next Business Day after delivery to the courier service; if by first class mail, on the third Business Day after deposit in the U.S. Mail; and if by email, on the date of transmission provided that such transmission is either confirmed in writing or otherwise recorded.

**9.2 Binding Effect.** The Loan Documents shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns; provided, however, that Borrower may not assign or transfer Borrower's rights or obligations under any Loan Document. Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Lender's rights and obligations under the Loan Documents provided that, so long as no Event of Default has occurred and is continuing, Lender shall not assign any of such rights or obligations to any competitor of Borrower. In connection with any of the foregoing, Lender may disclose all documents and information which Lender now or hereafter may have relating to the Loans, Borrower, or its business, provided that any Person who receives such information shall have agreed in writing in advance to maintain the confidentiality of such information on terms no less favorable to Borrower than are set forth in Section 9.13 hereof.

**9.3 No Waiver.** Any waiver, consent or approval by Lender of any Event of Default or breach of any provision, condition, or covenant of any Loan Document must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach or default shall be deemed a waiver of any later breach or default of the same or any other provision of any Loan Document. No failure or delay on the part of Lender in exercising any power, right, or privilege under any Loan Document shall operate as a waiver thereof, and no single or partial exercise of any such power, right, or privilege shall preclude any further exercise thereof or the exercise of any other power, right or privilege. Lender has the right at its sole option to continue to accept interest and/or principal payments due under the Loan Documents after default, and such acceptance shall not constitute a waiver of said default or an extension of the maturity of any Loan unless Lender agrees otherwise in writing.

**9.4 Rights Cumulative.** All rights and remedies existing under the Loan Documents are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.

**9.5 Unenforceable Provisions.** Any provision of any Loan Document executed by Borrower which is prohibited or unenforceable in any jurisdiction, shall be so only as to such jurisdiction and only to the extent of such prohibition or unenforceability, but all the remaining provisions of any such Loan Document shall remain valid and enforceable.

**9.6 Accounting Terms.** Except as otherwise provided in this Agreement, accounting terms and financial covenants and information shall be determined and prepared in accordance with GAAP (except for the absence of footnotes and subject to normal year-end adjustments).

**9.7 Indemnification; Exculpation.** Borrower shall pay and protect, defend and indemnify Lender and Lender's employees, officers, directors, shareholders, affiliates, correspondents, agents and representatives (other than Lender, collectively "**Agents**") against, and hold Lender and each such Agent harmless from, all claims, actions, proceedings, liabilities, damages, losses, expenses (including, without limitation, attorneys' fees and costs) and other amounts incurred by Lender and each such Agent, arising from (i) the matters contemplated by this Agreement or any other Loan Documents, (ii) any dispute between Borrower and a third party, or (iii) any contention that Borrower has failed to comply with any law, rule, regulation, order or directive applicable to Borrower's business; **provided, however**, that this indemnification shall not apply to any of the foregoing to the extent incurred as the result of Lender's or any Agent's gross negligence or willful misconduct. This indemnification shall survive the payment and satisfaction of all of Borrower's Obligations to Lender.

**9.8 Reimbursement.** Borrower shall reimburse Lender for all reasonable and documented costs and expenses, including without limitation reasonable and documented attorneys' fees and disbursements expended or incurred by Lender in any arbitration, mediation, judicial reference, legal action or otherwise in connection with (a) the preparation and negotiation of the Loan Documents, (b) the amendment and enforcement of the Loan Documents, including without limitation during any workout, attempted workout, and/or in connection with the rendering of legal advice as to Lender's rights, remedies and obligations under the Loan Documents, (c) collecting any sum which becomes due Lender under any Loan Document, (d) any proceeding for declaratory relief, any counterclaim to any proceeding, or any appeal, or (e) the protection, preservation or enforcement of any rights of Lender. For the purposes of this section, attorneys' fees shall include, without limitation, fees incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, proceeding or other activity of any kind in connection with an Insolvency Proceeding; (4) garnishment, levy, and debtor and third party examinations; and (5) postjudgment motions and proceedings of any kind, including without limitation any activity taken to collect or enforce any judgment. All of the foregoing costs and expenses shall be payable upon demand by Lender, and if not paid within forty-five (45) days of presentation of invoices shall bear interest at the Default Rate.

**9.9 Execution in Counterparts; Electronic Signatures.** This Agreement and the other Loan Documents may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Agreement and each of the other Loan Documents may be executed by electronic signatures. Borrower and Lender expressly agree to conduct the transactions contemplated by this Agreement and the other Loan Documents by electronic means (including, without limitation, with respect to the execution, delivery, storage and transfer of this Agreement and each of the other Loan Documents by electronic means and to the enforceability of electronic Loan Documents). Delivery of an executed signature page to this Agreement and each of the other Loan Documents by email or other electronic mail transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) shall be effective as delivery of a manually executed counterpart hereof and thereof, as applicable. The words "execution," "signed," "signature" and words of like import herein shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**9.10 Entire Agreement.** The Loan Documents are intended by the parties as the final expression of their agreement and therefore contain the entire agreement between the parties and supersede all prior understandings or agreements concerning the subject matter hereof. This Agreement may be amended only in a writing signed by Borrower and Lender.

**9.11 Governing Law and Jurisdiction.**

**(a) THIS AGREEMENT AND THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.**

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF BORROWER AND LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF BORROWER AND LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. BORROWER AND LENDER EACH WAIVE PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY CALIFORNIA LAW.

**9.12 Waiver of Jury Trial.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, BORROWER AND LENDER EACH WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. BORROWER AND LENDER EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEMS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

**9.13 Confidentiality.** Lender agrees to hold in confidence all confidential information that it receives from Borrower pursuant to the Loan Documents, except for disclosure as shall be reasonably required: (a) to legal counsel and accountants for Lender (who are subject to the same confidentiality obligation set forth herein); (b) to other professional advisors to Lender (subject to the same confidentiality obligation set forth herein); (c) to regulatory officials having jurisdiction over Lender to the extent required by law; (d) to Lender's investors and prospective investors (subject to the same confidentiality obligation set forth herein), and in Lender's SEC filings as required by law; (e) as required by law or legal process or in connection with any legal proceeding to which Lender and Borrower are adverse parties; (f) in connection with a disposition or proposed disposition of any or all of Lender's rights hereunder to any assignee or participant (subject to the same confidentiality obligation set forth herein); (g) to Lender's subsidiaries or Affiliates in connection with their business with Borrower (subject to the same confidentiality obligation set forth herein); (h) as required by valid order of a court of competent jurisdiction, administrative agency or governmental body, or by any applicable law, rule, regulation, subpoena, or any other administrative or legal process, or by applicable regulatory or professional standards, including in connection with any judicial or other proceeding involving Lender relating to this Agreement and the transactions contemplated hereby; and (i) as required in connection with Lender's examination or audit. For purposes of this section, Lender and Borrower agree that "confidential information" shall mean any information regarding or relating to Borrower other than: (i) information which is or becomes generally available to the public other than as result of a disclosure by Lender in violation of this section, (ii) information which becomes available to Lender from any other source (other than Borrower) which Lender does not know is bound by a confidentiality agreement with respect to the information made available, and (iii) information that Lender knows on a non-confidential basis prior to Borrower disclosing it to Lender. In addition, Borrower agrees that Lender may use Borrower's name, logo and/or trademark in connection with certain promotional materials that Lender may disseminate to the public, including, but are not limited to, brochures, internet website, press releases and any other materials relating to the fact that Lender has a financing relationship with Borrower.

## ARTICLE 10 - DEFINITIONS

The definitions appearing in this Agreement or any Supplement shall be applicable to both the singular and plural forms of the defined terms:

**“Account”** means any “account,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and, in any event, shall include, without limitation, all accounts receivable, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, Documents or Instruments) now owned or hereafter received or acquired by or belonging or owing to Borrower (including, without limitation, under any trade name, style or division thereof) whether arising out of goods sold or services rendered by Borrower or from any other transaction, whether or not the same involves the sale of goods or services by Borrower (including, without limitation, any such obligation that may be characterized as an account or contract right under the UCC) and all of Borrower’s rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of Borrower’s rights to any goods represented by any of the foregoing (including, without limitation, unpaid seller’s rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), and all monies due or to become due to Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of Borrower), now in existence or hereafter occurring, including, without limitation, the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

**“Advance Cecil”** means Advance Cecil, Inc.

**“Advance Cecil Indebtedness”** means owing by Clene Nanomedicine, Inc. to Advance Cecil, pursuant to that certain Loan Agreement (and accompanying promissory note) dated April 5, 2019 (as amended, modified, or amended and restated from time to time), in an original principal amount of \$100,000.

**“Affiliate”** means any Person which directly or indirectly controls, is controlled by, or is under common control with Borrower. “Control,” “controlled by” and “under common control with” mean direct or indirect possession of the power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise); provided, that control shall be conclusively presumed when any Person or affiliated group directly or indirectly owns five percent (5%) or more of the securities having ordinary voting power for the election of directors of a corporation.

**“Agreement”** means this Loan and Security Agreement and each Supplement thereto, as each may be amended or supplemented from time to time.

**“Bank Services”** means cash management services, treasury, depository, overdraft, electronic funds transfer, automatic clearing house arrangements, cash pooling arrangements, netting services, merchant services, interest rate swap arrangements, foreign exchange services and other similar arrangements or financial accommodations, in each case in the ordinary course of business

**“Bankruptcy Code”** means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, *et seq.*), as amended.

**“Basic Interest”** means the rate of interest payable on the outstanding balance of each Loan at the applicable Designated Rate.

**“Borrowing Date”** means the Business Day on which the proceeds of a Loan are disbursed by Lender.

**“Borrowing Request”** means a written request from Borrower in substantially the form of Exhibit “B” to the Supplement, requesting the funding of one or more Loans on a particular Borrowing Date.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to close.

**“Change of Control”** means: (a) any sale, license, or other disposition of all or substantially all of the assets of Borrower; (b) any reorganization, consolidation, merger or other transaction involving Borrower; or (c) any transaction or series of related transactions in which any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, the power to control the management of Borrower, or to control the equity interests of Borrower entitled to vote for members of the Board of Directors or equivalent governing body of Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 50% or more of the combined voting power of such securities.

**“Chattel Paper”** means any “chattel paper,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Clene Australia”** means Clene Australia Pty Ltd., an entity organized under the laws of Australia and a wholly-owned Subsidiary of Clene Inc.

**“Clene Netherlands”** means Clene Netherlands B.V., an entity organized under the laws of the Netherlands and a wholly-owned Subsidiary of Clene Inc.

**“Closing Date”** means the date of this Agreement.

**“Collateral”** means all of Borrower’s right, title and interest in and to the following property, whether now owned or hereafter acquired and wherever located: (a) all Receivables; (b) all Equipment; (c) all Fixtures; (d) all General Intangibles; (e) all Inventory; (f) all Investment Property; (g) all Deposit Accounts; (h) all Shares; (i) all other Goods and personal property of Borrower, whether tangible or intangible and whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located; (j) all Records; and (k) all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing.

Notwithstanding the foregoing the term “Collateral” shall not include: (i) more than sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities entitled to vote owned or held of record by Borrower in any Subsidiary that is a controlled foreign corporation (as defined in the Internal Revenue Code), if Borrower demonstrates to Lender’s reasonable satisfaction that a pledge of more than sixty-five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; provided that the Collateral shall include one hundred percent (100%) of the issued and outstanding non-voting capital stock of such Subsidiary; (ii) (x) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property; provided further that, if a judicial authority (including a U.S. Bankruptcy Court) holds (or, would hold, but for this proviso) that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Closing Date, include the Intellectual Property, subject to the rights of third parties with respect to such Intellectual Property and solely to the extent necessary to permit perfection of Lender’s security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property; and (y) “intent-to-use” trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, but only to the extent the granting of a security interest in such “intent to use” trademarks would be contrary to applicable law; or (iii) any contract, Instrument or Chattel Paper in which Borrower has any right, title or interest if and to the extent such contract, Instrument or Chattel Paper includes a provision containing a restriction on assignment such that the creation of a security interest in the right, title or interest of Borrower therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another person party to such contract, Instrument or Chattel Paper to enforce any remedy with respect thereto; provided, however, that the foregoing exclusion shall not apply if (A) such prohibition has been waived or such other person has otherwise consented to the creation hereunder of a security interest in such contract, Instrument or Chattel Paper, or (B) such prohibition would be rendered ineffective pursuant to Sections 9-407(a) or 9-408(a) of the UCC, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law (including the Bankruptcy Code or principles of equity); provided, further, that immediately upon the ineffectiveness, lapse or termination of any such provision, the term “Collateral” shall include, and Borrower shall be deemed to have granted a security interest in, all its rights, title and interests in and to such contract, Instrument or Chattel Paper as if such provision had never been in effect; and provided further that the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect Lender’s unconditional continuing security interest in and to all rights, title and interests of Borrower in or to any payment obligations or other rights to receive monies due or to become due under any such contract, Instrument or Chattel Paper and in any such monies and other proceeds of such contract, Instrument or Chattel Paper.

**“Commitment”** means the obligation of Lender to make Loans to Borrower up to the aggregate principal amount set forth in the Supplement.

**“Copyright License”** means any written agreement granting any right to use any Copyright or Copyright registration now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Copyrights”** means all of the following now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (i) all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof or of any other country; (ii) all registrations, applications and recordings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country; (iii) all continuations, renewals or extensions thereof; and (iv) any registrations to be issued under any pending applications.

**“d’Orbital”** means d’Orbital, Inc., a Delaware corporation and a wholly-owned Subsidiary of Clene Inc.

**“Default”** means an event which with the giving of notice, passage of time, or both would constitute an Event of Default.

**“Default Rate”** means the applicable Designated Rate plus five percent (5%) per annum.

**“Deposit Accounts”** means any “deposit accounts,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Designated Rate”** means the rate of interest per annum described in the Supplement as being applicable to an outstanding Loan from time to time.

**“Documents”** means any “documents,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Dollars”** or **“\$”** means lawful currency of the United States.

**“Environmental Laws”** means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authorities, in each case relating to environmental, health, or safety matters.

**“Equipment”** means any “equipment,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and any and all additions, substitutions and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“Event of Default”** means any event described in Section 7.1.

**“Excluded Subsidiary”** means each, and **“Excluded Subsidiaries”** means all, of Clene Australia, Clene Netherlands and d’Orbital.

**“Excluded Account”** means any Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower’s employees, any cash collateral account securing repayment of indebtedness permitted under Section 6.1(g) hereof, and, for the avoidance of doubt, any foreign accounts of any Subsidiary which does not guarantee (or become a co-borrower under) this Agreement; in each case, identified to Lender in writing as such.

**“Fixtures”** means any “fixtures,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Foreign Subsidiary”** is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

**“GAAP”** means generally accepted accounting principles and practices consistent with those principles and practices promulgated or adopted by the Financial Accounting Standards Board and the Board of the American Institute of Certified Public Accountants, their respective predecessors and successors. Each accounting term used but not otherwise expressly defined herein shall have the meaning given it by GAAP.

**“General Intangibles”** means any “general intangibles,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and, in any event, shall include, without limitation, all right, title and interest that Borrower may now or hereafter have in or under any contract, all customer lists, Copyrights, Trademarks, Patents, websites, domain names, and all applications therefor and reissues, extensions, or renewals thereof, other items of, and rights to, Intellectual Property, interests in partnerships, joint ventures and other business associations, Licenses, permits, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, recipes, experience, processes, models, drawings, materials and records, goodwill (including, without limitation, the goodwill associated with any Trademark, Trademark registration or Trademark licensed under any Trademark License), claims in or under insurance policies, including unearned premiums, uncertificated securities, money, cash or cash equivalents, deposit, checking and other bank accounts, rights to sue for past, present and future infringement of Copyrights, Trademarks and Patents, rights to receive tax refunds and other payments and rights of indemnification.

**“Goods”** means any “goods,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Indebtedness”** of any Person means at any date, without duplication and without regard to whether matured or unmatured, absolute or contingent: (i) all obligations of such Person for borrowed money; (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments; (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business; (iv) all obligations of such Person as lessee under capital leases; (v) all obligations of such Person to reimburse or prepay any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance, or similar instrument, whether drawn or undrawn; (vi) all obligations of such Person to purchase securities which arise out of or in connection with the sale of the same or substantially similar securities; (vii) all obligations of such Person to purchase, redeem, exchange, convert or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, now or hereafter outstanding, except to the extent that such obligations remain performable solely at the option of such Person; (viii) all obligations to repurchase assets previously sold (including any obligation to repurchase any accounts or chattel paper under any factoring, receivables purchase, or similar arrangement); (ix) obligations of such Person under interest rate swap, cap, collar or similar hedging arrangements; and (x) all obligations of others of any type described in clause (i) through clause (ix) above guaranteed by such Person.

**“Insolvency Proceeding”** means with respect to a Person (a) any case, action or proceeding before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors with respect to such Person, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of such Person’s creditors generally or any substantial portion of its creditors, undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code, but in each case, excluding any avoidance or similar action against such Person commenced by an assignee for the benefit of creditors, bankruptcy trustee, debtor in possession, or other representative of another Person or such other Person’s estate.

**“Instruments”** means any “instrument,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Intellectual Property”** means all of Borrower’s Copyrights, Trademarks, Patents, Licenses, trade secrets, source codes, customer lists, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, skill, expertise, experience, processes, models, drawings, materials, records and goodwill associated with the foregoing.

**“Inventory”** means any “inventory,” as such term is defined in the UCC, wherever located, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, and, in any event, shall include, without limitation, all inventory, goods and other personal property that are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service or that constitute raw materials, work in process or materials used or consumed or to be used or consumed in Borrower’s business, or the processing, packaging, promotion, delivery or shipping of the same, and all finished goods, whether or not the same is in transit or in the constructive, actual or exclusive possession of Borrower or is held by others for Borrower’s account, including, without limitation, all goods covered by purchase orders and contracts with suppliers and all goods billed and held by suppliers and all such property that may be in the possession or custody of any carriers, forwarding agents, truckers, warehousemen, vendors, selling agents or other Persons.

**“Investment Property”** means any “investment property,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Letter of Credit Rights”** means any “letter of credit rights,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, including any right to payment under any letter of credit.



**“License”** means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and any renewals or extensions thereof.

**“Lien”** means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and the filing of any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the UCC or comparable law of any jurisdiction.

**“Loan”** means an extension of credit by Lender under this Agreement.

**“Loan Documents”** means, individually and collectively, this Loan and Security Agreement, each Supplement, each Note, and any other security or pledge agreement(s), any Warrant issued by Borrower in connection with this Agreement, and all other contracts, instruments, addenda and documents executed in connection with this Agreement or the extensions of credit which are the subject of this Agreement.

**“Maryland HCD”** means the Department of Housing and Community Development, a principal department of the State of Maryland.

**“Maryland Indebtedness”** means the Advance Cecil Indebtedness and the Maryland HCD Indebtedness.

**“Maryland HCD Indebtedness”** means Indebtedness in the original principal amount of Five Hundred Thousand Dollars (\$500,000) owing by Clene Nanomedicine, Inc. to the Maryland HCD, pursuant to that certain Loan Agreement by and between Clene Inc. and the Maryland HCD dated as of February 22, 2019 (as amended, modified, or amended and restated from time to time).

**“Maryland HCD Lien”** means the Lien to secure repayment of the Maryland HCD Indebtedness, provided that such Lien is limited to the building and equipment financed with such Maryland HCD Indebtedness, and the Proceeds thereof.

**“Material Adverse Effect”** or **“Material Adverse Change”** means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, or financial condition of Borrower; (b) a material impairment of the ability of Borrower to perform under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

**“Material Contract”** means any indenture, agreement or contract that has been publicly disclosed in connection with the Borrower’s required reporting to the SEC.

**“Note”** means a promissory note substantially in the form attached to the Supplement as Exhibit “A”, executed by Borrower evidencing each Loan.

**“Obligations”** means all debts, obligations and liabilities of Borrower to Lender now or hereafter made, incurred or created under, pursuant to or in connection with this Agreement or any other Loan Document (other than the Warrant), whether voluntary or involuntary and however arising or evidenced, whether direct or acquired by Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower may be liable individually or jointly, or whether recovery upon such debt may be or become barred by any statute of limitations or otherwise unenforceable; and all renewals, extensions and modifications thereof; and all attorneys’ fees and costs incurred by Lender in connection with the collection and enforcement thereof as provided for in any such Loan Document.

**“Patent License”** means any written agreement granting any right with respect to any invention on which a Patent is in existence now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Patents”** means all of the following property now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all letters patent of, or rights corresponding thereto in, the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto in, the United States or any other country, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, continuations, continuations-in-part or extensions thereof; (c) all petty patents, divisionals, and patents of addition; and (d) all patents to be issued under any such applications.

**“Permitted Lien”** means:

- (a) involuntary Liens which, in the aggregate, would not have a Material Adverse Effect and which in any event would not exceed, in the aggregate, the Threshold Amount;
- (b) Liens for current taxes or other governmental or regulatory assessments which are not delinquent, or which are contested in good faith by the appropriate procedures and for which appropriate reserves are maintained;
- (c) security interests on any property held or acquired by Borrower in the ordinary course of business securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided, that such Lien attaches solely to the property acquired with such Indebtedness (and the Proceeds thereof) and that the principal amount of such Indebtedness does not exceed one hundred percent (100%) of the cost of such property;
- (d) Liens in favor of Lender;
- (e) bankers’ liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business as long as an account control agreement (or equivalent) for each account in which such deposits are held in a form acceptable to Lender has been executed and delivered to Lender to the extent required under Section 6.11;
- (f) materialmen’s, mechanics’, repairmen’s, warehousemen’s, carriers’, landlord’s (subject to Section 5.9(e) hereof), employees’ or other like Liens arising in the ordinary course of business and which are not delinquent for more than 45 days or are being contested in good faith by appropriate proceedings;
- (g) any judgment, attachment or similar Lien, unless the judgment it secures exceeds the Threshold Amount and has not been discharged or execution thereof effectively stayed and bonded against pending appeal within 30 days of the entry thereof;
- (h) licenses or sublicenses of Intellectual Property in accordance with the terms of Section 6.5 hereof;
- (i) Liens securing Subordinated Debt;
- (j) Liens which have been approved by Lender in writing prior to the Closing Date, as shown on Schedule 6.2 hereto, including but not limited to the Maryland HCD Lien;
- (k) the interests of licensors under inbound licenses to Borrower;
- (l) the interests of sub-lessees under subleases of real property and statutory or common law Liens of landlords;
- (m) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);
- (n) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than capital lease obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature arising as a matter of law and incurred in the ordinary course of business; and
- (o) zoning restrictions, easements, rights of way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries.

**“Person”** means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

**“Proceeds”** means “proceeds,” as such term is defined in the UCC and, in any event, shall include, without limitation, (a) any and all Accounts, Chattel Paper, Instruments, cash or other forms of money or currency or other proceeds payable to Borrower from time to time in respect of the Collateral, (b) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Borrower from time to time with respect to any of the Collateral, (c) any and all payments (in any form whatsoever) made or due and payable to Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority), (d) any claim of Borrower against third parties (i) for past, present or future infringement of any Copyright, Patent or Patent License or (ii) for past, present or future infringement or dilution of any Trademark or Trademark License or for injury to the goodwill associated with any Trademark, Trademark registration or Trademark licensed under any Trademark License and (e) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**“Receivables”** means all of Borrower’s Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, and letters of credit and Letter of Credit Rights.

**“Records”** means all Borrower’s computer programs, software, hardware, source codes and data processing information, all written documents, books, invoices, ledger sheets, financial information and statements, and all other writings concerning Borrower’s business.

**“Related Person”** means any Affiliate of Borrower, or any officer, employee, director or equity security holder of Borrower or any Affiliate.

**“Rights to Payment”** means all Borrower’s accounts, instruments, contract rights, documents, chattel paper and all other rights to payment, including, without limitation, the Accounts, all negotiable certificates of deposit and all rights to payment under any Patent License, any Trademark License, or any commercial or standby letter of credit.

**“Security Documents”** means this Loan and Security Agreement, the Supplement hereto, and any and all account control agreements, collateral assignments, chattel mortgages, financing statements, amendments to any of the foregoing and other documents from time to time executed or filed to create, perfect or maintain the perfection of Lender’s Liens on the Collateral.

**“Shares”** means: one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower in any Subsidiary; provided that, in the event Borrower demonstrates to Lender’s reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary which is a Foreign Subsidiary, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, “Shares” shall mean sixty five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or its Subsidiary in such Foreign Subsidiary.

**“Subordinated Debt”** means Indebtedness (i) approved by Lender; and (ii) where the holder’s right to payment of such Indebtedness, the priority of any Lien securing the same, and the rights of the holder thereof to enforce remedies against Borrower following default have been made subordinate to the Liens of Lender and to the prior payment to Lender of the Obligations, either (A) pursuant to a written subordination agreement approved by Lender in its sole but reasonable discretion or (B) on terms otherwise approved by Lender in its sole but reasonable discretion.

**“Subsidiary”** means any Person a majority of the equity ownership or voting stock of which is directly or indirectly now owned or hereafter acquired by Borrower or by one or more other Subsidiaries.

**“Supplement”** means that certain supplement to the Loan and Security Agreement, as the same may be amended or restated from time to time, and any other supplements entered into between Borrower and Lender, as the same may be amended or restated from time to time.

**“Supporting Obligations”** means any “supporting obligations,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Termination Date”** has the meaning specified in the Supplement.

**“Threshold Amount”** has the meaning specified in the Supplement.

**“Trademark License”** means any written agreement granting any right to use any Trademark or Trademark registration now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Trademarks”** means all of the following property now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all trademarks, tradenames, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and any applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof and (b) reissues, extensions or renewals thereof.

**“UCC”** means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions. Unless otherwise defined herein, terms that are defined in the UCC and used herein shall have the meanings given to them in the UCC.

**“Warrant”** has the meaning specified in the Supplement.

*[Signature page follows]*

---

*[Signature page to Loan and Security Agreement]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**BORROWER:**

CLENE INC.

By: /s/ Rob Etherington

Name: Rob Etherington

Title: President

CLENE NANOMEDICINE, INC.

By: /s/ Rob Etherington

Name: Rob Etherington

Title: President

**LENDER:**

AVENUE VENTURE OPPORTUNITIES FUND, L.P.

By: Avenue Venture Opportunities Partners, LLC

Its: General Partner

By: /s/ Sonia Gardner

Name: Sonia Gardner

Title: Authorized Signatory

*[Schedules to Loan and Security Agreement follow]*

---

Schedules to  
Loan and Security Agreement  
dated as of May 21, 2021  
among  
CLENE INC.,  
CLENE NANOMEDICINE, INC.  
and  
Avenue Venture Opportunities Fund, L.P.

---

**Schedule of Exceptions**

*See* attachment hereto.

**Schedule 6.1. Permitted Indebtedness**

**Schedule 6.2. Permitted Liens**

---

**SUPPLEMENT**  
to the  
**Loan and Security Agreement**  
dated as of May 21, 2021  
among  
**CLENE INC.,**  
**CLENE NANOMEDICINE, INC.**  
(individually and collectively, jointly and severally, “Borrower”)  
and  
**Avenue Venture Opportunities Fund, L.P. (“Lender”)**

---

This is a Supplement identified in the document entitled Loan and Security Agreement, dated as of May 21, 2021 (as amended, restated, supplemented and modified from time to time, the “**Loan and Security Agreement**”), by and between Borrower and Lender. All capitalized terms used in this Supplement and not otherwise defined in this Supplement have the meanings ascribed to them in Article 10 of the Loan and Security Agreement, which is incorporated in its entirety into this Supplement. In the event of any inconsistency between the provisions of the Loan and Security Agreement and this Supplement, this Supplement is controlling.

In addition to the provisions of the Loan and Security Agreement, the parties agree as follows:

**Part 1 - Additional Definitions:**

“**Additional Equity**” means Borrower’s receipt of net proceeds of at least Thirty Million Dollars (\$30,000,000) from the sale and issuance of Borrower’s equity securities (including any PIPE or follow-on offering) between May 1, 2021 and June 30, 2022.

“**Amortization Period**” means the period commencing on the first day of the first full calendar month following the Interest-only Period and continuing until the Maturity Date.

“**Commitment**” means, subject to the terms and conditions set forth in the Loan and Security Agreement and this Supplement, Lender’s commitment to make Growth Capital Loans to Borrower up to the aggregate original principal amount of Twenty Million Dollars (\$20,000,000), increasing to Thirty Million Dollars (\$30,000,000), subject to the Tranche 2 Milestones, with (i) Fifteen Million Dollars (\$15,000,000) funded on the Closing Date and (y) an additional Five Million Dollars (\$5,000,000) funded, upon both Borrower’s written request therefor no later than ten (10) Business Days prior to the proposed Borrowing Date thereof, no later than December 31, 2021, and evidence reasonably satisfactory to Lender of receipt of Five Million Dollars (\$5,000,000) in aggregate of financing through the Maryland’s State Incentive Programs (SIPs) and/or other Maryland State programs; and up to Ten Million Dollars (\$10,000,000) to be funded between the Tranche 2 Start Date and the Termination Date, subject to the conditions in Section 1(a) of Part 2 (“**Tranche 2**”), evidence reasonably satisfactory to Lender of receipt of an additional Five Million Dollars (\$5,000,000) of financing through the Maryland’s SIPs and/or other Maryland State programs in connection with Tranche 2) and mutual agreement of Borrower and Lender.

“**Designated Rate**” means, for each Growth Capital Loan, a variable rate of interest per annum equal to the sum of (i) the greater of (A) the Prime Rate and (B) three and one-quarters percent (3.25%), plus (ii) six and sixty-hundredths percent (6.60%). Changes to the Designated Rate based on changes to the Prime Rate shall be effective as of the next scheduled interest payment date immediately following such change.

“**Final Payment**” means a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) equal to four and one-quarter percent (4.25%) of the Growth Capital Loans funded.

---

**“Growth Capital Loan”** means any Loan requested by Borrower and funded by Lender under its Commitment for general corporate purposes of Borrower.

**“Interest-only Period”** means the period commencing on the Closing Date and continuing until the twelfth (12<sup>th</sup>) month anniversary of the Closing Date; *provided*, however, that such period shall be extended for twelve (12) months (the **“First Interest-only Period Extension”**) if as of the last day of the Interest-only Period then in effect Borrower has achieved Performance Milestone 1; *provided, further*, however that such period shall be extended for an additional twelve (12) months if, as of the last day of the Interest-only Period then in effect, Borrower has (a) achieved the First Interest-only Period Extension and (b) drawn Tranche 2; *provided, further*, however, that the Interest-only Period shall not exceed thirty-six (36) months.

**“Loan”** or **“Loans”** mean, as the context may require, individually a Growth Capital Loan, and collectively, the Growth Capital Loans.

**“Loan Commencement Date”** means, with respect to each Growth Capital Loan: (a) the first day of the first full calendar month following the Borrowing Date of such Loan if such Borrowing Date is not the first day of a month; or (b) the same day as the Borrowing Date if the Borrowing Date is the first day of a month.

**“Maturity Date”** means December 1, 2024.

**“Performance Milestone 1”** means Borrower has achieved a statistically significant result on the primary endpoint as defined within the statistical analysis plan for each respective study, or the totality of the results for any study warrant advancement into a subsequent clinical efficacy study as reasonably determined by Borrower and Lender with respect to at least two (2) of the following studies: (i) RESCUE-ALS or HEALEY-ALS; (ii) REPAIR-PD; or (iii) REPAIR- MS.

**“Prepayment Fee”** means, with respect to any prepayment of the Loans:

(i) if the prepayment occurs during the period commencing on the Closing Date and ending on (but including) the two-year anniversary of the Closing Date, an amount equal to the principal amount of the Loans prepaid multiplied by two percent (2.00%); and

(ii) if the prepayment occurs during the period commencing on the day immediately following the two-year anniversary of the Closing Date and ending on (but excluding) the Maturity Date, an amount equal to the principal amount of the Loans prepaid multiplied by one percent (1.00%).

**“Prime Rate”** is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Supplement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Lender, the “Prime Rate” shall mean the rate of interest per annum announced by Silicon Valley Bank as its prime rate in effect at its principal office in the State of California (such announced Prime Rate not being intended to be the lowest rate of interest charged by such institution in connection with extensions of credit to debtors).

**“Termination Date”** means the earlier of: (i) the date Lender may terminate making Growth Capital Loans or extending other credit pursuant to the rights of Lender under Article 7 of the Loan and Security Agreement; and (ii) June 30, 2022.

**“Threshold Amount”** means Two Hundred Fifty Thousand Dollars (\$250,000).

**“Tranche 2 Start Date”** means the date Borrower has satisfied the conditions in Part 2, Section 1(a), but no earlier than January 1, 2022.

**“Warrant”** is defined in Part 2, Section 3(a) hereof.



## Part 2 - Additional Covenants and Conditions:

### 1. Growth Capital Loan Facility.

**(a) Additional Condition(s) Precedent Regarding Growth Capital Loan Commitments.** In addition to the satisfaction of all of the other applicable conditions precedent specified in Sections 4.1 and 4.2 of the Loan and Security Agreement and this Supplement, Lender's obligation to fund Tranche 2 of its Commitment of Growth Capital Loans is subject to (I) Borrower's written request for Tranche 2, (II) approval by Lender's Investment Committee, and (III) receipt by Lender of evidence, as determined by Lender in its reasonable discretion, that Borrower has received (x) positive phase 3 HEALEY data, and (y) the Additional Equity.

Subject to satisfaction of the conditions precedent specified in Sections 4.1 and Section 4.2 of the Loan and Security Agreement and this Supplement, Lender agrees to make Growth Capital Loans to Borrower under Lender's Commitment from time to time from and after the Closing Date up to and including the Termination Date in an aggregate, original principal amount up to, but not exceeding, then then-unfunded portion of Lender's Commitment.

**(b) Minimum Funding Amount; Maximum Number of Borrowing Requests.** Growth Capital Loans requested by Borrower to be made on a single Business Day shall be for a minimum aggregate, original principal amount of Five Million Dollars (\$5,000,000); provided, however, that the initial Growth Capital Loan shall be funded on the Closing Date in the original principal amount of Fifteen Million Dollars (\$15,000,000). Borrower shall not submit a Borrowing Request more frequently than once per calendar month.

**(c) Repayment of Growth Capital Loans.** Principal of, and interest on, each Growth Capital Loan shall be payable as set forth in a Note evidencing such Growth Capital Loan (substantially in the form attached hereto as Exhibit "A"), which Note shall provide substantially as follows: principal shall be fully amortized over the Amortization Period in equal, monthly principal installments plus, in each case, unpaid interest thereon at the Designated Rate, commencing after the Interest-only Period of interest-only installments at the Designated Rate. In particular, on the Borrowing Date applicable to such Growth Capital Loan, Borrower shall pay to Lender (i) if the Borrowing Date is earlier than the Loan Commencement Date, interest only at the Designated Rate, in advance, on the outstanding principal balance of the Growth Capital Loan for the period from the Borrowing Date through the last day of the calendar month in which such Borrowing Date occurs, and (ii) the first (1st) interest-only installment at the Designated Rate, in advance, on the outstanding principal balance of the Note evidencing such Loan for the ensuing month. Commencing on the first day of the second full month after the Borrowing Date and continuing on the first day of each month during the Interest-only Period thereafter, Borrower shall pay to Lender interest only at the Designated Rate, in advance, on the outstanding principal balance of the Loan evidenced by such Note for the ensuing month. Commencing on the first day of the first full month after the end of the Interest-only Period, and continuing on the first day of each consecutive calendar month thereafter, Borrower shall pay to Lender equal consecutive monthly principal installments in advance in an amount sufficient to fully amortize the Loan evidenced by such Note over the Amortization Period, plus interest at the Designated Rate for such month. On the Maturity Date, all principal and accrued interest then remaining unpaid and the Final Payment shall be due and payable

**2. Prepayment.** The Growth Capital Loans may be prepaid as provided in this Section 2 only. Borrower may prepay all, but not less than all, outstanding Growth Capital Loans in whole, but not in part, at any time upon no less than five (5) Business Days' prior written notice to the Lender, by tendering to Lender a cash payment in respect of such Loans in an amount determined by Lender equal to the sum of: (i) the aggregate outstanding principal amount of such Loans; (ii) the accrued and unpaid interest on such Loans as of the date of prepayment; (iii) the Prepayment Fee; and (iv) the Final Payment; provided that, if Lender has not yet exercised its rights under Section 3(c) hereof, Borrower shall provide written notice of prepayment at least ten (10) days in advance of the proposed prepayment date and Lender shall have the option, with respect to the Conversion Option Principal, to exercise its rights pursuant to Section 3(c) hereof by delivering written notice to Borrower at least two (2) Business Days in advance of the proposed prepayment date.

### 3. Issuance of Warrant; Conversion Right.

(a) **Warrant.** As additional consideration for the making of its Commitment, Lender has earned and is entitled to receive immediately upon the execution of the Loan and Security Agreement and this Supplement, a warrant instrument issued by Borrower (the “**Warrant**”).

(b) **Warrant General.** The Warrant shall be in form and substance reasonably satisfactory to Lender.

(c) **Conversion Right.** Lender shall have the right, in its discretion, but not the obligation, at any time and from time to time from the first (1<sup>st</sup>) through the third (3<sup>rd</sup>) anniversary of the Closing Date, while the Loan is outstanding, to convert (the “**Conversion Option**”) an amount of up to Five Million Dollars (\$5,000,000) of the principal amount of the outstanding Growth Capital Loans (the “**Conversion Option Principal**”) into Borrower’s unrestricted, freely tradeable common stock (the “**Common Stock**”) at a price per share equal to one hundred twenty percent (120.00%) of the Stock Purchase Price set forth (and defined) in the Warrant (the “**Conversion Price**;” the exercise of such Conversion Option, a “**Conversion**”); provided that the Conversion Option is subject to (i) the closing price of the shares of Common Stock as reported by Bloomberg, L.P. on the NASDAQ stock market for each of the seven (7) consecutive trading days immediately preceding the Conversion being greater than or equal to the Conversion Price; and (ii) the Common Stock issued in connection with any such Conversion not exceeding twenty percent (20%) of the total trading volume of the Common Stock for the twenty-two (22) consecutive trading days immediately prior to and including the effective date of such Conversion. The Conversion Option will be exercised by Lender delivering a written, signed conversion notice to the Borrower in accordance with this Section 3(c) which will include (i) the date of which the conversion notice is given, (ii) a statement to the effect that the Lender is exercising the Conversion Option, (iii) the amount in respect of which the Conversion Option is being exercised and the number of shares issued and (iv) a date on which the allotment and issuance of the shares is to take place.

### 4. Commitment Fee; Utilization Fee.

(a) **Commitment Fee.** Borrower shall pay to Lender a commitment fee in the amount of one percent (1.00%) of the Twenty Million Dollars (\$20,000,000) Commitment due and payable on the Closing Date, of which One Hundred Thousand Dollars (\$100,000) has been paid by Borrower to Lender as an advance deposit prior to the date hereof. As an additional condition precedent under Section 4.1 of the Loan and Security Agreement, Lender shall have completed to its satisfaction its due diligence review of Borrower’s business and financial condition and prospects, and Lender’s Commitment shall have been approved. If this condition is not satisfied, the One Hundred Thousand Dollars (\$100,000) advance deposit previously paid by Borrower shall be refunded. In the event Lender advances the Tranche 2 Loan, Lender shall “net fund” an additional commitment fee equal to one percent (1.00%) of the Tranche 2 Loan amount on the funding date of such Tranche 2. Except as set forth in this Section 4, the commitment fee is not refundable.

(b) **Utilization Fee.** Borrower shall pay to Lender a utilization fee in the amount of one and one-half percent (1.50%) of the funded amount of each Loan made by Lender to Borrower, which amount Lender shall “net fund” and is fully earned and not refundable as of the date of each Loan.

**5. Documentation Fee Payment.** On the Closing Date, Borrower shall reimburse Lender pursuant to Section 9.8(a) of the Loan and Security Agreement for (i) its reasonable attorneys’ fees, costs and expenses incurred in connection with the preparation and negotiation of the Loan Documents and (ii) such Lender’s costs and filing fees related to perfection of its Liens in the Collateral in any jurisdiction in which the same is located, recording a copy of the Intellectual Property Security Agreement with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and confirming the priority of such Liens.

**6. Financial Covenants.** Borrower shall at all times during the term hereof maintain minimum unrestricted cash and cash equivalents, in accounts subject to control agreements in favor of, and in form and content reasonably acceptable to, Lender, of at least Five Million Dollars (\$5,000,000); provided that, upon Borrower (1) achieving Performance Milestone 1 and (2) receiving the Additional Equity, Borrower shall no longer be required to comply with this Part 2, Section 6.

**7. Borrower's Primary Operating Account and Wire Transfer Instructions:** [Redacted]

**8. Debits to Account for ACH Transfers.** For purposes of Sections 2.2 and 5.10 of the Loan and Security Agreement, the Primary Operating Account shall be the bank account set forth in Section 6 above, unless and until such account is changed in accordance with Section 5.10 of the Loan and Security Agreement. Borrower hereby agrees that the Growth Capital Loans will be advanced to the account specified above and regularly scheduled payments of principal, interest and fees will be automatically debited from the same account.

**Part 3 - Additional Representations:**<sup>1</sup>

Borrower represents and warrants that as of the Closing Date and, subject to any written updates of the information set forth below by Borrower to Lender, each Borrowing Date:

- a) Its chief executive office is located at: 6550 South Millrock Drive, Suite G50, Salt Lake City, Utah 84121.
- b) Its Equipment is located at: (i) 500 Principio Parkway, Cecil Technology Campus, Suite 300, Perryville, Maryland, (ii) 500 Principio Parkway, Cecil Technology Campus, Suite 400, Perryville, Maryland; and (iii) VOX Fulfillment, 2222 S 950 E, Provo, Utah 84606.
- c) Its Inventory is located at: (i) 500 Principio Parkway, Cecil Technology Campus, Suite 300, Perryville, Maryland, (ii) 500 Principio Parkway, Cecil Technology Campus, Suite 400, Perryville, Maryland; and (iii) VOX Fulfillment, 2222 S 950 E, Provo, Utah 84606.
- d) Its Records are located at: 6550 South Millrock Drive, Suite G50, Salt Lake City, Utah 84121.
- e) In addition to its chief executive office, Borrower maintains offices or operates its business at the following locations: (i) 500 Principio Parkway, Cecil Technology Campus, Suite 300, Perryville, Maryland, (ii) 500 Principio Parkway, Cecil Technology Campus, Suite 400, Perryville, Maryland.
- f) Other than its full corporate name, Borrower has conducted business using the following trade names or fictitious business names: None.
- g) Its state corporation identification number is: 3431683.
- h) Its U.S. federal tax identification number is: 85-2828339.

---

<sup>1</sup> Company: Please complete.

- i) Including Borrower's Primary Operating Account identified in Section 6 above, Borrower maintains the following Deposit Accounts and investment accounts: [Redacted]

**Part 4 - Additional Loan Documents:**

Form of Promissory Note  
Form of Borrowing Request  
Form of Compliance Certificate

Exhibit "A"  
Exhibit "B"  
Exhibit "C"

*[Remainder of this page intentionally left blank; signature page follows]*

[Signature page to Supplement to Loan and Security Agreement]

IN WITNESS WHEREOF, the parties have executed this Supplement as of the date first above written.

**BORROWER:**

CLENE INC.

By: /s/ Rob Etherington

Name: Rob Etherington

Title: President

CLENE NANOMEDICINE, INC.

By: /s/ Rob Etherington

Name: Rob Etherington

Title: President

Address for Notices:

6550 South Millrock Drive, Suite G50

Salt Lake City, Utah 84121

Attn: Rob Etherington

Fax # \_\_\_-\_\_\_-\_\_\_\_

Phone # 801-676-9695

**LENDER:**

AVENUE VENTURE OPPORTUNITIES FUND, L.P.

By: Avenue Venture Opportunities Partners, LLC

Its: General Partner

By: /s/ Sonia Gardner

Name: Sonia Gardner

Title: Authorized Signatory

Address for Notices:

11 West 42<sup>nd</sup> Street, 9<sup>th</sup> Floor

New York, New York 10036

Attn: Todd Greenberg, Senior Managing Director

Email: tgreenberg@avenuecapital.com

Phone # 212-878-3523

---

EXHIBIT "A"

FORM OF PROMISSORY NOTE

[Note No. X-XXX]

\$ \_\_\_\_\_

May 21, 2021

The undersigned ("Borrower") promises to pay to the order of AVENUE VENTURE OPPORTUNITIES FUND, L.P., a Delaware limited partnership ("Lender"), at such place as Lender may designate in writing, in lawful money of the United States of America, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), with interest thereon from the date hereof until maturity, whether scheduled or accelerated, at a variable rate per annum equal to the sum of (i) the greater of (A) the Prime Rate and (B) three and one-quarters percent (3.25%), plus (ii) six and sixty-hundredths percent (6.60%) (the "Designated Rate"), according to the payment schedule described herein, except as otherwise provided herein. In addition, on the Maturity Date, the Borrower promises to pay to the order of Lender (i) all principal and accrued interest then remaining unpaid and (ii) the Final Payment (as defined in the Loan Agreement (as defined herein)).

This Note is one of the Notes referred to in, and is entitled to all the benefits of, a Loan and Security Agreement, dated as of May 21, 2021, between Borrower and Lender (as the same has been and may be amended, restated or supplemented from time to time, the "Loan Agreement"). Each capitalized term not otherwise defined herein shall have the meaning set forth in the Loan Agreement. The Loan Agreement contains provisions for the acceleration of the maturity of this Note upon the happening of certain stated events.

Principal of and interest on this Note shall be payable as provided under Section 2 of Part 2 of the Supplement to the Loan Agreement.

This Note may be prepaid only as permitted under Section 2 of Part 2 of the Supplement to the Loan Agreement.

Any unpaid payments of principal or interest on this Note shall bear interest from their respective maturities, whether scheduled or accelerated, at a rate per annum equal to the Default Rate, compounded monthly. Borrower shall pay such interest on demand.

Interest, charges and fees shall be calculated for actual days elapsed on the basis of a 360-day year, which results in higher interest, charge or fee payments than if a 365-day year were used. In no event shall Borrower be obligated to pay interest, charges or fees at a rate in excess of the highest rate permitted by applicable law from time to time in effect.

If Borrower is late in making any scheduled payment under this Note by more than five (5) days, Borrower agrees to pay a "late charge" of five percent (5%) of the installment due, but not less than fifty dollars (\$50) for any one such delinquent payment. This late charge may be charged by Lender for the purpose of defraying the expenses incidental to the handling of such delinquent amounts. Borrower acknowledges that such late charge represents a reasonable sum considering all of the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Lender due to the failure of Borrower to make timely payments. Borrower further agrees that proof of actual damages would be costly and inconvenient. Such late charge shall be paid without prejudice to the right of Lender to collect any other amounts provided to be paid or to declare a default under this Note or any of the other Loan Documents or from exercising any other rights and remedies of Lender.

[Signature page to Promissory Note]

This Note shall be governed by, and construed in accordance with, the laws of the State of California, excluding those laws that direct the application of the laws of another jurisdiction.

CLENE INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CLENE NANOMEDICINE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT "B"

FORM OF BORROWING REQUEST

May 21, 2021

Avenue Venture Opportunities Fund, L.P.  
11 West 42nd Street, 9th Floor  
New York, New York 10036

Re: CLENE INC. AND CLENE NANOMEDICINE, INC.

Ladies and Gentlemen:

Reference is made to the Loan and Security Agreement, dated as of May 21, 2021 (as amended, restated or supplemented from time to time, the "Loan Agreement"; the capitalized terms used herein as defined therein), among Avenue Venture Opportunities Fund, L.P. ("Lender"), CLENE INC. and CLENE NANOMEDICINE, INC. (individually and collectively, jointly and severally, "Borrower").

The undersigned is the \_\_\_\_\_ of Borrower and hereby requests on behalf of Borrower a Loan under the Loan Agreement, and in that connection certifies as follows:

1. The amount of the proposed Loan is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Borrowing Date of the proposed Loan is \_\_\_\_\_ (the "Borrowing Date").

(a) On the Borrowing Date, the Lender will wire \$[\_\_\_\_\_] less fees and expenses to be deducted on the Borrowing Date of \$[\_\_\_\_\_] for net proceeds of \$[\_\_\_\_\_] to Borrower pursuant to the following wire instructions.

Institution Name:  
Address:  
ABA No.:  
Contact Name:  
Phone No.:  
E-mail:  
Account Title:  
Account No.:

(b) On the Borrowing Date, the Lender will wire \$[\_\_\_\_\_] to Barnes & Thornburg LLP for fees and expenses pursuant to wire instructions previously provided to the Lender.]<sup>2</sup>

---

<sup>2</sup> To be included in the Borrowing Request on the Closing Date. The executed Borrowing Request must be delivered 2 Business Days prior to the Closing Date.



2. As of this date, no Default or Event of Default has occurred and is continuing, or will result from the making of the proposed Loan, the representations and warranties of Borrower contained in Article 3 of the Loan Agreement and Part 3 of the Supplement are true and correct in all material respects other than those representations and warranties expressly referring to a specific date which are true and correct in all material respects as of such date, and the conditions precedent described in Sections 4.1 and/or 4.2 of the Loan Agreement and Part 2 of the Supplement, as applicable, have been met.

3. No event has occurred that has had or could reasonably be expected to have a Material Adverse Change.

4. Borrower's most recent financial statements, financial projections or business plan dated \_\_\_\_\_, as reviewed by Borrower's Board of Directors, are enclosed herewith in the event such financial statements, financial projections or business plan have not been previously provided to Lender.

*Remainder of this page intentionally left blank; signature page follows*

[Signature page to Borrowing Request]

Borrower shall notify you promptly before the funding of the Loan if any of the matters to which I have certified above shall not be true and correct on the Borrowing Date.

Very truly yours,

CLENE INC., for itself and on behalf of all Borrowers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \* \_\_\_\_\_

\_\_\_\_\_  
\* Must be executed by Borrower's Chief Financial Officer or other executive officer.

---

**EXHIBIT “C”**

**FORM OF  
COMPLIANCE CERTIFICATE**

Avenue Venture Opportunities Fund, L.P.  
11 West 42nd Street, 9th Floor  
New York, New York 10036

Re: CLENE INC. AND CLENE NANOMEDICINE, INC.

Ladies and Gentlemen:

Reference is made to the Loan and Security Agreement, dated as of May , 2021 (as the same has been and may be supplemented, amended and modified from time to time, the “Loan Agreement,” the capitalized terms used herein as defined therein), among Avenue Venture Opportunities Fund, L.P. (“Lender”), CLENE INC. and CLENE NANOMEDICINE, INC. (individually and collectively, jointly and severally, “Borrower”).

The undersigned authorized representative of Borrower hereby certifies in such capacity that in accordance with the terms and conditions of the Loan Agreement, (i) no Default or Event of Default has occurred and is continuing, except as noted below, and (ii) Borrower is in compliance for the financial reporting period ending \_\_\_\_\_ with all required financial reporting under the Loan Agreement, except as noted below. Attached herewith are the required documents supporting the foregoing certification. The undersigned authorized representative of Borrower further certifies in such capacity that: (a) the accompanying financial statements have been prepared in accordance with Borrower’s past practices applied on a consistent basis, or in such manner as otherwise disclosed in writing to Lender, throughout the periods indicated; and (b) the financial statements fairly present in all material respects the financial condition and operating results of Borrower and its Subsidiaries, if any, as of the dates, and for the periods, indicated therein, subject to the absence of footnotes and normal year-end audit adjustments (in the case of interim monthly financial statements), except as explained below.

***Please provide the following requested information and indicate compliance status by circling (or otherwise indicating) Yes/No under “Included/Complies”:***

REPORTING REQUIREMENT	REQUIRED	INCLUDED/COMPLIES
Balance Sheet, Income Statement & Cash Flow Statement	Monthly, within 30 days	YES / NO / N/A
Operating Budgets, 409(A) Valuations & Updated Capitalization Tables	As modified	YES / NO / N/A
Annual Financial Statements	Annually, within 90 day of fiscal year-end	YES / NO / N/A
Board Packages	As modified	YES / NO / N/A
Date of most recent Board-approved budget/plan		
Any change in budget/plan since version most recently delivered to Lender <i>If Yes, please attach</i>		YES / NO / N/A
Date of most recent capitalization table:		
Any changes in capitalization table since version most recently delivered to Lender?: <i>If Yes, please attach a copy of latest capitalization table</i>		YES / NO / N/A

EQUITY & CONVERTIBLE NOTE FINANCINGS

*Please provide the following information (if applicable) regarding Borrower’s most-recent equity and/or convertible note financing each time this Certificate is delivered to Lender*

Date of Last Round Raised:  
Has there been any new financing since the last Compliance Certificate submitted? YES / NO  
*If “YES” please attach a copy of the Capitalization Table*

Date Closed: \_\_\_\_\_ Series: \_\_\_\_\_ Per Share Price: \_\_\_\_\_  
Amount Raised: \_\_\_\_\_ Post Money Valuation: \_\_\_\_\_

Any stock splits since date of last report? YES / NO  
*If yes, please provide any information on stock splits which would affect valuation:*

---

Any dividends since date of last report? YES / NO  
*If yes, please provide any information on dividends which would affect valuation:*

---

Any unusual terms? (i.e., Anti-dilution, multiple preference, etc.) YES / NO  
*If yes, please explain:*

---

ACCOUNT CONTROL AGREEMENTS

Pursuant to Section 6.11 of the Loan Agreement, the undersigned, on behalf of each Borrower and Guarantor, represents and warrants that: (i) as of the date hereof, each Borrower and Guarantor maintains only those deposit and investment accounts set forth below; and (ii) to the extent required by Section 6.11 of the Loan Agreement, a control agreement has been executed and delivered to Lender with respect to each such account **[Note: If any Borrower or Guarantor has established any new account(s) since the date of the last compliance certificate, please so indicate].**

Deposit Accounts

	<u>Name of Institution</u>	<u>Account Number</u>	<u>Control Agt. In place?</u>	<u>Complies</u>	<u>New Account</u>
1.)	[Redacted]	[Redacted]	YES / NO	YES / NO	YES / NO
2.)	[Redacted]	[Redacted]	YES / NO	YES / NO	YES / NO
3.)	[Redacted]	[Redacted]	YES / NO	YES / NO	YES / NO
4.)	[Redacted]	[Redacted]	YES / NO	YES / NO	YES / NO

Investment Accounts

	<u>Name of Institution</u>	<u>Account Number</u>	<u>Control Agt. In place?</u>	<u>Complies</u>	<u>New Account</u>
1.)	None		YES / NO	YES / NO	YES / NO
2.)			YES / NO	YES / NO	YES / NO
3.)			YES / NO	YES / NO	YES / NO
4.)			YES / NO	YES / NO	YES / NO

AGREEMENTS WITH PERSONS IN POSSESSION OF TANGIBLE COLLATERAL

Pursuant to Section 5.9(e) of the Loan Agreement, the undersigned, on behalf of each Borrower and Guarantor, represents and warrants that: (i) as of the date hereof, tangible Collateral is located at the addresses set forth below; and (ii) to the extent required by Section 5.9(e) of the Loan Agreement, a Waiver has been executed and delivered to Lender, or such Waiver has been waived by Lender, **[Note: If any Borrower or Guarantor has located Collateral at any new location since the date of the last compliance certificate, please so indicate].**

	<u>Location of Collateral</u>	<u>Value of Collateral at such Locations</u>	<u>Waiver In place?</u>	<u>Complies?</u>	<u>New Location?</u>
1.)	Vox Fulfillment 2222 S 950 East Provo, UT 84606	\$ _____ (d'Orbital Inventory)	YES / NO	YES / NO	YES / NO
2.)	EOS Investment 6550 S Millrock Drive Suite G50 Holladay, Utah 84121	\$ _____	YES / NO	YES / NO	YES / NO
3.)	Upper Chesapeake Flex One 500 Principio Parkway W Suite 400 North East, MD 21901	\$ _____	YES / NO	YES / NO	YES / NO
4.)	_____	\$ _____	YES / NO	YES / NO	YES / NO

SUBSIDIARIES AND OTHER PERSONS

Pursuant to Section 6.14(a) of the Loan Agreement, Borrower represents and warrants that: (i) as of the date hereof, it has directly or indirectly acquired or created, or it intends to directly or indirectly acquire or create, each Subsidiary or other Person described below; and (ii) such Subsidiary or Person has been made a co-borrower under the Loan Agreement or a guarantor of the Obligations **[Note: If Borrower has acquired or created any Subsidiary since the date of the last compliance certificate, please so indicate].**

	<u>Name:</u>	<u>Jurisdiction of formation or organization:<sup>3</sup></u>	<u>Co-borrower or guarantor?</u>	<u>Complies?</u>	<u>New Subsidiary or Person?</u>
1.)	Clene Nanomedicine, Inc.	Delaware	YES / NO	YES / NO	YES / NO
2.)	dOrbital, Inc.	Delaware	YES / NO	YES / NO	YES / NO
3.)	Clene Australia Pty Ltd	Australia	YES / NO	YES / NO	YES / NO
4.)	Clene Netherlands B.V.	Netherlands	YES / NO	YES / NO	YES / NO

	<u>Name:</u>	<u>Jurisdiction of formation or organization:<sup>4</sup></u>	<u>Co-borrower or guarantor?</u>	<u>Complies?</u>	<u>New Subsidiary or Person?</u>
1.)			YES / NO	YES / NO	YES / NO
2.)			YES / NO	YES / NO	YES / NO
3.)			YES / NO	YES / NO	YES / NO
4.)			YES / NO	YES / NO	YES / NO

FINANCIAL COVENANTS

Minimum Cash<sup>5</sup>

<u>Required:</u>	<u>Actual:</u>	<u>Complies?</u>
\$5,000,000		YES / NO

EXPLANATIONS

---



---



---



---

[Remainder of this page intentionally left blank; signature page follows]

<sup>3</sup> Under the “Explanations” heading (see below) please include a description of such Subsidiary’s or Person’s fully diluted capitalization and Borrower’s purpose for its acquisition or creation of such Subsidiary if such information has not been previously furnished to Lender.

<sup>4</sup> Under the “Explanations” heading (see below) please include a description of such Subsidiary’s or Person’s fully diluted capitalization and Borrower’s purpose for its acquisition or creation of such Subsidiary if such information has not been previously furnished to Lender.

<sup>5</sup> Upon Borrower (1) achieving Performance Milestone 1 and (2) receiving the Additional Equity, Borrower shall no longer be required to comply with this Financial Covenant.

[Signature page to Compliance Certificate]

Very truly yours,

CLENE INC., for itself on behalf of all Borrowers and  
Guarantors

By: \_\_\_\_\_

Name:

Title:\*

\_\_\_\_\_  
\* Must be executed by Borrower's Chief Financial Officer or other executive officer.

---

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE AND DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF (A) SUCH REGISTRATION, (B) AN OPINION OF COUNSEL IN A FORM REASONABLY ACCEPTABLE TO COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED DUE TO AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (C) CLENE INC. OTHERWISE SATISFIES ITSELF THAT SUCH TRANSACTION IS COMPLIANT WITH SUCH LAWS.

Date of Issuance: May 21, 2021

WARRANT TO PURCHASE

SHARES OF STOCK OF

CLENE INC.

(Void after May 21, 2026)

This certifies that AVENUE VENTURE OPPORTUNITIES FUND, LP, a Delaware limited partnership, or permitted assigns (“Holder”), for value received, is entitled to purchase from CLENE INC., a Delaware corporation (“Company”), the Applicable Number (hereinafter defined) of fully paid and nonassessable shares of the Company’s Common Stock (the “Warrant Stock”), for cash, at a purchase price per share equal to the Stock Purchase Price (hereinafter defined). Holder may also exercise this Warrant on a cashless or “net issuance” basis as described in Section 1(b) below, and this Warrant shall be deemed to have been exercised in full on such basis on the Expiration Date (hereinafter defined), to the extent not fully exercised prior to such date. This Warrant is issued in connection with that certain Loan and Security Agreement and Supplement thereto, both of even date herewith (as amended, restated and supplemented from time to time, the “Loan Agreement” and the “Supplement”, respectively), between Company, as borrower, and Holder, as lender (“Lender”). Capitalized terms used herein and not otherwise defined in this Warrant shall have the meaning(s) ascribed to them in the Loan Agreement and the Supplement, unless the context would otherwise require.

“Applicable Number” means the number of shares of Warrant Stock purchasable hereunder obtained by dividing (A) five percent (5.00%) of the original principal amount of each Loan funded under the Loan Agreement (such amount sometimes referred to hereinafter as the “Coverage Amount”) by (B) the Stock Purchase Price; provided that, upon the funding of Tranche 2 under (and as defined in) the Supplement, and without further action of Holder or Issuer, the Applicable Number automatically shall be adjusted to include an additional number of shares of Warrant Stock (the “Tranche 2 Warrant Stock”) equal to five percent (5.00%) the original principal amount of Tranche 2, divided by the Stock Purchase Price; in each case, subject to the other adjustments set forth in Section 4 of this Warrant.

“Stock Purchase Price” means the lower of (i) the five (5)-day volume weighted average price per share; determined as of the end of trading on the last trading day before the Date of Issuance (and, in the case of any Tranche 2 Warrant Stock, as of the end of trading on the last trading day before any issuance thereof), or (ii) the Next Round Price (hereinafter defined).

---



“Next Round Price” means the lowest price per share paid to the Company by cash investors for the Company’s Common Stock issued in the Next Round (hereinafter defined). “Next Round” means the next bona fide round of equity financing after the Date of Issuance and on or prior to March 31, 2022, in which Company sells or issues shares of its Common Stock (excluding any option grants, shares issued in an acquisition, shares issued to vendors, and the like).

As soon as reasonably practicable after the occurrence or non-occurrence of the latest event or condition necessary to determine the Stock Purchase Price, Company shall deliver a supplement to this Warrant (subsequent to a request by Holder therefor), in substantially the form of Exhibit “A” attached hereto, specifying the total number and series of shares of Warrant Stock issuable hereunder after giving effect to the foregoing calculations, and otherwise completed with such quantity and price terms and other information as have been determined as a result of the occurrence or non-occurrence of such events or conditions. The provisions of such supplement, once completed and executed, shall control the interpretation and exercise of this Warrant; provided, however, that the failure of Company to deliver such supplement shall not affect the rights of Holder to receive the number and type of shares of Warrant Stock as set forth herein.

Subject to Section 4.3, this Warrant may be exercised at any time or from time to time up to and including 5:00 p.m. (Pacific time) on May , 2026 (the “Expiration Date”), upon surrender to Company at its principal office at 6550 South Millrock Drive, Suite G50, Salt Lake City, Utah 84121 (or at such other location as Company may advise Holder in writing) of this Warrant properly endorsed with the Form of Subscription attached hereto duly completed and signed and upon payment in cash or by check of the aggregate Stock Purchase Price for the number of shares for which this Warrant is being exercised determined in accordance with the provisions hereof. The Stock Purchase Price and the number of shares purchasable hereunder are subject to further adjustment as provided in Section 4 of this Warrant.

This Warrant is subject to the following terms and conditions:

1. Exercise; Issuance of Certificates; Payment for Shares.

(a) Unless an election is made pursuant to clause (b) of this Section 1, this Warrant shall be exercisable at the option of Holder, at any time or from time to time, on or before the Expiration Date for all or any portion of the shares of Warrant Stock (but not for a fraction of a share) which may be purchased hereunder for the Stock Purchase Price multiplied by the number of shares to be purchased. Company agrees that the shares of Warrant Stock purchased under this Warrant shall be and are deemed to be issued to Holder as the record owner of such shares as of the close of business on the date on which the form of subscription shall have been delivered and payment made for such shares. Subject to the provisions of Section 2, certificates for the shares of Warrant Stock so purchased, together with any other securities or property to which Holder is entitled upon such exercise, shall be delivered to Holder by Company at Company’s expense within a reasonable time after the rights represented by this Warrant have been so exercised. Except as provided in clause (b) of this Section 1, in case of a purchase of less than all the shares which may be purchased under this Warrant, Company shall cancel this Warrant and execute and deliver a new Warrant or Warrants of like tenor for the balance of the shares purchasable under this Warrant surrendered upon such purchase to Holder within a reasonable time. Each stock certificate so delivered shall be in such denominations of Warrant Stock as may be requested by Holder and shall be registered in the name of such Holder or such other name as shall be designated by such Holder, subject to the limitations contained in Section 2.

(b) Holder, in lieu of exercising this Warrant by the cash payment of the Stock Purchase Price pursuant to clause (a) of this Section 1, may elect, at any time on or before the Expiration Date, to surrender this Warrant and receive that number of shares of Warrant Stock computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

- Where: X = the number of shares of Warrant Stock to be issued to Holder.
- Y = the number of shares of Warrant Stock that Holder would otherwise have been entitled to purchase hereunder pursuant to Section 1(a) (or such lesser number of shares as Holder may designate in the case of a partial exercise of this Warrant).
- A = the Per Share Price (as defined in Section 1(c) below) of one (1) share of Warrant Stock at the time the net issuance election under this Section 1(b) is made.
- B = the Stock Purchase Price then in effect.

Election to exercise under this Section 1(b) may be made by delivering a signed form of subscription to Company via facsimile, to be followed by delivery of this Warrant. Notwithstanding anything to the contrary contained in this Warrant, if as of the close of business on the last business day preceding the Expiration Date this Warrant remains unexercised as to all or a portion of the shares of Warrant Stock purchasable hereunder, then effective as 9:00 a.m. (Pacific time) on the Expiration Date, Holder shall be deemed, automatically and without need for notice to Company, to have elected to exercise this Warrant in full pursuant to the provisions of this Section 1(b), and upon surrender of this Warrant shall be entitled to receive that number of shares of Warrant Stock computed using the above formula, provided that the application of such formula as of the Expiration Date yields a positive number for "X".

(c) For purposes of Section 1(b), "Per Share Price" means:

(i) If this Warrant is exercised on the date of Company's initial public offering of Common Stock, and if Company's registration statement relating to such public offering has been declared effective by the Securities and Exchange Commission, then the Per Share Price shall be, if the Warrant is exercisable for Warrant Stock, the product of (A) the initial "Price to Public" of the Common Stock specified in the final prospectus with respect to the offering, and (B) the number of shares of Common Stock into which each share of Warrant Stock exercised is convertible at the date of calculation, or, if the Warrant is exercisable for Common Stock, the initial "Price to Public" of the Common Stock specified in the final prospectus with respect to the offering.

(ii) If (i) is not applicable, the Per Share Price shall be determined in good faith by the Board of Directors of Company (the "Board") based on relevant facts and circumstances at the time of the net exercise under Section 1(b), including (a) the five (5)-day volume weighted average price per share of the Common Stock and (b) in the case of a Change of Control (as defined in Section 4.3 hereof) the consideration receivable by the holders of the Warrant Stock in such Change of Control and the liquidation preference (including any declared but unpaid dividends), if any, then applicable to the Warrant Stock.

## 2. Limitation on Transfer.

(a) This Warrant and the Warrant Stock shall not be transferable except upon the conditions specified in this Section 2, which conditions are intended to ensure compliance with the provisions of the Securities Act of 1933, as amended (the "Securities Act"). Each holder of this Warrant or the Warrant Stock issuable hereunder will cause any proposed transferee of the Warrant or Warrant Stock to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Section 2. Notwithstanding the foregoing and any other provision of this Section 2 but subject to the last sentence of Section 2(c), Holder may freely transfer all or part of this Warrant or the shares issuable upon exercise of this Warrant (or the securities issuable, directly or indirectly, upon conversion of the shares, if any) at any time to any affiliate of Lender under the Loan Agreement, by giving Company notice of the portion of the Warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this Warrant to Company for reissuance to the transferees(s) (and Holder, if applicable).

(b) Each certificate representing (i) this Warrant, (ii) the Warrant Stock and (iii) any other securities issued in respect to the Warrant Stock upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of this Section 2 or unless such securities have been registered under the Securities Act or sold under Rule 144) be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE AND DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF (A) SUCH REGISTRATION, (B) AN OPINION OF COUNSEL IN A FORM REASONABLY ACCEPTABLE TO COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED DUE TO AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (C) CLENE INC. OTHERWISE SATISFIES ITSELF THAT SUCH TRANSACTION IS COMPLIANT WITH SUCH LAWS.

(c) Holder of this Warrant and each person to whom this Warrant is subsequently transferred represents and warrants to Company and agrees (by acceptance of such transfer) that it will not transfer this Warrant (or securities issuable upon exercise hereof unless a registration statement under the Securities Act was in effect with respect to such securities at the time of issuance thereof) unless (i) there is an effective registration statement under the Securities Act and applicable state securities laws covering any such transaction, (ii) pursuant to Rule 144 under the Securities Act (or any other rule under the Securities Act relating to the disposition of securities), (iii) Company receives an opinion of counsel, reasonably satisfactory to Company, that an exemption from such registration is available or (iv) the Company otherwise satisfies itself that such transaction is exempt from registration. Notwithstanding the foregoing or any other provision of this Section 2, Holder shall not transfer this Warrant (or securities issuable upon exercise hereof, or securities issuable, directly or indirectly, upon conversion of such securities, if any) to any competitor of Company, as determined in good faith by the Board, without the prior written consent of Company.

(d) [Reserved].

(e) As a condition to the exercise of this Warrant and the issuance of Warrant Stock, if requested by the Company by reasonable notice to Holder, Holder shall agree in writing to be fully bound by any investors rights, shareholder or similar agreements applicable to holders of Warrant Stock ("Investor Agreements"), provided that Holder shall not be required to agree to any terms of such agreements that are inconsistent with the terms of this Warrant.

3. Shares to be Fully Paid; Reservation of Shares. Company covenants and agrees that all shares of Warrant Stock which may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable and free from all preemptive rights of any stockholder and free of all taxes (except any tax imposed on Holder with respect to the gain on the exercise of the Warrant), liens and charges with respect to the issue thereof. Company further covenants and agrees that during the period within which the rights represented by this Warrant may be exercised, Company will at all times have authorized and reserved, for the purpose of issue or transfer upon exercise of the subscription rights evidenced by this Warrant, a sufficient number of shares of authorized but unissued Warrant Stock, or other securities and property, when and as required to provide for the exercise of the rights represented by this Warrant. Company will take all such action as may be necessary to assure that such shares of Warrant Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any domestic securities exchange upon which the Warrant Stock may be listed. Company will not take any action which would result in any adjustment of the Stock Purchase Price (as described in Section 4 hereof) (i) if the total number of shares of Warrant Stock issuable after such action upon exercise of all outstanding warrants, together with all shares of Warrant Stock then outstanding and all shares of Warrant Stock then issuable upon exercise of all options and upon the conversion of all convertible securities then outstanding, would exceed the total number of shares of Warrant Stock then authorized by Company's Certificate of Incorporation, as amended and restated from time to time (the "Charter"), (ii) if the total number of shares of Common Stock issuable after such action upon the conversion of all such shares of Warrant Stock together with all shares of Common Stock then outstanding and then issuable upon exercise of all options and upon the conversion of all convertible securities then outstanding would exceed the total number of shares of Common Stock then authorized by Company's Charter or (iii) if the par value per share of the Warrant Stock would exceed the Stock Purchase Price.

4. Adjustment of Stock Purchase Price and Number of Shares. The Stock Purchase Price and the number of shares purchasable upon the exercise of this Warrant shall be subject to adjustment from time to time upon the occurrence of certain events described in this Section 4. Upon each adjustment of the Stock Purchase Price, Holder of this Warrant shall thereafter be entitled to purchase, at the Stock Purchase Price resulting from such adjustment, the number of shares obtained by multiplying the Stock Purchase Price in effect immediately prior to such adjustment by the number of shares purchasable pursuant hereto immediately prior to such adjustment, and dividing the product thereof by the Stock Purchase Price resulting from such adjustment.

4.1 Subdivision or Combination of Stock. In case Company shall at any time subdivide its outstanding shares of Warrant Stock into a greater number of shares, the Stock Purchase Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Warrant Stock of Company shall be combined into a smaller number of shares, the Stock Purchase Price in effect immediately prior to such combination shall be proportionately increased.

4.2 Dividends. If at any time or from time to time the holders of Warrant Stock (or any shares of stock or other securities at the time receivable upon the exercise of this Warrant) shall have received or become entitled to receive,

(a) Warrant Stock, or any shares of stock or other securities whether or not such securities are at any time directly or indirectly convertible into or exchangeable for Warrant Stock, or any rights or options to subscribe for, purchase or otherwise acquire any of the foregoing by way of dividend or other distribution,

(b) any cash paid or payable including as a cash dividend, or

(c) Warrant Stock or other or additional stock or other securities or property (including cash) by way of spin off, split-up, reclassification, combination of shares or similar corporate rearrangement, (other than shares of Warrant Stock issued as a stock split, adjustments in respect of which shall be covered by the terms of Section 4.1 above), then and in each such case, Holder hereof shall, upon the exercise of this Warrant, be entitled to receive, in addition to the number of shares of Warrant Stock receivable thereupon, and without payment of any additional consideration therefor, the amount of stock and other securities and property (including cash in the cases referred to in clauses (b) and (c) above) which such Holder would hold on the date of such exercise had it been the holder of record of such Warrant Stock as of the date on which holders of Warrant Stock received or became entitled to receive such shares and/or all other additional stock and other securities and property.

4.3 Change of Control. In the event of a Change of Control (as hereinafter defined) that occurs after the date this Warrant is issued, this Warrant shall be automatically exchanged for a number of shares of Company's securities, such number of shares being equal to the maximum number of shares issuable pursuant to the terms hereof (after taking into account all adjustments described herein) had Holder elected to exercise this Warrant immediately prior to the closing of such Change of Control and purchased all such shares pursuant to the cash exercise provision set forth in Section 1(a) hereof (as opposed to the cashless exercise provision set forth in Section 1(b)). Company acknowledges and agrees that Holder shall not be required to make any payment (cash or otherwise) for such shares as further consideration for their issuance pursuant to the terms of the preceding sentence. "Change of Control" shall mean any sale, license, or other disposition of all or substantially all of the assets of Company, any reorganization, consolidation, merger or other transaction involving Company where the holders of Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction; provided that an issuance of equity securities for the primary purpose of raising capital shall not be considered a Change of Control under this Warrant. This Warrant shall terminate upon Holder's receipt of the number of shares of Company's equity securities described in this Section 4.3.

4.4 Reserved.

4.5 Notice of Adjustment. Upon any adjustment of the Stock Purchase Price, and/or any increase or decrease in the number of shares purchasable upon the exercise of this Warrant, Company shall give written notice thereof to Holder pursuant to Section 12. The notice, which may be substantially in the form of Exhibit "A" attached hereto, shall be signed by Company's chief financial officer and shall state the Stock Purchase Price resulting from such adjustment and the increase or decrease, if any, in the number of shares purchasable at such price upon the exercise of this Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

4.6 Other Notices. If at any time:

(a) Company shall declare any cash dividend upon its Warrant Stock;

(b) Company shall declare any dividend upon its Warrant Stock payable in stock or make any special dividend or other distribution to the holders of its Warrant Stock;

(c) Company shall offer for subscription pro rata to the holders of its Warrant Stock any additional shares of stock of any class or other rights;

(d) there shall be any capital reorganization or reclassification of the capital stock of Company, or consolidation or merger of Company with, or sale of all or substantially all of its assets to, another entity;

(e) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of Company; or

(f) Company shall take or propose to take any other action, notice of which is actually provided to holders of the Warrant Stock;

then, in any one or more of said cases, Company shall give Holder, pursuant to Section 12, (i) at least 10 days' prior written notice of the date on which the books of Company shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, or other action and (ii) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, or other action, at least 10 days' written notice of the date when the same shall take place. Any notice given in accordance with the foregoing clause (i) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Warrant Stock shall be entitled thereto. Any notice given in accordance with the foregoing clause (ii) shall also specify the date on which the holders of Warrant Stock shall be entitled to exchange their Warrant Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, or other action as the case may be.

4.7 Certain Events. If any change in the outstanding Warrant Stock of Company or any other event occurs as to which the other provisions of this Section 4 are not strictly applicable or if strictly applicable would not fairly effect the adjustments to this Warrant in accordance with the essential intent and principles of such provisions, then the Board shall make in good faith an adjustment in the number and class of shares issuable under this Warrant, the Stock Purchase Price and/or the application of such provisions, in accordance with such essential intent and principles, so as to protect such purchase rights as aforesaid. The adjustment shall be such as will give Holder of this Warrant upon exercise for the same aggregate Stock Purchase Price the total number, class and kind of shares as Holder would have owned had this Warrant been exercised prior to the event and had Holder continued to hold such shares until after the event requiring adjustment.

5. Issue Tax. The issuance of certificates for shares of Warrant Stock upon the exercise of this Warrant shall be made without charge to Holder of this Warrant for any issue tax in respect thereof; provided, however, that Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the then Holder of this Warrant being exercised, and the Holder shall pay any tax imposed on Holder with respect to the gain on the exercise of the Warrant.

6. Closing of Books. Company will at no time close its transfer books against the transfer of this Warrant or of any shares of Warrant Stock issued or issuable upon the exercise of this Warrant in any manner which interferes with the timely exercise of this Warrant unless the Company at the same time is closing its transfer books for all Common Stock.

7. No Voting Rights; Limitation of Liability. Nothing contained in this Warrant shall be construed as conferring upon Holder hereof the right to vote or to consent as a stockholder in respect of meetings of stockholders for the election of directors of Company or any other matters or any rights whatsoever as a stockholder of Company. No dividends or interest shall be payable in respect of this Warrant or the interest represented hereby or the shares purchasable hereunder until, and only to the extent that, this Warrant shall have been exercised; provided, however, that if any dividends are due or paid at any time on the underlying securities for which this Warrant is exercisable, then upon exercise, the securities issued to Holder shall be deemed to have accrued dividends and be paid identical dividends from the same time as the outstanding shares for which this Warrant is exercisable were first issued (or, if later, the date of this Warrant). No provisions hereof, in the absence of affirmative action by Holder to purchase shares of Warrant Stock, and no mere enumeration herein of the rights or privileges of Holder hereof, shall give rise to any liability of such Holder for the Stock Purchase Price or as a stockholder of Company, whether such liability is asserted by Company or by its creditors.

8. Amendment of Charter. Unless Holder consents thereto in writing, Company shall not amend its Charter prior to the exercise of this Warrant if the Warrant Stock would be adversely affected by such amendment in a manner that would be more adverse to Holder with respect to the shares of Warrant Stock issuable upon the exercise of this Warrant than, and substantially dissimilar to, such amendment's effect on the other holders of the same class or series of Warrant Stock.

9. Registration Rights. The Company will use commercially reasonable efforts to include in a registration statement on Form S-1, currently in good faith anticipated to be filed by the Company with the SEC in connection with a PIPE transaction within ninety days, the Warrant Stock issuable upon exercise of this Warrant. Thereafter, the Company will use commercially reasonable efforts to maintain a registration statement under which the Warrant Stock could be issued until the Warrant is exercised or expires.

10. Rights and Obligations Survive Exercise of Warrant. The rights and obligations of Company, of Holder of this Warrant and of the holder of shares of Warrant Stock issued upon exercise of this Warrant, contained in Sections 6, 8, 9 and 19 shall survive the exercise of this Warrant.

11. Modification and Waiver. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.

12. Notices. Any notice, request or other document required or permitted to be given or delivered to Holder or Company shall be deemed to have been given (i) upon receipt if delivered personally or by courier (ii) upon confirmation of receipt if by telecopy or (iii) three business days after deposit in the US mail, with postage prepaid and certified or registered, to each such Holder at its address as shown on the books of Company or to Company at the address indicated therefor in the opening paragraphs of this Warrant (or at such other location as Company may advise Holder in writing).

13. Survival of Certain Obligations. All of the obligations of Company relating to the Warrant Stock issuable upon the exercise of this Warrant shall survive the exercise and termination of this Warrant. All of the covenants and agreements of Company shall inure to the benefit of and be binding upon the successors and permitted assigns of Holder. Company will, at the time of the exercise of this Warrant, in whole or in part, upon request of Holder but at Company's expense, acknowledge in writing its continuing obligation to Holder in respect of any rights to which Holder shall continue to be entitled after such exercise in accordance with this Warrant; provided, that the failure of Holder to make any such request shall not affect the continuing obligation of Company to Holder in respect of such rights.

14. Descriptive Headings and Governing Law. The descriptive headings of the several sections and paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant. This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Delaware.

15. Lost Warrants or Stock Certificates. Company agrees that upon receipt of evidence reasonably satisfactory to Company of the loss, theft, destruction, or mutilation of any Warrant or stock certificate and, in the case of any such loss, theft or destruction, upon receipt of an indemnity reasonably satisfactory to Company, or in the case of any such mutilation upon surrender and cancellation of such Warrant or stock certificate, Company at its expense will make and deliver a new Warrant or stock certificate, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant or stock certificate.

16. Fractional Shares. No fractional shares shall be issued upon exercise of this Warrant. Company shall, in lieu of issuing any fractional share, pay the holder entitled to such fraction a sum in cash equal to such fraction multiplied by the then effective Stock Purchase Price.

17. Representations of Holder. With respect to this Warrant, Holder represents and warrants to Company as follows:

17.1 Experience. It is experienced in evaluating and investing in companies engaged in businesses similar to that of Company; it understands that investment in this Warrant involves substantial risks; it has made detailed inquiries concerning Company, its business and services, its officers and its personnel; the officers of Company have made available to Holder any and all written information it has requested; the officers of Company have answered to Holder's satisfaction all inquiries made by it; in making this investment it has relied upon information made available to it by Company; and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of investment in Company and it is able to bear the economic risk of that investment.

17.2 Investment. It is acquiring this Warrant for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. It understands that this Warrant and the shares of Warrant Stock have not been registered under the Securities Act, nor qualified under applicable state securities laws.

17.3 Rule 144. It acknowledges that this Warrant, the Warrant Stock and the Common Stock must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. It has been advised or is aware of the provisions of Rule 144 promulgated under the Securities Act.

17.4 Access to Data. It has had an opportunity to discuss Company's business, management and financial affairs with Company's management and has had the opportunity to inspect Company's facilities.

17.5 Accredited Investor. It is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

18. Additional Representations and Covenants of Company. Company hereby represents, warrants and agrees as follows:

18.1 Corporate Power. Company has all requisite corporate power and corporate authority to issue this Warrant and to carry out and perform its obligations hereunder.

18.2 Authorization. All corporate action on the part of Company, its directors and stockholders necessary for the authorization, execution, delivery and performance by Company of this Warrant has been taken. This Warrant is a valid and binding obligation of Company, enforceable in accordance with its terms.

18.3 Offering. Subject in part to the truth and accuracy of Holder's representations set forth in Section 17 hereof, the offer, issuance and sale of this Warrant is, and the issuance of Warrant Stock upon exercise of this Warrant will be, exempt from the registration requirements of the Securities Act, and are exempt from the qualification requirements of any applicable state securities laws (assuming any required filing is made); and neither Company nor anyone acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

18.4 Listing; Stock Issuance. Company shall secure and maintain the listing of the Warrant Stock issuable upon exercise of this Warrant upon each securities exchange or over-the-counter market upon which securities of the same class or series issued by the Company are listed, if any. Upon exercise of this Warrant, Company will use commercially reasonable efforts to cause stock certificates representing the shares of Warrant Stock purchased pursuant to the exercise to be issued in the names of Holder, its nominees or assignees, as appropriate at the time of such exercise.

18.5 Charter Documents. Company has provided Holder with true and complete copies of Company's Charter, By-Laws, and each Certificate of Designation or other charter document setting forth any rights, preferences and privileges of Company's capital stock, each as amended and in effect on the date of issuance of this Warrant.

18.6 Reserved.

18.7 Reserved.

19. Counterparts; Facsimile. Holder's execution and delivery of Holder's counterpart signature page to this Warrant via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., www.docusign.com) shall constitute Holder's effective execution and delivery of this Warrant and agreement to and acceptance of the terms hereof for all purposes.

*[Remainder of this page intentionally left blank; signature page follows]*



*[Signature Page to Warrant]*

IN WITNESS WHEREOF, Company has caused this Warrant to be duly executed by its officer, thereunto duly authorized as of the date of issuance set forth on the first page hereof.

CLENE INC.

By: /s/ Rob Etherington  
Name: Rob Etherington  
Title: President

AGREED AND ACCEPTED:

HOLDER:

AVENUE VENTURE OPPORTUNITIES FUND, LP

By: Avenue Venture Opportunities Partners, LLC  
Its: General Partner

By: /s/ Sonia Gardner  
Name: Sonia Gardner  
Title: Authorized Signatory

---

FORM OF SUBSCRIPTION

(To be signed only upon exercise of Warrant)

To: \_\_\_\_\_

- The undersigned, the holder of the within Warrant, hereby irrevocably elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, (1) \_\_\_\_\_ ( ) shares<sup>1</sup> (the "Shares") of Stock of \_\_\_\_\_ and herewith makes payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) therefor, and requests that the certificates for such shares be issued in the name of, and delivered to, \_\_\_\_\_, whose address is \_\_\_\_\_.
- The undersigned hereby elects to convert \_\_\_\_\_ percent ( %) of the value of the Warrant pursuant to the provisions of Section 1(b) of the Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 17 of this Warrant and by its signature below hereby makes such representations and warranties to Company.

Dated \_\_\_\_\_

Holder: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

(Address)

\_\_\_\_\_

\_\_\_\_\_

---

<sup>1</sup> Insert here the number of shares called for on the face of the Warrant (or, in the case of a partial exercise, the portion thereof as to which the Warrant is being exercised), in either case without making any adjustment for additional Warrant Stock or any other stock or other securities or property or cash which, pursuant to the adjustment provisions of the Warrant, may be issuable upon exercise.

---

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned, the holder of the within Warrant, hereby sells, assigns and transfers all of the rights of the undersigned under the within Warrant, with respect to the number of shares of Warrant Stock covered thereby set forth herein below, unto:

Name of Assignee	Address	No. of Shares

Dated \_\_\_\_\_

Holder: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

---

EXHIBIT "A"

[On letterhead of Company]

Reference is hereby made to that certain Warrant dated May 21, 2021 issued by CLENE INC., a Delaware corporation (the "Company"), to AVENUE VENTURE OPPORTUNITIES FUND, LP, a Delaware limited partnership (the "Holder").

[IF APPLICABLE] The Warrant provides that the actual number and type of shares of Company's capital stock issuable upon exercise of the Warrant and the initial exercise price per share are to be determined by reference to one or more events or conditions subsequent to the issuance of the Warrant. Such events or conditions have now occurred or lapsed, and Company wishes to confirm the actual number of shares issuable and the initial exercise price. The provisions of this Supplement to Warrant are incorporated into the Warrant by this reference, and shall control the interpretation and exercise of the Warrant.

[IF APPLICABLE] Notice is hereby given pursuant to Section 4.5 of the Warrant that the following adjustment(s) have been made to the Warrant: [describe adjustments, setting forth details regarding method of calculation and facts upon which calculation is based].

This certifies that Holder is entitled to purchase from Company \_\_\_\_\_, at the Holder's option, either (i) (\_\_\_\_\_) fully paid and nonassessable shares of Company's \_\_\_\_\_ Stock at a price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per share or (ii) (\_\_\_\_\_) fully paid and nonassessable shares of Company's \_\_\_\_\_ Stock at a price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per share. The applicable Stock Purchase Price and the number of shares purchasable under the Warrant remain subject to adjustment as provided in Section 4 of the Warrant.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CLENE INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

## SUBSCRIPTION AGREEMENT

Clene Inc.  
6550 South Millrock Drive, Suite G50  
Salt Lake City, Utah 84121

Ladies and Gentlemen:

This Subscription Agreement (this "Subscription Agreement") is being entered into as of the date set forth on the signature page hereto, by and between Clene Inc., a Delaware corporation (the "Company"), and the undersigned subscriber (the "Investor").

The Company is seeking commitments from interested investors to purchase shares of the Company's common stock, par value \$0.0001 per share (the "Shares"), in a private placement for a purchase price of \$ \_\_\_\_\_ per share. The aggregate purchase price to be paid by the Investor for the subscribed Shares (as set forth on the signature page hereto) is referred to herein as the "Subscription Amount."

In connection therewith, and in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, set forth herein, and intending to be legally bound hereby, each of the Investor and the Company acknowledges and agrees as follows:

1. Subscription. The Investor hereby irrevocably subscribes for and agrees to purchase from the Company the number of Shares set forth on the signature page of this Subscription Agreement on the terms and subject to the conditions provided for herein. The Investor acknowledges and agrees that the Company reserves the right to accept or reject the Investor's subscription for the Shares for any reason or for no reason, in whole or in part, at any time prior to its acceptance, and the same shall be deemed to be accepted by the Company only when this Subscription Agreement is signed by a duly authorized person by or on behalf of the Company; the Company may do so in counterpart form.

2. Closing. The closing is contingent upon the substantially concurrent consummation of the transactions contemplated by the Loan and Security Agreement by and among the Company, a wholly-owned subsidiary of the Company, and Avenue Venture Opportunities Fund, L.P., dated May 21, 2021 (the "Transaction"). The closing of the transactions contemplated by this Subscription Agreement shall occur on the date of, and substantially concurrently with and conditioned upon the effectiveness of, the Transaction and simultaneously with the Company's acceptance of the subscription for the shares by delivery of written notice from (or on behalf of) the Company to the Investor (the "Closing Date"). The Investor shall deliver to the Company, on or prior to the Closing Date, the Subscription Amount by wire transfer of United States dollars in immediately available funds to the account(s) specified by the Company in writing. On the Closing Date, the Company shall issue a number of Shares to the Investor set forth on the signature page to this Subscription Agreement, and shall subsequently cause such Shares to be registered in book entry form in the name of the Investor on the Company's share register; provided, however, that the Company's obligation to issue the Shares to the Investor is contingent upon the Company having received the Subscription Amount in full accordance with this Section 2. For purposes of this Subscription Agreement, "business day" shall mean a day, other than a Saturday or Sunday, on which commercial banks in New York, New York are open for the general transaction of business.

3. Closing Conditions.

a. The obligation of the parties hereto to consummate the purchase and sale of the Shares pursuant to this Subscription Agreement is subject to the following conditions:

(i) no applicable governmental authority shall have enacted, issued, promulgated, enforced or entered any judgment, order, law, rule or regulation (whether temporary, preliminary or permanent) which is then in effect and has the effect of making consummation of the transactions contemplated hereby illegal or otherwise restraining or prohibiting consummation of the transactions contemplated hereby; and

---

(ii) all conditions precedent to the closing of the Transaction shall have been satisfied or waived (as determined by the parties thereto and other than those conditions which, by their nature, are to be fulfilled at the closing of the Transaction, including to the extent that any such condition is dependent upon the consummation of the purchase and sale of the Shares pursuant to this Subscription Agreement).

b. The obligation of the Company to consummate the issuance and sale of the Shares pursuant to this Subscription Agreement shall be subject to the condition that all representations and warranties of the Investor contained in this Subscription Agreement are true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true in all respects) at and as of the Closing Date, and consummation of the Closing shall constitute a reaffirmation by the Investor of each of the representations and warranties of the Investor contained in this Subscription Agreement as of the Closing Date.

c. The obligation of the Investor to consummate the purchase of the Shares pursuant to this Subscription Agreement shall be subject to the condition that all representations and warranties of the Company contained in this Subscription Agreement shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect (as defined herein), which representations and warranties shall be true in all respects) at and as of the Closing Date, and consummation of the Closing shall constitute a reaffirmation by the Company of each of the representations and warranties of the Company contained in this Subscription Agreement as of the Closing Date.

4. Further Assurances. The parties hereto shall execute and deliver such additional documents and take such additional actions as the parties reasonably may deem to be practical and necessary in order to consummate the subscription as contemplated by this Subscription Agreement.

5. Company Representations and Warranties. The Company represents and warrants to the Investor that:

a. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all corporate power and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

b. As of the Closing Date, the Shares will be duly authorized and, when issued and delivered to the Investor against full payment therefor in accordance with the terms of this Subscription Agreement, the Shares will be validly issued, fully paid and non-assessable and will not have been issued in violation of or subject to any preemptive or similar rights created under the Company's certificate of incorporation (as amended to the Closing Date) or under the General Corporation Law of the State of Delaware.

c. This Subscription Agreement has been duly authorized, executed and delivered by the Company and, assuming that this Subscription Agreement constitutes the valid and binding agreement of the Investor, this Subscription Agreement is enforceable against the Company in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, or (ii) principles of equity, whether considered at law or equity.

d. The issuance and sale of the Shares and the compliance by the Company with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Company or any of its subsidiaries pursuant to the terms of (i) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company is subject that would reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole (a "Material Adverse Effect") or materially affect the validity of the Shares or the legal authority of the Company to comply in all material respects with the terms of this Subscription Agreement; (ii) result in any violation of the provisions of the organizational documents of the Company; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over the Company or any of their properties that would reasonably be expected to have a Material Adverse Effect or materially affect the validity of the Shares or the legal authority of the Company to comply in all material respects with this Subscription Agreement.

e. The Financial Statements (i) comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto as of their respective dates; (ii) were prepared in accordance with United States generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved; and (iii) fairly present in all material respects the consolidated financial position and the results of operations, changes in stockholders’ deficit, and cash flows of the Company and its consolidated subsidiaries as of the respective dates of and for the periods referred to in such financial statements, subject, in the case of unaudited interim financial statements, to normal and year-end audit adjustments as permitted by GAAP and the applicable rules and regulations of the SEC (but only if the effect of such adjustments would not, individually or in the aggregate, be material). “Financial Statements” means (i) the audited Consolidated Balance Sheets of the Company as of December 31, 2020 and 2019, the Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2020 and 2019, the Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders’ Equity (Deficit) as of December 31, 2020 and 2019 and the Consolidated Statements of Cash Flows for the years ended December 31, 2020 and 2019, in each case as included in the Form 10-K filed by the Company on March 29, 2021, and (ii) the unaudited Condensed Consolidated Balance Sheets of the Company as of March 31, 2021 and December 31, 2020, the Condensed Consolidated Statements of Operations and Comprehensive Loss for the three months ended March 31, 2021 and 2020, the Condensed Consolidated Statements of Stockholders’ Equity (Deficit) as of March 31, 2021 and 2020 and the Consolidated Statements of Cash Flows for the three months ended March 31, 2021 and 2020, in each case as included in the Form 10-Q filed by the Company on May 10, 2021.

6. Investor Representations and Warranties. The Investor represents and warrants to the Company that:

a. The Investor (i) is a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”)) or an institutional “accredited investor” (within the meaning of Rule 501(a) under the Securities Act), in each case, satisfying the applicable requirements set forth on Schedule A, (ii) is acquiring the Shares only for his, her or its own account and not for the account of others, or if the Investor is subscribing for the Shares as a fiduciary or agent for one or more investor accounts, the Investor has full investment discretion with respect to each such account, and the full power and authority to make the acknowledgements, representations and agreements herein on behalf of each owner of each such account, and (iii) is not acquiring the Shares with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act (and shall provide the requested information set forth on Schedule A). The Investor is not an entity formed for the specific purpose of acquiring the Shares and is an “institutional account” as defined by FINRA Rule 4512(c).

b. The Investor acknowledges and agrees that the Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Shares have not been registered under the Securities Act. The Investor acknowledges and agrees that the Shares may not be offered, resold, transferred, pledged or otherwise disposed of by the Investor absent an effective registration statement under the Securities Act except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each case in accordance with any applicable securities laws of the states of the United States and other jurisdictions, and that any certificates representing the Shares shall contain a restrictive legend to such effect. The Investor acknowledges and agrees that the Shares will be subject to transfer restrictions and, as a result of these transfer restrictions, the Investor may not be able to readily offer, resell, transfer, pledge or otherwise dispose of the Shares and may be required to bear the financial risk of an investment in the Shares for an indefinite period of time. The Investor acknowledges and agrees that the Shares will not be eligible for offer, resale, transfer, pledge or disposition pursuant to Rule 144 promulgated under the Securities Act until at least one year from the Closing Date. The Investor acknowledges and agrees that it has been advised to consult legal counsel prior to making any offer, resale, transfer, pledge or disposition of any of the Shares.

c. The Investor acknowledges and agrees that the Investor is purchasing the Shares from the Company. The Investor further acknowledges that there have been no representations, warranties, covenants and agreements made to the Investor by or on behalf of the Company, any of its affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing or any other person or entity, expressly or by implication, other than those representations, warranties, covenants and agreements of the Company expressly set forth in Section 5 of this Subscription Agreement.

d. The Investor's acquisition and holding of the Shares will not constitute or result in a non-exempt prohibited transaction under Section 406 of the Employee Retirement Income Security Act of 1974, as amended, Section 4975 of the Internal Revenue Code of 1986, as amended, or any applicable similar law.

e. The Investor acknowledges and agrees that the Investor has received such information as the Investor deems necessary in order to make an investment decision with respect to the Shares, including, with respect to the Company and its subsidiaries. Without limiting the generality of the foregoing, the Investor acknowledges that he, she or it has reviewed the Company's filings with the U.S. Securities and Exchange Commission (the "SEC"). The Investor acknowledges and agrees that the Investor and the Investor's professional advisor(s), if any, have had the full opportunity to ask such questions, receive such answers and obtain such information as the Investor and such Investor's professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Shares.

f. The Investor became aware of this offering of the Shares solely by means of direct contact between the Investor and the Company or a representative of the Company, and the Shares were offered to the Investor solely by direct contact between the Investor and the Company or a representative of the Company. The Investor did not become aware of this offering of the Shares, nor were the Shares offered to the Investor, by any other means. The Investor acknowledges that the Shares (i) were not offered by any form of general solicitation or general advertising and (ii) are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws. The Investor acknowledges that it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, firm or corporation (including, without limitation, the Company, any of its affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing), other than the representations and warranties of the Company contained in Section 5 of this Subscription Agreement, in making its investment or decision to invest in the Company.

g. The Investor acknowledges that it is aware that there are substantial risks incident to the purchase and ownership of the Shares, including those set forth in the Company's filings with the SEC. The Investor has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Shares, and the Investor has sought such accounting, legal and tax advice as the Investor has considered necessary to make an informed investment decision. The Investor is able to sustain a complete loss on its investment in the Shares, has no need for liquidity with respect to its investment in the Shares and has no reason to anticipate any change in circumstances, financial or otherwise, which may cause or require any sale or distribution of all or any part of the Shares.

h. Alone, or together with any professional advisor(s), the Investor has adequately analyzed and fully considered the risks of an investment in the Shares and determined that the Shares are a suitable investment for the Investor and that the Investor is able at this time and in the foreseeable future to bear the economic risk of a total loss of the Investor's investment in the Company. The Investor acknowledges specifically that a possibility of total loss exists.

i. In making its decision to purchase the Shares, the Investor has relied solely upon independent investigation made by the Investor.

j. The Investor acknowledges and agrees that no federal or state agency has passed upon or endorsed the merits of the offering of the Shares or made any findings or determination as to the fairness of this investment.



k. The Investor, if not an individual, has been duly formed or incorporated and is validly existing and is in good standing under the laws of its jurisdiction of formation or incorporation, with power and authority to enter into, deliver and perform its obligations under this Subscription Agreement.

l. The execution, delivery and performance by the Investor of this Subscription Agreement are within the powers of the Investor, have been duly authorized and will not constitute or result in a breach or default under or conflict with any order, ruling or regulation of any court or other tribunal or of any governmental commission or agency, or any agreement or other undertaking, to which the Investor is a party or by which the Investor is bound, and, if the Investor is not an individual, will not violate any provisions of the Investor's organizational documents, including, without limitation, its incorporation or formation papers, bylaws, indenture of trust or partnership or operating agreement, as may be applicable. The signature on this Subscription Agreement is genuine, and the signatory, if the Investor is an individual, has legal competence and capacity to execute the same or, if the Investor is not an individual, the signatory has been duly authorized to execute the same, and this Subscription Agreement constitutes a legal, valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

m. The Investor is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or in any Executive Order issued by the President of the United States and administered by OFAC ("OFAC List"), or a person or entity prohibited by any OFAC sanctions program, (ii) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (iii) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (each, a "Prohibited Investor"). The Investor agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that the Investor is permitted to do so under applicable law. If the Investor is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), the Investor maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. To the extent required, it maintains policies and procedures reasonably designed for the screening of its investors against the OFAC sanctions programs, including the OFAC List. To the extent required by applicable law, the Investor maintains policies and procedures reasonably designed to ensure that the funds held by the Investor and used to purchase the Shares were legally derived and were not obtained, directly or indirectly, from a Prohibited Investor.

n. In connection with the issue and purchase of the Shares, no person, firm or corporation has acted as the Investor's financial advisor or fiduciary.

o. The Investor has or has commitments to have and, when required to deliver payment to the Company pursuant to Section 2 above, will have, sufficient funds to pay the Subscription Amount and consummate the purchase and sale of the Shares pursuant to this Subscription Agreement.

7. Registration Rights. The Company agrees that, within sixty (60) calendar days after the Closing Date, it will file with the SEC (at the Company's sole cost and expense) a registration statement registering the resale of the Shares (the "Registration Statement"), and it shall use its commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after the filing thereof. The Company agrees to cause such Registration Statement, or another shelf registration statement that includes the Shares to be sold pursuant to this Subscription Agreement, to remain effective until the earliest of (i) the second anniversary of the Closing, (ii) the date on which the Investor ceases to hold any Shares issued pursuant to this Subscription Agreement, or (iii) on the first date on which the Investor is able to sell all of its Shares issued pursuant to this Subscription Agreement (or shares received in exchange therefor) under Rule 144 of the Securities Act within 90 days without limitation as to the amount of such securities that it may be sold. The Investor agrees to disclose its ownership to the Company upon request to assist it in making the determination described above. The Company may amend the Registration Statement so as to convert the Registration Statement to a Registration Statement on Form S-3 after the Company becomes eligible to use such Form S-3. The Investor acknowledges and agrees that the Company may suspend the use of any such registration statement if it determines that in order for such registration statement not to contain a material misstatement or omission, an amendment thereto would be needed to include information that would at that time not otherwise be required in a current, quarterly, or annual report under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company's obligations to include the Shares issued pursuant to this Subscription Agreement (or shares issued in exchange therefor) for resale in the Registration Statement are contingent upon the Investor furnishing in writing to the Company such information regarding the Investor, the securities of the Company held by the Investor and the intended method of disposition of such Shares, which shall be limited to non-underwritten public offerings, as shall be reasonably requested by the Company to effect the registration of such Shares, and shall execute such documents in connection with such registration as the Company may reasonably request that are customary of a selling stockholder in similar situations.

8. Termination. This Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) the Company's notification to the investor in writing that it has terminated the Investor's obligations with respect to the subscription without the delivery of the Shares having occurred, (b) May 31, 2021, if the Closing has not occurred by such date or (c) if any of the conditions to Closing set forth in Section 3 of this Subscription Agreement are (i) not satisfied or waived prior to the Closing (and if the failure to so satisfy such condition is capable of being cured prior to the Closing, such failure shall not have been cured by the thirtieth calendar day following receipt of written notice from the party claiming such condition has not been satisfied) or (ii) not capable of being satisfied on the Closing and, in each case of (i) and (ii), as a result thereof, the transactions contemplated by this Subscription Agreement will not be and are not consummated at the Closing (the termination events described in clauses (a)–(c) above, collectively, the "Termination Events"); provided that nothing herein will relieve any party from liability for any willful breach hereof prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from any such willful breach. Upon the occurrence of any Termination Event, this Subscription Agreement shall be void and of no further effect and any monies paid by the Investor to the Company in connection herewith shall promptly (and in any event within one business day) following the Termination Event be returned to the Investor, which obligation to return such monies and remedies for losses, liabilities and damages arising from willful breach shall survive termination of this Subscription Agreement.

9. Miscellaneous.

a. Neither this Subscription Agreement nor any rights that may accrue to the Investor hereunder (other than the Shares acquired hereunder, if any) may be transferred or assigned.

b. The Company may request from the Investor such additional information as the Company may deem necessary to register the resale of the Shares and evaluate the eligibility of the Investor to acquire the Shares, and the Investor shall provide such information as may reasonably be requested. The Investor acknowledges that the Company may file a copy of this Subscription Agreement with the SEC as an exhibit to a periodic report or a registration statement of the Company.

c. The Investor acknowledges that the Company and others will rely on the acknowledgments, understandings, agreements, representations and warranties contained in this Subscription Agreement. Prior to the Closing, the Investor agrees to promptly notify the Company if any of the acknowledgments, understandings, agreements, representations and warranties set forth in Section 6 above are no longer accurate. The Investor acknowledges and agrees that each purchase by the Investor of Shares from the Company will constitute a reaffirmation of the acknowledgments, understandings, agreements, representations and warranties herein (as modified by any such notice) by the Investor as of the time of such purchase.

d. The Company is entitled to rely upon this Subscription Agreement and is irrevocably authorized to produce this Subscription Agreement or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

e. All of the agreements, representations and warranties made by each party hereto in this Subscription Agreement shall survive the Closing.

f. This Subscription Agreement may not be modified, waived or terminated (other than pursuant to the terms of Section 8 above) except by an instrument in writing, signed by each of the parties hereto. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

g. This Subscription Agreement (including the schedule hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof. Except as set forth in Section 7, Section 9(c), Section 9(d), Section 9(f), this Section 9(g), the last sentence of Section 9(k) and Section 10 with respect to the persons specifically referenced therein, this Subscription Agreement shall not confer any rights or remedies upon any person other than the parties hereto, and their respective successor and assigns, and the parties hereto acknowledge that such persons so referenced are third party beneficiaries of this Subscription Agreement for the purposes of, and to the extent of, the rights granted to them, if any, pursuant to the applicable provisions.

h. Except as otherwise provided herein, this Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns.

i. If any provision of this Subscription Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.

j. This Subscription Agreement may be executed in one or more counterparts (including by facsimile or electronic mail or in .pdf) and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts so executed and delivered shall be construed together and shall constitute one and the same agreement.

k. The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Subscription Agreement, without posting a bond or undertaking and without proof of damages, to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled at law, in equity, in contract, in tort or otherwise.

l. This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof) as to all matters (including any action, suit, litigation, arbitration, mediation, claim, charge, complaint, inquiry, proceeding, hearing, audit, investigation or reviews by or before any governmental entity related hereto), including matters of validity, construction, effect, performance and remedies.

m. Each party hereto hereby and any person asserting rights as a third party beneficiary may do so only if he, she or it irrevocably agrees that any action, suit or proceeding between or among the parties hereto, whether arising in contract, tort or otherwise, arising in connection with any disagreement, dispute, controversy or claim arising out of or relating to this Subscription Agreement or any related document or any of the transactions contemplated hereby or thereby ("Legal Dispute") shall be brought only to the exclusive jurisdiction of the courts of the State of Delaware or the federal courts located in the State of Delaware, and each party hereto hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding that is brought in any such court has been brought in an inconvenient forum. During the period a Legal Dispute that is filed in accordance with this Section 9(m) is pending before a court, all actions, suits or proceedings with respect to such Legal Dispute or any other Legal Dispute, including any counterclaim, cross-claim or interpleader, shall be subject to the exclusive jurisdiction of such court. Each party hereto and any person asserting rights as a third party beneficiary may do so only if he, she or it hereby waives, and shall not assert as a defense in any Legal Dispute, that (a) such party is not personally subject to the jurisdiction of the above named courts for any reason, (b) such action, suit or proceeding may not be brought or is not maintainable in such court, (c) such party's property is exempt or immune from execution, (d) such action, suit or proceeding is brought in an inconvenient forum, or (e) the venue of such action, suit or proceeding is improper. A final judgment in any action, suit or proceeding described in this Section 9(m) following the expiration of any period permitted for appeal and subject to any stay during appeal shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable laws. EACH OF THE PARTIES HERETO AND ANY PERSON ASSERTING RIGHTS AS A THIRD PARTY BENEFICIARY MAY DO SO ONLY IF HE, SHE OR IT IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIMS OR COUNTERCLAIMS ASSERTED IN ANY LEGAL DISPUTE RELATING TO THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND FOR ANY COUNTERCLAIM RELATING THERETO. IF THE SUBJECT MATTER OF ANY SUCH LEGAL DISPUTE IS ONE IN WHICH THE WAIVER OF JURY TRIAL IS PROHIBITED, NO PARTY HERETO NOR ANY PERSON ASSERTING RIGHTS AS A THIRD PARTY BENEFICIARY SHALL ASSERT IN SUCH LEGAL DISPUTE A NONCOMPULSORY COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHERMORE, NO PARTY HERETO NOR ANY PERSON ASSERTING RIGHTS AS A THIRD PARTY BENEFICIARY SHALL SEEK TO CONSOLIDATE ANY SUCH LEGAL DISPUTE WITH A SEPARATE ACTION OR OTHER LEGAL PROCEEDING IN WHICH A JURY TRIAL CANNOT BE WAIVED.

10. Non-Reliance and Exculpation. The Investor acknowledges that it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, firm or corporation, other than the statements, representations and warranties of the Company expressly contained in Section 5 of this Subscription Agreement, in making its investment or decision to invest in the Company. The Investor acknowledges and agrees that none of (i) any other investor pursuant to this Subscription Agreement or any other subscription agreement related to the private placement of the Shares (including the investor's respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing), or (ii) any Non-Party Affiliate, shall have any liability to the Investor, or to any other investor, pursuant to, arising out of or relating to this Subscription Agreement or any other subscription agreement related to the private placement of the Shares, the negotiation hereof or thereof or its subject matter, or the transactions contemplated hereby or thereby, including, without limitation, with respect to any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Shares or with respect to any claim (whether in tort, contract or otherwise) for breach of this Subscription Agreement or in respect of any written or oral representations made or alleged to be made in connection herewith, as expressly provided herein, or for any actual or alleged inaccuracies, misstatements or omissions with respect to any information or materials of any kind furnished by the Company or any Non-Party Affiliate concerning the Company, any of its controlled affiliates, this Subscription Agreement or the transactions contemplated hereby. For purposes of this Subscription Agreement, "Non-Party Affiliates" means each former, current or future officer, director, employee, partner, member, manager, direct or indirect equityholder or affiliate of the Company or any of the Company's controlled affiliates or any family member of the foregoing.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Investor has executed or caused this Subscription Agreement to be executed by its duly authorized representative as of the date set forth below.

Name of Investor:

State/Country of Formation or Domicile:

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 2021

Name in which Shares are to be registered (if different):

Investor's EIN: \_\_\_\_\_

Business Address-Street:

For notices, with copy to (which shall not constitute notice):

City, State, Zip:

Attn:

Telephone No.:

Facsimile No.:

Attn:

Number of Shares subscribed for:

Aggregate Subscription Amount: \$

Price Per Share: \$\_\_\_\_\_

You must pay the Subscription Amount by wire transfer of United States dollars in immediately available funds to the account specified by the Company in writing. To the extent the offering is oversubscribed, the number of Shares received may be less than the number of Shares subscribed for.

IN WITNESS WHEREOF, the Company has accepted this Subscription Agreement as of the date set forth below.

CLENE INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

**SCHEDULE A**

**ELIGIBILITY REPRESENTATIONS OF THE INVESTOR**

**A. QUALIFIED INSTITUTIONAL BUYER STATUS**

(Please check the applicable subparagraphs):

We are a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act (a “QIB”).

**B. INSTITUTIONAL ACCREDITED INVESTOR STATUS**

(Please check the applicable subparagraphs):

1.  We are an “accredited investor” (within the meaning of Rule 501(a) under the Securities Act or an entity in which all of the equity holders are accredited investors within the meaning of Rule 501(a) under the Securities Act), and have marked and initialed the appropriate box below indicating the provision under which we qualify as an “accredited investor.”

2.  We are not a natural person.

Rule 501(a), in relevant part, states that an “accredited investor” shall mean any person who comes within any of the below listed categories, or who the issuer reasonably believes comes within any of the below listed categories, at the time of the sale of the securities to that person. The Investor has indicated, by marking and initialing the appropriate box below, the provision(s) below which apply to the Investor and under which the Investor accordingly qualifies as an “accredited investor.”

Any bank, registered broker or dealer, insurance company, registered investment company, business development company, or small business investment company;

Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;

Any employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5,000,000;

Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

Any trust with assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person;

Any entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a); or

Any natural person who (i) has an individual net worth, or joint net worth with their spouse or equivalent, in excess of \$1,000,000, (ii) had an individual income in excess of \$200,000 in each of the two most recent years, or (iii) had joint income with their spouse or equivalent in excess of \$300,000 in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year.

***This page should be completed by the Investor  
and constitutes a part of the Subscription Agreement.***

---

**Clene Announces Plan to Expand its Manufacturing Capacity of CNM-Au8, Closing of Up to \$30 Million Debt Facility, and Financing Agreements for \$9.25 Million At-the-Market Private Placement**

**SALT LAKE CITY, UT, May 24, 2021** -- Clene Inc. (NASDAQ: CLNN) (along with its subsidiaries, "Clene") and its wholly owned subsidiary Clene Nanomedicine, Inc., a clinical-stage biopharmaceutical company dedicated to the treatment of neurodegenerative disease using bioenergetic nanocatalysis, today announced that it is currently in negotiations to lease a 75,000 square foot facility in Elkton, Maryland, a few miles north of its current manufacturing site. Subject to the successful consummation of those negotiations, the site will be redeveloped to support Clene's unique manufacturing needs; this redevelopment will enable the Company to materially increase its manufacturing capacity preparatory to the expected data release in H1 2022 from its Phase 3 registration trial evaluating CNM-Au8 as a treatment for amyotrophic lateral sclerosis (ALS).

In connection with its planned efforts to expand its manufacturing capacity, Clene entered into a Loan and Security Agreement with Avenue Venture Opportunities Fund, L.P. ("Avenue"), a fund of the Avenue Capital Group. The Loan Agreement provides for term loans in an aggregate principal amount up to \$30 million, with up to \$20 million committed between today and December 31, 2021 ("Tranche 1"), and up to a further \$10 million funded between January 1, 2022 and June 30, 2022. On the closing date, Clene received \$15 million of funds under the Loan Agreement.

Further, Clene has agreed to sell an aggregate of 960,540 shares of its common stock to certain accredited investors in a private placement (PIPE) financing. Clene anticipates that gross proceeds from the PIPE will be \$9.25 million, based on the offering price of \$9.63 per share, the last reported sale price of Clene's common stock on the Nasdaq Capital Market on Friday, May 21, 2021. There are no discounts or other warrants associated with the PIPE. Clene has agreed to file with the U.S. Securities and Exchange Commission a registration statement registering the resale of the PIPE Shares within 60 days of the closing date.

Rob Etherington, CEO and President of Clene commented, "Clene already had cash-on-hand to conclude its presently underway and ambitious clinical programs in the difficult-to-treat neurodegenerative diseases of ALS, multiple sclerosis, and Parkinson's disease. These new funds will further strengthen our balance sheet, extend our runway, and enable our important manufacturing expansion to ensure readiness if our Phase 2 and registrational Phase 3 clinical programs read out positive."

Taken together, the net proceeds from the PIPE and Loan Agreement announced today add approximately \$24 million to Clene's cash position, incremental to the \$48 million as of March 31, 2021. Clene's strengthened cash position will enable an expansion of its CNM-Au8 manufacturing capabilities.

Chad Norman, Senior Portfolio Manager of Avenue's Venture Strategy, said, "Avenue is excited to partner with the team at Clene. The company's platform technology has the potential to revolutionize the way neurodegenerative diseases are treated. Through this transaction, Clene has strengthened its cash position in advance of expected value enhancing milestones and also has the potential to grow with Avenue in the future as its financing needs evolve."

Pursuant to the funding of Tranche 1 of the Loan Agreement, Clene issued to Avenue warrants to purchase up to 115,851 shares of Clene Inc. common stock. The Warrants expire on May 21, 2026 and have an exercise price per share equal to the lower of (i) \$8.63, or (ii) the lowest price per share paid by cash investors for Clene common stock issued in the next bona fide round of equity financing prior to March 31, 2022.

The PIPE was led by four current or former Board members of Clene, three of whom have been involved with Clene for many years. David Matlin, Chairman of the Board of Clene and a PIPE investor, commented, "I have been involved with Clene since its founding, and remain enthusiastically hopeful that Clene's lead asset, CNM-Au8, may be able to help patients with neurodegenerative diseases. I am grateful to continue supporting Clene in their many efforts."

---



## **About Clene**

Clene, a clinical-stage biopharmaceutical company focused on neurodegenerative disease, is leading the way by using nanotechnology to treat bioenergetic failure, which underlies many neurological diseases. Clene has innovated a novel nanotherapeutic platform to create a new class of drugs—bioenergetic nanocatalysts. Clene's lead drug candidate, CNM-Au8, is a concentrated nanocrystalline gold (Au) suspension that drives critical cellular bioenergetic reactions in the CNS. CNM-Au8 increases cellular energy to accelerate neurorepair and improve neuroprotection. Currently, CNM-Au8 is being investigated for efficacy and safety in a Phase 3 registration trial for ALS and in Phase 2 trials for multiple sclerosis and Parkinson's disease. Clene has also advanced into the clinic an aqueous solution of ionic zinc and silver for anti-viral and anti-microbial uses. The company is based in Salt Lake City, Utah with R&D and manufacturing operations in Maryland. For more information, please visit [www.clene.com](http://www.clene.com).

## **About Avenue Venture Opportunities**

The Avenue Venture Opportunities Fund seeks to provide creative financing solutions to high-growth, venture capital-backed technology and life science companies. The Avenue Venture Opportunities Fund focuses generally on companies within the underserved segment of the market created by the widening financing gap between commercial banks and larger debt funds. For additional information on Avenue Capital Group, which is a global investment firm with assets under management over \$11 billion as of April 30, 2021, please visit [www.avenuecapital.com](http://www.avenuecapital.com).

## **Forward-Looking Statements**

This press release contains "forward-looking statements" which are intended to be covered by the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Clene's actual results may differ from its expectations, estimates and projections and consequently, you should not rely on these forward-looking statements as predictions of future events. Words such as "expect," "estimate," "project," "budget," "forecast," "anticipate," "intend," "plan," "may," "will," "could," "should," "believes," "predicts," "potential," "might" and "continues," and similar expressions are intended to identify such forward-looking statements. These forward-looking statements involve significant known and unknown risks and uncertainties, many of which are beyond Clene's control and could cause actual results to differ materially and adversely from expected results. Factors that may cause such differences include Clene's ability to demonstrate the efficacy and safety of its drug candidates; the clinical results for its drug candidates, which may not support further development or marketing approval; actions of regulatory agencies, which may affect the initiation, timing and progress of clinical trials and marketing approval; Clene's ability to achieve commercial success for its marketed products and drug candidates, if approved; Clene's ability to obtain and maintain protection of intellectual property for its technology and drugs; Clene's reliance on third parties to conduct drug development, manufacturing and other services; Clene's limited operating history and its ability to obtain additional funding for operations and to complete the licensing or development and commercialization of its drug candidates; the impact of the COVID-19 pandemic on Clene's clinical development, commercial and other operations, as well as those risks more fully discussed in the section entitled "Risk Factors" in Clene's Annual Report on Form 10K, as well as discussions of potential risks, uncertainties, and other important factors in Clene's subsequent filings with the U.S. Securities and Exchange Commission. Clene undertakes no obligation to release publicly any updates or revisions to any forward-looking statements to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based, subject to applicable law. All information in this press release is as of the date of this press release. The information contained in any website referenced herein is not, and shall not be deemed to be, part of or incorporated into this press release.

## **Media Contact**

Gwendolyn Schanker  
LifeSci Communications  
(269) 921-3607  
[gschanker@lifescicomms.com](mailto:gschanker@lifescicomms.com)

## **Investor Contact**

Bruce Mackle  
LifeSci Advisors, LLC  
(929) 469-3859  
[bmackle@lifesciadvisors.com](mailto:bmackle@lifesciadvisors.com)

Source: Clene Inc.

---