

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

FORM 8-K

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

Date of Report (Date of earliest event reported): April 14, 2022

Clene Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

001-39834

(Commission File Number)

85-2828339

(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:

- 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, \$0.0001 par value	CLNN	The Nasdaq Capital Market
Warrants, to acquire one-half of one share of Common Stock for \$11.50 per share	CLNNW	The Nasdaq Capital Market

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On April 14, 2022, Clene Inc. (the “Company”) entered into an Equity Distribution Agreement (the “Distribution Agreement”) with Canaccord Genuity LLC and Oppenheimer & Co. Inc., as placement agents (the “Placement Agents”). In accordance with the terms of the Distribution Agreement, the Company may offer and sell shares of its common stock, par value \$0.0001 per share (the “Common Stock”), having an aggregate offering price of up to \$50,000,000 from time to time through the Placement Agents. The issuance and sale of Common Stock, if any, by the Company under the Distribution Agreement will be made pursuant to the Company’s registration statement on Form S-3, once effective, which is being filed with the Securities and Exchange Commission (the “SEC”) on April 14, 2022 (the “Registration Statement”), and the Company’s prospectus supplement relating to the offering filed therewith that forms part of the Registration Statement.

Subject to terms of the Distribution Agreement, the Placement Agents are not required to sell any specific number or dollar amount of Common Stock but will act as the Company’s placement agents, using commercially reasonable efforts to sell, on the Company’s behalf, all of the Common Stock requested by the Company to be sold, consistent with the Placement Agents’ normal trading and sales practices, on terms mutually agreed between the Placement Agents and the Company. The Placement Agents will be entitled to compensation under the terms of the Distribution Agreement at a fixed commission rate of 3.0% of the gross proceeds from each issuance and sale of Common Stock, if any.

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

The Common Stock may not be sold nor may offers to buy be accepted prior to the time that the Registration Statement becomes effective. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the Common Stock, nor shall there be any offer, solicitation or sale of the Common Shares in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
10.1	Equity Distribution Agreement, dated April 14, 2022, by and among Clene Inc. and Canaccord Genuity LLC and Oppenheimer & Co. Inc.
104	Cover Page Interactive Data File (formatted as Inline XBRL).

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.

CLENE INC.

Date: April 14, 2022

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

CLENE INC.

\$50,000,000

EQUITY DISTRIBUTION AGREEMENT

April 14, 2022

Canaccord Genuity LLC
99 High Street, Suite 1200
Boston, Massachusetts 02110

Oppenheimer & Co. Inc.
85 Broad Street
New York, New York 10004

Ladies and Gentlemen:

Clene Inc., a Delaware corporation (the "Company"), confirms its agreement (this "Agreement") with Canaccord Genuity LLC ("Canaccord") and Oppenheimer & Co. Inc. ("Oppenheimer") and together with Canaccord, the "Sales Agents" and each a "Sales Agent"), as of the date first written above, as follows:

The Company has prepared and filed, or will prepare and file, as the case may be, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the "Securities Act"), with the Securities and Exchange Commission (the "Commission") a "shelf" registration statement on Form S-3 under the Securities Act, including a base prospectus, relating to the securities registered pursuant to such registration statement, which registration statement incorporates by reference documents which the Company has filed, or will file, in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the "Exchange Act").

Except where the context otherwise requires, "Registration Statement," as used herein, means the registration statement, as amended, at the time of such registration statement's effectiveness for purposes of Section 11 of the Securities Act, as such section applies to the Sales Agents (the "Effective Time"), including (i) all documents filed as a part thereof or incorporated or deemed to be incorporated by reference therein, (ii) any information contained or incorporated by reference in a prospectus filed with the Commission pursuant to Rule 424(b) under the Securities Act, to the extent such information is deemed, pursuant to Rule 430B or Rule 430C under the Securities Act, to be part of the registration statement at the Effective Time, and (iii) any registration statement filed to register the offer and sale of Placement Shares (as defined below) pursuant to Rule 462(b) under the Securities Act.

Except where the context otherwise requires, "Basic Prospectus," as used herein, means any such base prospectus and any base prospectus furnished to you by the Company and attached to or used with the Prospectus Supplement (as defined below).

Except where the context otherwise requires, “Prospectus Supplement,” as used herein, means the final prospectus supplement, relating to the Placement Shares, filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act on or before the second business day after the Effective Time (or such earlier time as may be required under the Securities Act) in the form furnished by the Company to you for use by you in connection with the offering of the Placement Shares.

Except where the context otherwise requires, “Prospectus,” as used herein, means the Prospectus Supplement together with the Basic Prospectus attached to or used with the Prospectus Supplement.

The Sales Agents have not offered or sold and will not offer or sell, without the Company’s consent, any Placement Shares by means of any “free writing prospectus” (as defined in Rule 405 under the Securities Act) that is required to be filed by the Sales Agents or the Company with the Commission pursuant to Rule 433 under the Securities Act.

“Issuer Free Writing Prospectuses,” as used herein, means each “issuer free writing prospectus” (as defined in Rule 433(h) (1) under the Securities Act), if any, relating to the Placement Shares.

“Disclosure Package,” as used herein, means, with respect to any Placement Shares (including the public offering price of such Placement Shares), the Prospectus and any Issuer Free Writing Prospectuses issued at or prior to the Applicable Time.

“Applicable Time,” as used herein, means, with respect to any Placement Shares, the time of sale of such Placement Shares pursuant to this Agreement.

Any reference herein to the Registration Statement, any Basic Prospectus, the Prospectus Supplement, or the Prospectus shall be deemed to refer to and include the documents, if any, incorporated by reference, or deemed to be incorporated by reference, therein (the “Incorporated Documents”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, any Basic Prospectus, the Prospectus Supplement, or the Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act on or after the initial effective date of the Registration Statement, or the date of such Basic Prospectus, the Prospectus Supplement, or the Prospectus, as the case may be, and deemed to be incorporated therein by reference.

As used in this Agreement, “business day” shall mean a day on which the Nasdaq Capital Market (the “Nasdaq”) is open for trading. The terms “herein,” “hereof,” “hereto,” “hereinafter” and similar terms, as used in this Agreement, shall in each case refer to this Agreement as a whole and not to any particular section, paragraph, sentence or other subdivision of this Agreement. The term “or,” as used herein, is not exclusive.

1. Issuance and Sale of Placement Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it shall have the option, but not the obligation, to issue and sell through the Sales Agents, acting as sales agents, shares of common stock, \$0.0001 par value per share (the “Common Shares”), of the

Company having an aggregate offering price of up to \$50,000,000 (the “Placement Shares”). The Placement Shares will be sold on the terms set forth herein at such times and in such amounts as the Company and the Sales Agents shall agree from time to time. The issuance and sale of the Placement Shares through the Sales Agents will be effected pursuant to the Registration Statement filed by the Company and declared effective by the Commission (or, in the case of any registration statement filed to register the offer and sale of Placement Shares pursuant to Rule 462(b) under the Securities Act, became or will become effective upon filing with the Commission).

2. Placements.

(a) Placement Notice. Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “Placement”), it will notify the Sales Agents by e-mail notice (or other method mutually agreed to in writing by the parties) containing the parameters within which it desires to sell the Placement Shares, which shall at a minimum include the number of Placement Shares to be issued, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one Trading Day (as defined in Section 3) and any minimum price below which sales may not be made (a “Placement Notice”), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals (each an “Authorized Representative”) from the Company set forth on Schedule 2 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Sales Agents set forth on Schedule 2 attached hereto, as such Schedule 2 may be amended from time to time. The Placement Notice shall be effective upon confirmation by the Sales Agents unless and until (i) the Sales Agents decline to accept the terms contained therein for any reason, in their sole discretion, in accordance with the notice requirements set forth in Section 4; provided the Sales Agents deliver written notice thereof to the Company within two (2) business days after receipt of such Placement Notice, (ii) the entire amount of the Placement Shares have been sold, (iii) the Company suspends or terminates the Placement Notice in accordance with the notice requirements set forth in Section 4, (iv) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice, or (v) the Agreement has been terminated under the provisions of Section 12.

(i) Placement Fee. The amount of compensation to be paid by the Company to the Sales Agents with respect to each Placement (in addition to any expense reimbursement pursuant to Section 7(i)(ii)) shall be equal to 3.0% of gross proceeds from each Placement.

(ii) No Obligation. It is expressly acknowledged and agreed that neither the Company nor the Sales Agents will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Sales Agents, and then only upon the terms specified therein and herein. It is also expressly acknowledged that the Sales Agents will be under no obligation to purchase Placement Shares on a principal basis. Unless otherwise provided herein, in the event of a conflict between the terms of this

Agreement and the terms of a Placement Notice, the terms of the Placement Notice control.

3. Sale of Placement Shares by the Sales Agents. Subject to the terms and conditions of this Agreement, upon the Company's issuance of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Sales Agents will use their commercially reasonable efforts consistent with its normal trading and sales practices to sell on behalf of the Company and as agent, such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges that the Sales Agents will conduct the sale of Placement Shares in compliance with applicable law, rules and regulations including, without limitation, Regulation M under the Exchange Act, and applicable Nasdaq rules and that such compliance may include a delay in commencement of sales efforts after receipt of a Placement Notice. The Sales Agents will provide written confirmation to the Company, as provided in Section 13, no later than the opening of the Trading Day (as defined below) next following the Trading Day on which they have made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Sales Agents with respect to such sales, and the Net Proceeds (as defined below) payable to the Company. The Sales Agents may sell Placement Shares by any method permitted by law deemed to be an "at the market" offering under Rule 415 of the Securities Act, including without limitation sales made directly on Nasdaq, on any other existing trading market for the Common Shares or to or through a market maker in a transaction consummated other than on an exchange, or in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices. Notwithstanding anything to the contrary set forth in this Agreement or a Placement Notice, the Company acknowledges and agrees that (i) there can be no assurance that the Sales Agents will be successful in selling any Placement Shares or as to the price at which any Placement Shares are sold, if at all, and (ii) the Sales Agents will incur no liability or obligation to the Company or any other person or entity if they do not sell Placement Shares for any reason other than a failure by the Sales Agents to use their commercially reasonable efforts consistent with its normal trading and sales practices to sell on behalf of the Company and as agent such Placement Shares as provided under this Section 3. For the purposes hereof, "Trading Day" means any day on which Nasdaq is open for trading. While a Placement Notice is in effect, neither the Sales Agents nor any of their subsidiaries shall, for their own respective accounts, engage in (i) any short sale of any security of the Company, as defined in Regulation SHO under the Exchange Act, or (ii) any market making bidding, stabilization or other trading activity with regard to the Common Shares or related derivative securities, in each case, if such activity would be prohibited under Regulation M under the Exchange Act or other anti-manipulation rules under the Securities Act. For the avoidance of doubt, this restriction shall not apply to (A) transactions by or on behalf of any customer of either Sales Agent or transactions by either Sales Agent to facilitate any such transactions by or on behalf of any customer of either Sales Agent, or (B) bona fide market making activities otherwise in compliance with Regulation M and Regulation SHO.

4. Suspension of Sales.

(a) The Company or the Sales Agents may, upon notice to the other party in writing, by telephone (confirmed immediately by verifiable facsimile transmission or e-mail) or by e-mail notice (or other method mutually agreed to in writing by the parties),

suspend any sale of Placement Shares; provided, however, that such suspension shall not affect or impair either party's obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. The Company and the Sales Agents agree that no such notice shall be effective against the other party unless it is made to one of the individuals named on Schedule 2 hereto, as such Schedule may be amended from time to time.

(b) Notwithstanding any other provision of this Agreement, during any period in which the Company is in possession of material non-public information, the Company and the Sales Agents (provided the Sales Agents have been given prior written notice of such by the Company, which notice the Sales Agents agree to treat confidentially) agree that no sale of Placement Shares will take place.

5. Settlement.

(a) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the second (2nd) business day (or such earlier day as is agreed by the parties to be industry practice for regular-way trading) following the date on which such sales are made (each a "Settlement Date"). The amount of proceeds to be delivered to the Company on a Settlement Date against the receipt of the Placement Shares sold ("Net Proceeds") will be equal to the aggregate sales price at which such Placement Shares were sold, after deduction for (i) the commission or other compensation for such sales payable by the Company to the Sales Agents, as the case may be, pursuant to Section 2 hereof, (ii) any other amounts due and payable by the Company to the Sales Agents hereunder pursuant to Section 7(i) hereof, and (iii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(b) Delivery of Placement Shares. On each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Sales Agents' accounts or its designee's account at The Depository Trust Company through its Deposit Withdrawal Agent Commission System or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Placement Shares, which in all cases shall be freely tradeable, transferable, registered shares in good deliverable form, the Sales Agents will, on each Settlement Date, deliver the related Net Proceeds in same day funds delivered to an account designated by the Company prior to the Settlement Date. If the Company defaults in its obligation to deliver Placement Shares on a Settlement Date through no fault of the Sales Agents, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10 hereto, it will (i) hold the Sales Agents harmless against any loss, claim, damage, or reasonable documented expense (including reasonable documented legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay to the Sales Agents any commission, discount, or other compensation to which it would otherwise have been entitled absent such default; provided, however, that without limiting Section 10 herein, the Company shall not be obligated to pay the Sales Agents any commission, discount or other compensation on any Placement Shares that it is not possible to settle due to: (i)

a suspension or material limitation in trading in securities generally on Nasdaq; or (ii) a material disruption in securities settlement or clearance services in the United States.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, the Sales Agents that as of the date of this Agreement and as of each Applicable Time unless such representation or warranty specifies a different time:

(a) the Registration Statement has heretofore become effective under the Securities Act or will become effective under the Securities Act prior to any sale of Placement Shares hereunder, or with respect to any registration statement to be filed to register the offer and sale of Placement Shares pursuant to Rule 462(b) under the Securities Act, will be filed with the Commission and become effective under the Securities Act no later than 10:00 P.M., New York City time, on the date of determination of the public offering price for the Placement Shares; no stop order of the Commission preventing or suspending the use of any Basic Prospectus, the Prospectus Supplement, or the Prospectus, or the effectiveness of the Registration Statement, has been issued, and no proceedings for such purpose have been instituted or, to the Company's knowledge, are contemplated by the Commission;

(b) as of the Effective Time, the Registration Statement complied or will comply in all material respects with the requirements of the Securities Act; the conditions to the use of Form S-3 in connection with the offering and sale of the Placement Shares as contemplated hereby have been satisfied, including General Instruction I.B.1 of such Form S-3, if applicable; the Registration Statement meets, and the offering and sale of the Placement Shares as contemplated hereby complies with, the requirements of Rule 415 under the Securities Act; the Registration Statement did not or will not, as of the Effective Time, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; the Disclosure Package, as of the Applicable Time, did not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Prospectus will comply, as of the date that it is filed with the Commission, the time of purchase, and at all times during which a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with any sale of Placement Shares, in all material respects, with the requirements of the Securities Act (including, without limitation, Section 10(a) of the Securities Act); at no time during the period that begins on the date of the Prospectus Supplement and ends at the later of the time of purchase, and the end of the period during which a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with any sale of Placement Shares did or will the Prospectus, as then amended or supplemented, include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty in this Section 6(b) or otherwise with respect to any statement contained in the Registration Statement, the Disclosure Package or the Prospectus made in reliance upon

and in conformity with information concerning the Sales Agents and furnished in writing by or on behalf of the Sales Agents to the Company expressly for use in the Registration Statement, the Disclosure Package or the Prospectus; each Incorporated Document, at the time such document was filed, or will be filed, with the Commission or at the time such document became or becomes effective, as applicable, complied or will comply, in all material respects, with the requirements of the Exchange Act and did not or will not, as applicable, include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(c) prior to the execution of this Agreement, the Company has not, directly or indirectly, offered or sold any Placement Shares by means of any “prospectus” (within the meaning of the Securities Act) or used any “prospectus” (within the meaning of the Securities Act) in connection with the offer or sale of the Placement Shares; neither the Company nor the Sales Agents are disqualified, by reason of subsection (f) or (g) of Rule 164 under the Securities Act, from using, in connection with the offer and sale of the Placement Shares, “free writing prospectuses” (as defined in Rule 405 under the Securities Act) pursuant to Rules 164 and 433 under the Securities Act;

(d) as of the date of this Agreement, the Company has an authorized capitalization, or will have an authorized capitalization immediately following the time of purchase, as set forth in the Registration Statement, the Disclosure Package and the Prospectus, and, as of the time of purchase the Company shall have an authorized capitalization, or will have an authorized capitalization immediately following the time of purchase, as set forth in the Registration Statement, the Disclosure Package and the Prospectus; all of the issued and outstanding shares of capital stock, including the Common Shares, of the Company have been duly authorized and validly issued and are fully paid and non-assessable, have been issued in compliance with all applicable securities laws and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right; and the Placement Shares are or will be duly listed, and admitted and authorized for trading, subject to official notice of issuance and evidence of satisfactory distribution, on Nasdaq;

(e) the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with full corporate power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus, to execute and deliver this Agreement and to issue, sell and deliver the Placement Shares as contemplated herein;

(f) the Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, properties, financial condition, results of operations, or prospects of the Company and the Subsidiaries (as defined below) taken as a whole (a “Material Adverse Effect”);

(g) the Common Shares are registered pursuant to Section 12(b) of the Exchange Act and are listed on Nasdaq and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act or delisting the Common Shares from Nasdaq, nor has the Company received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing. To the Company’s knowledge, it is in compliance with all listing requirements of Nasdaq for the continued listing of the Common Shares.

(h) except as set forth in the Registration Statement or the Prospectus, the Company has no subsidiaries (as defined under the Securities Act) other than those set forth on Schedule 3 attached hereto (each a “Subsidiary” and collectively, the “Subsidiaries”); except as set forth in the Registration Statement or the Prospectus, the Company owns directly or indirectly all of the issued and outstanding shares of capital stock of the Subsidiaries; other than the ownership interests of the Subsidiaries, the Company does not own, directly or indirectly, any shares of stock or any other equity interests of any corporation, firm, partnership, joint venture, association or other entity; complete and correct copies of the charters and the bylaws or other organizational or governing documents of the Company and the Subsidiaries and all amendments thereto have been made available to you, and, except as set forth in the exhibits to the Registration Statement, no changes therein will be made on or after the date hereof through and including the time of purchase or, if later, any additional time of purchase; each Subsidiary has been duly formed and is validly existing as a corporation in good standing under the laws of the jurisdiction of its formation, with full corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus; each Subsidiary is duly qualified to do business as a corporation and is in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect; all of the outstanding ownership interests of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance with all applicable securities laws, were not issued in violation of any preemptive right, resale right, right of first refusal or similar right and are owned by the Company subject to no security interest, other encumbrance or adverse claims; and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into shares of capital stock or ownership interests in the Subsidiaries are outstanding;

(i) the Placement Shares have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued, fully paid and non-assessable and free of statutory and contractual preemptive rights, resale rights, rights of first refusal and similar rights, except for any such rights that have been waived; the Placement Shares, when issued and delivered against payment therefor as provided herein, will be free of any restriction upon the voting or transfer thereof pursuant to the Delaware General Corporation Law or the Company's charter or bylaws or any agreement or other instrument to which the Company is a party;

(j) the capital stock of the Company, including the Placement Shares, conforms in all material respects to each description thereof, if any, contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus; and the certificates, if any, for the Placement Shares will be in due and proper form;

(k) this Agreement has been duly authorized, executed and delivered by the Company;

(l) neither the Company nor the Subsidiaries is in breach or violation of or in default under (nor has any event occurred which, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (A) its charter or bylaws or other organizational or governing documents, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (C) any applicable federal, state, local or foreign law, regulation or rule, or (D) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority having jurisdiction over the Company or the Subsidiaries, as applicable (including, without limitation, the rules and regulations of Nasdaq), or (E) any decree, judgment or order applicable to it or any of its properties, except in the case of the foregoing clauses (B), (C), (D), and (E), for any such breaches, violations, defaults or events that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(m) the execution, delivery and performance of this Agreement, the issuance and sale of the Placement Shares and the consummation of the transactions contemplated hereby will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or the Subsidiaries pursuant to) (A) the charter or bylaws or other organizational or governing documents of the Company or the Subsidiaries, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which

the Company or the Subsidiaries is a party or by which either or them or any of their respective properties may be bound or affected, or (C) any applicable federal, state, local or foreign law, regulation or rule, or (D) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority having jurisdiction over the Company, the Subsidiaries or the Placement Shares, as applicable (including, without limitation, the rules and regulations of Nasdaq), or (E) any decree, judgment or order applicable to the Company or the Subsidiaries or any of their respective properties; except in the case of the foregoing clauses (B), (C), (D) and (E), for any such breaches, violations, defaults or events that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(n) no approval, authorization, consent or order of or filing with any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, Nasdaq), or approval of the stockholders of the Company, is required in connection with the issuance and sale of the Placement Shares or the consummation by the Company of the transactions contemplated hereby, other than (i) registration of the Placement Shares under the Securities Act and the registration of the Common Shares under the Exchange Act, each of which has been or will be effected (or, with respect to any registration statement to be filed hereunder pursuant to Rule 462(b) under the Securities Act, will be effected in accordance herewith), (ii) any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Placement Shares are being offered by the Sales Agents, (iii) under the Conduct Rules of the Financial Industry Regulatory Authority, Inc. ("FINRA"), (iv) any listing applications and related consents or any notices required by Nasdaq in the ordinary course of the offering of the Placement Shares, (v) filings with the Commission pursuant to Rule 424(b) under the Securities Act, except as have already been made, obtained or waived or where the failure to obtain any such approval, authorization, consent, order or filing would not impair the ability of the Company to issue and sell the Placement Shares or to consummate the transactions contemplated by this Agreement, or (vi) filings with the Commission on Form 8-K with respect to this Agreement;

(o) except as described in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus or as have otherwise been waived (i) no person has the right, contractual or otherwise, to cause the Company to issue or sell to it any Common Shares or shares of any other capital stock or other equity interests of the Company, (ii) no person has any preemptive rights, resale rights, rights of first refusal or other rights to purchase any Common Shares or shares of any other capital stock of or other equity interests in the Company, (iii) no person has the right to act as an underwriter or agent or as a financial advisor to the Company in connection with the offer and sale of the Placement Shares; and (iv) no person has the right, contractual or otherwise, to cause the Company to register under the Securities Act any Common Shares or shares of any other capital stock of or other equity interests in the Company or to include any such shares or interests in the Registration Statement or the offering contemplated thereby;

(p) (i) each of the Company and the Subsidiaries is in compliance with and has all necessary licenses, authorizations, consents and approvals and has made all necessary filings required under any applicable law, regulation or rule, and has obtained all necessary licenses, authorizations, consents and approvals from other persons, in order to conduct their respective businesses as presently conducted, except where the failure to have, make or obtain the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (ii) neither the Company nor the Subsidiaries is in violation of, or in default under, or has received notice of any proceedings relating to the revocation or modification of, any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or the Subsidiaries, except where such violation, default, revocation or modification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(q) except as set forth in the Registration Statement or the Prospectus, there are no actions, suits, claims, investigations or proceedings pending or, to the Company's knowledge, threatened or contemplated to which the Company or the Subsidiaries or any of their respective directors or "officers" (within the meaning of Rule 16a-1(f) under the Exchange Act) is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or before or by any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, Nasdaq), except any such action, suit, claim, investigation or proceeding which, if resolved adversely to the Company or the Subsidiaries, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially interfere with consummation of the transactions contemplated hereby;

(r) each of Deloitte & Touche LLP and PricewaterhouseCoopers LLP, who have certified certain consolidated financial statements of the Company and the Subsidiaries, whose reports are incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus, are independent registered public accountants as required by the Securities Act and by the rules of the Public Company Accounting Oversight Board;

(s) the financial statements included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus, together with the related notes and schedules, and the interactive data in eXtensible Business Reporting Language ("XBRL") incorporated by reference in the Registration Statement, present fairly in all material respects the consolidated financial position of the Company and its Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' deficit (equity) of the Company and the Subsidiaries for the periods specified and have been prepared in compliance in all material respects with the requirements of the Securities Act and Exchange Act and in conformity with U.S. generally accepted accounting principles applied on a consistent basis during the periods involved (subject, in the case of unaudited interim statements, to normal year-end audit adjustments and the exclusion or condensing of certain footnotes); the other

financial data or statistical data derived from financial data included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus are accurately and fairly presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, the Disclosure Package or the Prospectus that are not included or incorporated by reference as required; the Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable;

(t) except as disclosed in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus, each stock option granted under any equity incentive plan of the Company or the Subsidiaries (each, a “Stock Plan”) was granted with a per share exercise price no less than the fair market value per Common Share on the grant date of such option and no such grant involved any “back-dating,” “forward-dating” or similar practice with respect to the effective date of such grant; except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each such option (i) was granted in compliance with applicable law and with the applicable Stock Plan(s), (ii) was duly approved by the board of directors (or a duly authorized committee thereof or an officer of the Company duly authorized by the board of directors or authorized committee thereof to make such grants) of the Company or the Subsidiaries, as applicable, and (iii) has been properly accounted for in the Company’s financial statements included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus in accordance with U.S. generally accepted accounting principles and disclosed therein;

(u) subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, in each case excluding any amendments or supplements to the foregoing made after the execution of this Agreement, there has not been (i) any material adverse change, or any development involving a prospective material adverse change, in the business, properties, management, financial condition or results of operations of the Company and the Subsidiaries taken as a whole, (ii) any transaction which is material to the Company and the Subsidiaries taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or the Subsidiaries, which is material to the Company and the Subsidiaries taken as a whole, (iv) any change in the capital stock or outstanding indebtedness of the Company or the Subsidiaries (other than the issuance of Common Shares upon exercise of stock options and warrants disclosed as outstanding in the Registration Statement, the Disclosure Package and the Prospectus) or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or the Subsidiaries;

(v) neither the Company nor the Subsidiaries is and, after giving effect to the offering and sale of the Placement Shares and the application of the proceeds thereof as described in the Registration Statement, Disclosure Package and the Prospectus, neither of them will be, an “investment company” or an entity “controlled” by an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”);

(w) except as otherwise described in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package, the Company and the Subsidiaries have good and marketable title to all property (real and personal, excluding for the purposes of this Section 6(w), Intellectual Property (as defined below)) described in the Registration Statement, the Disclosure Package and the Prospectus as being owned by any of them, free and clear of all liens, claims, security interests or other encumbrances, except those that do not materially interfere with the use or proposed use of such property by the Company or the Subsidiaries, respectively, or as would not materially or adversely affect the value of such property; all the property described in the Registration Statement, the Disclosure Package and the Prospectus as being held under lease by the Company or the Subsidiaries is held thereby under valid, subsisting and enforceable leases, except where such failure to hold such property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance or other similar laws relating to creditor’s rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought;

(x) the Company and the Subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in the Registration Statement, the Disclosure Package and the Prospectus as being owned or licensed by them (collectively, the “Company Intellectual Property”) or which are necessary for the conduct of their respective businesses as currently conducted or as currently proposed to be conducted (including the commercialization of products or services described in the Registration Statement, the Disclosure Package and the Prospectus as under development), except where the failure to own, license or have such rights would not, individually or in the aggregate, have a Material Adverse Effect (collectively, “Intellectual Property”); and except for matters which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) there are no third parties who have or, to the Company’s knowledge, will be able to establish rights to any Company Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus disclose is licensed to the Company; (ii) there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by others challenging the Company’s rights in or to any Intellectual Property, and the Company is unaware of any facts which would reasonably be expected to form a reasonable basis for any such action, suit, proceeding or claim;

(iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property owned by the Company, and the Company is unaware of any facts which would reasonably be expected to form a reasonable basis for any such action, suit, proceeding or claim; (v) except as described in the Registration Statement, the Disclosure Package and the Prospectus, there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or the Subsidiaries infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement, the Disclosure Package and the Prospectus as under development, infringe or violate, any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would reasonably be expected to form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and the Subsidiaries have complied in all material respects with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or the Subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property, and no claims by any third party have been raised that challenge the validity, enforceability or scope of any of the Intellectual Property of the Company; (viii) to the Company's knowledge, there is no publication that anticipates or renders obvious/non-inventive any patent or patent application in the Company's patent portfolio or otherwise impacts the patentability of same; (ix) any publication which may be related to the patentability of applications in the Company's portfolio of which the Company is aware have been disclosed to the relevant patent office in which an obligation to do so exists; and (x) the product candidates described in the Registration Statement, the Disclosure Package and the Prospectus as under development by the Company or the Subsidiaries fall within the scope of the claims of one or more patents owned by, or exclusively licensed to, the Company or the Subsidiaries;

(y) neither the Company nor the Subsidiaries is engaged in any unfair labor practice; except for matters which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the Company's knowledge, threatened against the Company or the Subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or, to the Company's knowledge, threatened, (B) no strike, labor dispute, slowdown or stoppage pending or, to the Company's knowledge, threatened against the Company or the Subsidiaries and (C) no union representation dispute currently existing concerning the employees of the Company or the Subsidiaries, and (ii) there has been no violation of any applicable federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or the rules and regulations promulgated thereunder concerning the employees of the Company or the Subsidiaries. To the Company's knowledge, (i) no union organizing activities are currently taking place concerning the

employees of the Company or the Subsidiaries and (ii) there is no existing or imminent labor disturbance by the employees of any of the Company's or the Subsidiaries' respective principal suppliers, customers or contractors;

(z) the Company and the Subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and the Subsidiaries each hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company is not aware of any non-compliance with Environmental Laws, any past or present events, conditions, circumstances, activities, practices, actions, omissions or plans that would reasonably be expected to result in non-compliance with Environmental Laws or any current liabilities under Environmental Laws that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and except for matters which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor the Subsidiaries (i) is the subject of any investigation known to the Company, (ii) has not received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "Environmental Law" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "Hazardous Materials" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law);

(aa) in the ordinary course of their business, the Company and the Subsidiaries each conduct periodic reviews of the effect of the Environmental Laws on their respective businesses, operations and properties, in the course of which they identify and evaluate associated costs and liabilities (including, without limitation, any capital or operating expenditures required for cleanup, closure of properties or compliance with the Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties);

(bb) all federal and other material tax returns required to be filed by the Company or the Subsidiaries have been timely filed (within any applicable time limit extensions permitted by the relevant tax authority) and such tax returns are true, complete and correct in all material respects; all taxes and other assessments of a similar nature (whether imposed directly or through withholding) including any material interest, additions to tax or penalties applicable thereto due or claimed to be due from such

entities have been paid, other than those being contested in good faith and for which adequate reserves have been provided;

(cc) the Company and the Subsidiaries each maintain insurance covering their respective properties, operations, personnel and businesses as the Company reasonably deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice in all material respects to protect the Company and the Subsidiaries and their respective businesses; all such insurance is fully in force on the date hereof and is expected to be fully in force at the time of purchase and each additional time of purchase, if any; neither the Company nor the Subsidiaries have reason to believe that it will not be able to (i) renew any such insurance as and when such insurance expires or (ii) obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted at a cost that would not reasonably be expected to result in any Material Adverse Effect;

(dd) except as referred to or described in the Registration Statement, the Disclosure Package or the Prospectus, neither the Company nor the Subsidiaries has sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in the Prospectus, or referred to or described in, or filed as an exhibit to, the Registration Statement or the any Incorporated Document, and no such termination or non-renewal has been threatened by the Company or, to the Company's knowledge, any other party to any such contract or agreement;

(ee) the Company and the Subsidiaries each maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(ff) the Company has established and maintains "disclosure controls and procedures" (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) and "internal control over financial reporting" (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's independent registered public accountants and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies, if any, in the design or operation of internal controls which would reasonably be expected to adversely affect the Company's ability to record, process, summarize and report financial data; and (ii) any fraud, whether or not material, that

involves management or other employees who have a role in the Company's internal controls; all "material weaknesses" (as such terms are defined in Rule 1-02(a)(4) of Regulation S-X under the Securities Act) of the Company, if any, have been identified to the Company's independent registered public accountants and are disclosed in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus; since the date of the most recent evaluation of such disclosure controls and procedures and internal controls, there have been no material adverse changes in internal controls or in other factors that would reasonably be expected to materially adversely affect internal controls; the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and any related rules and regulations promulgated by the Commission, and the statements contained in each such certification are complete and correct; the Company, the Subsidiaries and the Company's directors and officers are each in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission and Nasdaq promulgated thereunder;

(gg) each "forward-looking statement" (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus has been made or reaffirmed with a reasonable basis and in good faith;

(hh) all statistical or market-related data included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus are based on or derived from sources that the Company reasonably believes to be reliable and accurate in all material respects, and the Company has obtained the written consent to the use of such data from such sources to the extent required;

(ii) neither the Company nor the Subsidiaries nor any director or officer of the Company or the Subsidiaries, nor, to the knowledge of the Company, any employee, agent or affiliate of the Company or the Subsidiaries is aware of or has taken, any action, directly or indirectly, that would result in a violation by such persons or entities of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "Foreign Corrupt Practices Act"), the U.K. Bribery Act 2010, or other applicable anti-corruption laws (collectively, "Anti-Corruption Laws"); the Company will not use the proceeds of the offering of the Placement Shares contemplated hereby in violation of Anti-Corruption Laws; and the Company and the Subsidiaries each have instituted and maintain policies and procedures designed to ensure continued compliance therewith;

(jj) the operations of the Company and the Subsidiaries are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements of the USA Patriot Act, the Bank Secrecy Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company (collectively, the "Money Laundering Laws"); and no action, suit or

proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company or the Subsidiaries with respect to the Money Laundering Laws is pending or, to the Company's knowledge, threatened;

(kk) neither the Company nor the Subsidiaries nor any director or officer of the Company or the Subsidiaries, nor to the knowledge of the Company, any director, agent, employee or affiliate of the Company or the Subsidiaries is (i) currently subject to or the target of any economic, financial or trade sanctions administered or enforced by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority (collectively, "Sanctions"), or (ii) operating, organized or resident in, or is engaging or has engaged in the past five years in any transaction or dealing, directly or indirectly, with a country or territory that is the target of comprehensive U.S. Sanctions or a designated state sponsor of terrorism (at the time of this Agreement, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine) (collectively, "Sanctioned Country"); and the Company will not directly or indirectly use the proceeds of the offering of the Placement Shares contemplated hereby, or lend, contribute or otherwise make available such proceeds to the Subsidiaries, any joint venture partner or other person or entity (i) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any person that is the target of Sanctions, or in any Sanctioned Country, or (ii) in any manner that would reasonably be expected to result in the violation of any Sanctions applicable to any party hereto;

(ll) the Company acknowledges that, in accordance with the requirements of the USA Patriot Act, each Sales Agent is required to obtain, verify and record information that identifies its clients, including the Company, which information may include the name and address of its clients, as well as other information that will allow each Sales Agent to properly identify its clients;

(mm) none of the Subsidiaries is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on its capital stock, from repaying to the Company any loans or advances to it from the Company or from transferring any of its property or assets to the Company, except as described in the Registration Statement and the Prospectus;

(nn) the clinical trials that are described in the Prospectus Supplement were, and if still pending, are being conducted in all material respects in accordance with the protocol, investigator agreements, and requirements of the Company's Investigational New Drug application approved by the Food and Drug Administration of the U.S. Department of Health and Human Services (the "FDA") and all applicable laws and regulations; each description of the results of the clinical trials contained in the Prospectus Supplement is accurate and complete in all material respects and fairly presents the data derived from such trials, and the Company has no knowledge of any other studies or tests the results of which are inconsistent with, or otherwise call into

question, the clinical trial results described or referred to in the Prospectus Supplement; the Company has made all such material filings and obtained all such material licenses, certificates, permits, approvals, clearances, registrations, exemptions, consents and other authorizations required by the FDA or any other U.S. or foreign government pharmaceutical regulatory agency, or health care facility Institutional Review Board (collectively, the “Regulatory Agencies”) for the conduct of its business as described in the Prospectus Supplement; the Company has not received any notice of, or other correspondence from, any Regulatory Agency requiring the termination, suspension or modification of any clinical trials that are described or referred to in the Prospectus Supplement; and the Company has operated and currently is in compliance in all material respects with all applicable laws and regulations of the Regulatory Agencies including, without limitation, the Federal Food, Drug and Cosmetic Act (“FFDCA”) and its implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58, and 812;

(oo) the Company and the Subsidiaries each have operated and currently are in compliance with all applicable Health Care Laws, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. For purposes of this Agreement, “Health Care Laws” means: (i) the FFDCA, and the regulations promulgated thereunder; (ii) all applicable foreign and U.S. federal, state, and local health care related fraud and abuse laws and regulations, including, without limitation, the state fraud and abuse prohibitions, including those that apply to all payors (governmental, commercial insurance and self-payors), the U.S. Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the U.S. Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the U.S. Civil False Claims Act (31 U.S.C. § 3729 et seq.), the Federal False Statements Law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (42 U.S.C. § 1320d et seq.), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the exclusion laws (42 U.S.C. § 1320a-7), the Medicare statute (Title XVIII of the Social Security Act), and the Medicaid statute (Title XIX of the Social Security Act) and the regulations promulgated pursuant to such statutes; and (iii) the administrative simplification provisions of Title II, Subtitle F of HIPAA, as amended, and the regulations promulgated by the Secretary of the United States Department of Health and Human Services to implement the administrative simplification provisions of Title II, Subtitle F of HIPAA, as amended, including the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. parts 160 and 164 (subparts A and E); the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. parts 160 and 164 (subparts A and C); Notification in the Case of Breach of Unsecured Protected Health Information, 45 C.F.R. part 164 (subpart D); and the Standards for Electronic Transactions and Code Sets, 45 C.F.R. parts 160 and 162. Neither the Company nor the Subsidiaries has received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court, arbitrator, governmental or regulatory authority, or third-party alleging that any product, operation or activity is in material violation of any Health Care Laws, and, to the Company’s knowledge, no such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action is threatened. To the Company’s knowledge, neither the Company nor the Subsidiaries

has engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state or federal health care program. Neither the Company nor the Subsidiaries is a party to and nor does it have any ongoing reporting obligations pursuant to any corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any governmental or regulatory authority. Additionally, neither the Company nor the Subsidiaries nor, to the Company's knowledge, any of their respective officers, directors or employees has been excluded, suspended or debarred from participation in any U.S. federal health care program or human clinical research or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action that would reasonably be expected to result in debarment, suspension, or exclusion. The Company and the Subsidiaries have filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by the Health Care Laws for the conduct of its business as described in the Registration Statement, the Disclosure Package and the Prospectus, and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and accurate on the date filed in all material respects (or were corrected or supplemented by a subsequent submission), except in each case, as would not reasonably be expected to have a Material Adverse Effect;

(pp) the issuance and sale of the Placement Shares as contemplated hereby will not cause any holder of any shares of capital stock, securities convertible into or exchangeable or exercisable for capital stock or options, warrants or other rights to purchase capital stock or any other securities of the Company to have any right to acquire any share of preferred stock of the Company, except as have been otherwise waived;

(qq) except pursuant to this Agreement, neither the Company nor the Subsidiaries has incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or by the Registration Statement;

(rr) neither the Company nor the Subsidiaries nor any of their respective directors, officers, affiliates or, to the Company's knowledge, any controlling persons of such affiliates, has taken, directly or indirectly, any action designed, or which has constituted or would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares in violation of Regulation M under the Exchange Act;

(ss) to the Company's knowledge, there are no affiliations or associations between (i) any member of FINRA and (ii) the Company or any of the Company's officers, directors or 5% or greater security holders or any beneficial owner of the Company's unregistered equity securities that were acquired at any time on or after the 180th day immediately preceding the date the Registration Statement was initially filed with the Commission, except as disclosed in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus;

(tt) (i) no Plan is, and none of the Company, the Subsidiaries or any of their respective ERISA Affiliates (as defined below) has within the past six years sponsored, maintained, participated in, contributed to, or had any obligation (contingent or otherwise) with respect to any (A) “multiemployer plan” within the meaning of Section 3(37) of ERISA, (B) pension plan subject to Title IV or Part 3 of Title I of ERISA or Section 412 of the Code, (C) “multiple employer plan” within the meaning of Section 413(c) of the Code or (D) multiple employer welfare arrangement within the meaning of Section 3(40) of ERISA; and (ii) except for matters which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (A) each “employee benefit plan” (within the meaning of Section 3(3) of ERISA) for which the Company would have any liability (each a “Plan”) has been maintained in compliance in all material respects with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “Code”); (B) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; and (C) there is no pending audit or investigation by the Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other governmental agency or any foreign regulatory agency with respect to any Plan that would reasonably be expected to result in material liability to the Company or the Subsidiaries. “ERISA Affiliate,” as used herein, means, with respect to the Company or the Subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Code of which the Company or the Subsidiaries is a member;

(uu) the Company is not a party to any agreement with an agent or underwriter for any other “at the market” or continuous equity transaction, except as otherwise disclosed to the Sales Agents;

(vv) the Company has not relied on the Sales Agents or legal counsel for the Sales Agents for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares;

(ww) on each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with; and

(xx) there is no franchise, contract or other document of a character required to be described in the Registration Statement or Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required (and the Disclosure Package contains in all material respects the same description of the foregoing matters contained in the Prospectus).

In addition, any certificate signed by any officer of the Company and delivered to the Sales Agents or counsel for the Sales Agents in connection with the offering of the Placement Shares

shall be deemed to be a representation and warranty by the Company, as to matters covered thereby, to the Sales Agents.

7. Covenants of the Company. The Company covenants and agrees with the Sales Agents that:

(a) Registration Statement Amendments. After the date of this Agreement and during the period in which a prospectus relating to the Placement Shares is required to be delivered by the Sales Agents under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 or Rule 173(a) under the Securities Act), (i) the Company will notify the Sales Agents promptly of the time when any subsequent amendment to the Registration Statement has been filed with the Commission and has become effective (each, a “Registration Statement Amendment Date”) or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information; (ii) the Company will file promptly all other material required to be filed by it with the Commission pursuant to Rule 433(d) under the Securities Act; (iii) it will prepare and file with the Commission, promptly upon the Sales Agents’ request, any amendments or supplements to the Registration Statement or Prospectus that, in the Sales Agents’ reasonable opinion based upon the advice of counsel, may be necessary or advisable in connection with the distribution of the Placement Shares by the Sales Agents (provided, however, that the failure of the Sales Agents to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Sales Agents’ right to rely on the representations and warranties made by the Company in this Agreement); and (iv) the Company will submit to the Sales Agents a copy of any amendment or supplement to the Registration Statement or Prospectus a reasonable period of time before the filing thereof and will afford the Sales Agents and the Sales Agents’ counsel a reasonable opportunity to comment on any such proposed filing prior to such proposed filing; and the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed; provided that the Company has no obligation to provide the Sales Agents any advance copy of such filing or to provide the Sales Agents an opportunity to comment on such filing if such filing does not name the Sales Agents and does not reference the transactions contemplated hereby.

(b) Notice of Commission Stop Orders. The Company will advise the Sales Agents, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or other prospectus in respect of the Placement Shares, of any notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the form of the

Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any such stop order or of any such order preventing or suspending the use of the Prospectus in respect of the Placement Shares or suspending any such qualification, to promptly use its commercially reasonable efforts to obtain the withdrawal of such order; and in the event of any such issuance of a notice of objection, promptly to take such reasonable steps as may be necessary to permit offers and sales of the Placement Shares by the Sales Agents, which may include, without limitation, amending the Registration Statement or filing a new registration statement, at the Company's expense (references herein to the Registration Statement shall include any such amendment or new registration statement); provided, however, that the Company may delay any such amendment or supplement or new Registration Statement if, in the reasonable judgment of the Company, it is in the best interests of the Company to do so.

(c) Delivery of Prospectus; Subsequent Changes. Within the time during which a prospectus relating to the Placement Shares is required to be delivered by the Sales Agents under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 or Rule 173(a) under the Securities Act), the Company will comply in all material respects with all requirements imposed upon it by the Securities Act, as from time to time in force, and will file on or before their respective due dates all reports required to be filed by it with the Commission pursuant to Sections 13(a), 13(c), 15(d), if applicable, or any other provision of or under the Exchange Act. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Sales Agents to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) Nasdaq Filings. In connection with the offering and sale of the Placement Shares, the Company will file with Nasdaq all documents and notices, and make all certifications, required by Nasdaq of companies that have securities that are listed on Nasdaq.

(e) Listing of Placement Shares. The Company will use commercially reasonable efforts to cause the Placement Shares to be listed on Nasdaq and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as the Sales Agents designate and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; provided that the Company shall not be required in connection therewith to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(f) Maintenance of Listings; Reservation of Shares. (a) The Company will use its commercially reasonable efforts to maintain the listing of the Placement Shares on

Nasdaq; and (b) the Company will reserve and keep available at all times, free of preemptive rights, Placement Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement.

(g) Delivery of Registration Statement and Prospectus. The Company will furnish to the Sales Agents and their counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during the period in which a prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as the Sales Agents may from time to time reasonably request and, at the Sales Agents' request, will also furnish copies of the Prospectus to each exchange or market on which sales of Placement Shares may be made; provided, however, that the Company's obligations under this Agreement to furnish, provide or deliver or make available (and all other reference of like import) copies of any report or statement shall be deemed satisfied if the same is filed with the Commission through its Electronic Data Gathering, Analysis and Retrieval system.

(h) Earnings Statement. The Company will make generally available to its security holders as soon as reasonably practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder. For the avoidance of doubt, the Company's compliance with the reporting requirements of the Exchange Act shall be deemed to satisfy the requirements of this Section 7(h).

(i) Expenses.

(i) The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid all expenses incident to the performance of its obligations hereunder, including but not limited to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each Prospectus and of each amendment and supplement thereto and each Issuer Free Writing Prospectus, (ii) the preparation, issuance and delivery of the Placement Shares, (iii) all fees and disbursements of the Company's counsel, accountants and other advisors, (iv) the qualification of the Placement Shares under securities laws in accordance with the provisions of Section 7(e) of this Agreement, including filing fees in connection therewith, (v) the printing and delivery to the Sales Agents of copies of the Prospectus and any amendments or supplements thereto, and of this Agreement, (vi) the fees and expenses incurred in connection with the listing or qualification of the Placement Shares for trading on Nasdaq, and (vii) any filing fees related to the Commission and FINRA.

(ii) Notwithstanding the foregoing, the Company shall reimburse the Sales Agents for all of their reasonable and documented expenses, up to a maximum reimbursement of \$50,000, arising out of this Agreement (including travel and related expenses, the costs of document preparation, production and distribution, third party research and database services and the reasonable and documented fees and disbursements of counsel to the Sales Agents) within ten (10) days of the presentation by the Sales Agents to the Company of a reasonably detailed statement therefor.

(j) Use of Proceeds. The Company will use the net proceeds from the sale of the Placement Shares under this Agreement as described in the Prospectus.

(k) Other Sales. Without the prior written consent of the Sales Agents (which consent shall not be unreasonably withheld, conditioned or delayed), the Company will not (A) directly or indirectly, offer to sell, sell, announce the intention to sell, contract to sell, pledge, lend, grant or sell any option, right or warrant to sell or any contract to purchase, purchase any contract or option to sell or otherwise transfer or dispose of any Common Shares (other than the Placement Shares offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable for Common Shares, warrants or any rights to purchase or acquire, Common Shares or file any registration statement under the Securities Act with respect to any of the foregoing (other than a registration statement on Form S-8, a new “shelf” registration statement on Form S-3 or any amendments or supplements to existing Registration Statements on Form S-3 or any new Registration Statements on Form S-1 or S-3 in replacement thereof or pursuant to registration requirements of the Company in existence on the date hereof), or (B) enter into any swap or other agreement or any transaction that transfers in whole or in part, directly or indirectly, any of the economic consequence of ownership of the Common Shares, or any securities convertible into or exchangeable or exercisable for or repayable with Common Shares, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of Common Shares or such other securities, in cash or otherwise, during the period beginning on the date on which any Placement Notice is delivered by the Company hereunder and ending on the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice. The foregoing sentence shall not apply to (i) Common Shares, options to purchase Common Shares or Common Shares issuable upon the exercise of options, restricted share awards, restricted share unit awards, Common Shares issuable upon vesting of restricted share unit awards, or other equity awards or Common Shares issuable upon exercise or vesting of equity awards, pursuant to any employee or director (x) equity award or benefits plan or otherwise approved by the Company’s Board of Directors or a duly authorized committee thereof, (y) share ownership or share purchase plan or (z) dividend reinvestment plan (but not shares subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, and (ii) Common Shares issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding on the date hereof or otherwise disclosed in the Registration Statement, Disclosure Package or Prospectus.

(l) Change of Circumstances. The Company will, at any time a Placement Notice is outstanding (i) advise the Sales Agents immediately after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect any opinion, certificate, letter or other document provided to the Sales Agents in connection with such Placement Notice; and (ii) without the prior written consent of the Sales Agents (which consent shall not be unreasonably withheld, conditioned or delayed), the Company will not directly or indirectly in any other “at the market” transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares (other than the Placement Shares offered pursuant to the provisions of this Agreement or, for the avoidance of doubt, sales pursuant to any future equity line of credit) or securities convertible into or exchangeable for Common Shares, warrants or any rights to purchase or acquire, Common Shares prior to the later of the termination of this Agreement and the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice; provided, however, that such restrictions will not be applicable to the Company’s issuance or sale of (A) Common Shares, options to purchase Common Shares or Common Shares issuable upon the exercise of options, restricted share awards, restricted share unit awards, Common Shares issuable upon vesting of restricted share unit awards, or other equity awards or Common Shares issuable upon exercise or vesting of equity awards, pursuant to any employee or director (x) equity award or benefits plan or otherwise approved by the Company’s Board of Directors, (y) share ownership or share purchase plan or (z) dividend reinvestment plan (but not shares subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, and (B) Common Shares issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding on the date hereof or otherwise disclosed in the Registration Statement, Disclosure Package or Prospectus.

(m) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Sales Agents or their respective agents, including, without limitation, providing information and making available documents and the Company’s senior corporate officers, as the Sales Agents may reasonably request; provided, however, that the Company shall be required to make available senior corporate officers only (i) by telephone or at the Company’s principal offices and (ii) during the Company’s ordinary business hours.

(n) Affirmation of Representations, Warranties, Covenants and Other Agreements. Upon commencement of the offering of the Placement Shares under this Agreement (and upon the recommencement of the offering of the Placement Shares under this Agreement following any termination of a suspension of sales hereunder), and at each Applicable Time, the Company shall be deemed to have affirmed each representation, warranty, covenant and other agreement contained in this Agreement.

(o) Required Filings Relating to Placement of Placement Shares. In each Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company in respect of any quarter in which sales of Placement Shares were made by the Sales Agents under this Agreement (each date on which any such document is filed, and any date on which an amendment to any such document is filed, a “Company Periodic Report Date”), the

Company shall set forth with regard to such quarter the number of Placement Shares sold through the Sales Agents under this Agreement and the Net Proceeds received by the Company with respect to sales of Placement Shares pursuant to this Agreement.

(p) Representation Dates; Certificate. During the term of this Agreement, on or prior to the date the Company first delivers a Placement Notice hereunder, and each time the Company (i) amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of document(s) by reference to the Registration Statement or the Prospectus relating to the Placement Shares; (ii) files an annual report on Form 10-K under the Exchange Act; (iii) files its quarterly reports on Form 10-Q under the Exchange Act; or (iv) files a report on Form 8-K containing amended financial information (other than an earnings release, to “furnish” information pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassifications of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “Representation Date”); the Company shall furnish the Sales Agents (but in the case of clause (iv) above only if the Sales Agents reasonably determines that the financial information contained in such Form 8-K is material) with a certificate, in the form attached hereto as Exhibit A. The requirement to provide a certificate under this Section 7(p) shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date following the delivery of such Placement Notice; provided, however, that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K.

Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide the Sales Agents with a certificate under this Section 7(p), then before the Company delivers the Placement Notice or the Sales Agents sell any Placement Shares, the Company shall provide the Sales Agents with a certificate, in the form attached hereto as Exhibit A, dated the date of the Placement Notice.

(q) Legal Opinions. On or prior to the date a Placement Note is first delivered under this Agreement (and thereafter upon the recommencement of the offering of the Placement Shares under this Agreement following any termination of a suspension of sales hereunder), and as promptly as reasonably practicable following each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit A for which no waiver is applicable, the Company will furnish or cause to be furnished to the Sales Agents the written opinion letter and negative assurance of Holland & Knight LLP, counsel to the Company, each dated as of the date that the opinion letter and negative assurance is required to be delivered, as the case may be, in a form and substance reasonably satisfactory to the

Sales Agents and their counsel, or, in lieu of such opinion and negative assurance, counsel last furnishing such opinion and negative assurance to the Sales Agents shall furnish the Sales Agents with a letter substantially to the effect that the Sales Agents may rely on such last opinion and negative assurance to the same extent as though each were dated the date of such letter authorizing reliance (except that statements in such last opinion and negative assurance shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such letter authorizing reliance).

(r) Comfort Letters. On or prior to the date a Placement Note is first delivered under this Agreement (and thereafter upon the recommencement of the offering of the Placement Shares under this Agreement following any termination of a suspension of sales hereunder), and as promptly as reasonably practicable following each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit A for which no waiver is applicable, the Company shall cause each of (i) Deloitte & Touche LLP and (ii) solely with respect to the Initial Comfort Letter but not as to any subsequent Representation Dates, PricewaterhouseCoopers LLP, to furnish the Sales Agents a letter dated the date of such commencement or recommencement or the date of such Representation Date (but in the case of clauses (i) and (iv) of Section 7(p) above, only if the Sales Agents reasonably determine that the information contained in such filings with the Commission contains a material change in the financial disclosure of the Company), as the case may be (the "Comfort Letters"), in form and substance reasonably satisfactory to the Sales Agents, (i) confirming that they are registered independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of such date, the conclusions and findings of the firm with respect to the financial information and other matters included in or incorporated by reference in the Registration Statement as ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings (the first such letter, the "Initial Comfort Letter") and (iii) updating the Initial Comfort Letter with any information which would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letters.

(s) Market Activities. The Company will not in violation of Regulation M or other applicable law, directly or indirectly (without giving effect to the activities of the Sales Agents), (i) take any action designed to cause or result in, or that constitutes or would reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares or (ii) sell, bid for, or purchase the Placement Shares, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Sales Agents. If, at the time of execution of this Agreement, the Company's Common Shares are not an "actively traded security" exempted from the requirements of Rule 101 of Regulation M by subsection (c)(1) of such rule, the Company shall notify the Sales Agents at the time the Common Shares become an "actively traded security" under such rule. Furthermore,

the Company shall notify the Sales Agents immediately if the Common Shares, having once qualified for such exemption, ceases to so qualify.

(t) Securities Act and Exchange Act. The Company will use commercially reasonable efforts to comply with all requirements imposed upon it by the Securities Act and the Exchange Act as from time to time in force, so far as necessary to permit the continuance of sales of, or dealings in, the Placement Shares as contemplated by the provisions hereof and the Prospectus.

(u) No Offer to Sell. Other than a free writing prospectus (as defined in Rule 405 under the Securities Act) approved in advance by the Company and the Sales Agents in their capacity as principals or agents hereunder, neither the Sales Agents nor the Company (including its agents and representatives, other than the Sales Agents in their capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed by it with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Common Shares hereunder.

(v) Blue Sky and Other Qualifications. The Company will use its commercially reasonable efforts, in cooperation with the Sales Agents, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Sales Agents may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); *provided, however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(w) Sarbanes-Oxley Act. The Company and the Subsidiaries will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in accordance with generally accepted accounting principles, (iii) provide that receipts and expenditures of the Company are being made only in accordance with management's and the Company's directors' authorization, and (iv) provide reasonable assurance

regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that would reasonably be expected to have a material effect on its financial statements. Except as otherwise described in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package, the Company and the Subsidiaries will maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company or the Subsidiaries is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

(x) Consent to Trading. The Company consents to the Sales Agents trading in compliance with applicable law, in the Common Shares of the Company for the Sales Agents' own respective accounts and for the accounts of their respective clients at the same time as sales of Placement Shares occur pursuant to this Agreement.

(y) Secretary's Certificate; Further Documentation. On or prior to the date of the first Placement Notice, the Company shall deliver to the Sales Agents a certificate of the Secretary of the Company and attested to by an executive officer of the Company, dated as of such date, certifying as to (i) the Certificate of Incorporation of the Company, (ii) the Bylaws of the Company, (iii) the resolutions of the Board of Directors of the Company authorizing the execution, delivery and performance of this Agreement and the issuance of the Placement Shares and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement. Within three (3) business days of each Representation Date, the Company shall have furnished to the Sales Agents such further information, certificates and documents as the Sales Agents may reasonably request.

8. Additional Representations and Covenants of the Company.

(a) Issuer Free Writing Prospectuses.

(i) The Company represents that it has not made, and covenants that, unless it obtains the prior written consent of the Sales Agents, it will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus required to be filed by it with the Commission or retained by the Company under Rule 433 of the Securities Act; except as set forth in a Placement Notice, no use of any Issuer Free Writing Prospectus has been consented to by the Sales Agents. The Company agrees that it will comply with the requirements of

Rules 164 and 433 of the Securities Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending.

(ii) The Company agrees that no Issuer Free Writing Prospectus, if any, will include any information that conflicts with the information contained in the Registration Statement, including any document incorporated by reference therein that has not been superseded or modified, or the Prospectus. In addition, no Issuer Free Writing Prospectus, if any, will include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided however, the foregoing shall not apply to any statements or omissions in any Issuer Free Writing Prospectus made in reliance on information furnished in writing to the Company by the Sales Agents intended for use therein.

(iii) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, including any document incorporated by reference therein that has not been superseded or modified, or the Prospectus or would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Company will give prompt notice thereof to the Sales Agents and, if requested by the Sales Agents, will prepare and furnish without charge to the Sales Agents an Issuer Free Writing Prospectus or other document which will correct such conflict, statement or omission; provided, however, the foregoing shall not apply to any statements or omissions in any Issuer Free Writing Prospectus made in reliance on information furnished in writing to the Company by the Sales Agents intended for use therein.

(b) Non-Issuer Free Writing Prospectus. The Company consents to the use by the Sales Agents of a free writing prospectus that (a) is not an “Issuer Free Writing Prospectus” as defined in Rule 433 under the Securities Act, and (b) contains only information describing the preliminary terms of the Placement Shares or their offering, or information permitted under Rule 134 under the Securities Act; provided that each Sales Agent covenants with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Sales Agents that otherwise would not be required to be filed by the Company thereunder, but for the action of the Sales Agents and the Company shall have consented to the form and substance of such free writing prospectus prior to its use by the Sales Agents.

(c) Distribution of Offering Materials. The Company has not distributed and will not distribute, during the term of this Agreement, any offering materials in connection with the offering and sale of the Placement Shares other than the Registration Statement, Prospectus or any Issuer Free Writing Prospectus reviewed and consented to by the Sales Agents and included in a Placement Notice (as described in clause (a)(i) above).

9. Conditions to the Sales Agents' Obligations. The obligations of the Sales Agents hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein and in the applicable Placement Notices, to the due performance by the Company of its obligations hereunder, to the completion by the Sales Agents of a due diligence review satisfactory to the Sales Agents in their reasonable judgment, and to the continuing satisfaction (or waiver by the Sales Agents in their sole discretion) of the following additional conditions:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the sale of (i) all Placement Shares issued pursuant to all prior Placements and not yet sold by the Sales Agents and (ii) all Placement Shares contemplated to be issued by the Placement Notice relating to such Placement.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state or foreign or other governmental, administrative or self-regulatory authority during the period of effectiveness of the Registration Statement, the response to which might reasonably require any amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state or foreign or other governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; (iv) the occurrence of any event that makes any statement made in the Registration Statement or the Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (v) the Company's reasonable determination that a post-effective amendment to the Registration Statement would be appropriate.

(c) No Misstatement or Material Omission. The Sales Agents shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Sales Agents' opinion is material, or omits to state a fact that in the Sales Agents' opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated and appropriately disclosed in the Prospectus, or disclosed in the Company's reports filed with the Commission, in each

case at the time the applicable Placement Notice is delivered, there shall not have been any material change, on a consolidated basis, in the authorized share capital of the Company and its Subsidiaries, or any Material Adverse Effect, or any development that may reasonably be expected to cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities, the effect of which, in the sole judgment of the Sales Agents (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Certificate. The Sales Agents shall have received the certificate required to be delivered pursuant to Section 7(p) on or before the date on which delivery of such certificate is required pursuant to Section 7(p).

(f) Legal Opinions. The Sales Agents shall have received the opinions and letters of counsel to the Company required to be delivered pursuant to Section 7(q) on or before the date on which such delivery of such opinions and letters are required pursuant to Section 7(q). In addition, the Sales Agents shall have received a negative assurance letter of Goodwin Procter LLP, counsel to the Sales Agents, on such dates and with respect to such matters as the Sales Agents may reasonably request.

(g) Comfort Letters. The Sales Agents shall have received the Comfort Letters required to be delivered pursuant to Section 7(r) on or before the date on which such delivery of such letters is required pursuant to Section 7(r).

(h) Approval for Listing; No Suspension. The Placement Shares shall have either been (i) approved for listing, subject to notice of issuance, on Nasdaq, or (ii) the Company shall have filed an application for listing of the Placement Shares on Nasdaq at or prior to the issuance of the Placement Notice. Trading in the Common Shares shall not have been suspended on Nasdaq.

(i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(p), the Company shall have furnished to the Sales Agents such appropriate further information, certificates, opinions and documents as the Sales Agents may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof. The Company will furnish the Sales Agents with such conformed copies of such opinions, certificates, letters and other documents as the Sales Agents shall reasonably request.

(j) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) No Termination Event. There shall not have occurred any event that would permit the Sales Agents to terminate this Agreement pursuant to Section 12(a).

10. Indemnification and Contribution.

(a) Company Indemnification. The Company will indemnify and hold harmless each Sales Agent and each person, if any, who controls either Sales Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which a Sales Agent or controlling person may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, the Disclosure Package, or any Issuer Free Writing Prospectus or any “issuer information” filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or any amendment or supplement to the Registration Statement, the Prospectus or the Disclosure Package, or in any application or other document executed by or on behalf of the Company or based on written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify the Placement Shares under the securities laws thereof or filed with the Commission, or arise out of or are based upon the omission or alleged omission to state in the Registration Statement, the Prospectus, the Disclosure Package, or any Issuer Free Writing Prospectus or any “issuer information” filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or any amendment or supplement to the Registration Statement, the Prospectus, or the Disclosure Package or in any application or other document executed by or on behalf of the Company or based on written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify the Placement Shares under the securities laws thereof or filed with the Commission a material fact required to be stated in it or necessary to make the statements in it not misleading, and will reimburse the Sales Agents for any reasonable and documented legal expenses of counsel for the Sales Agents and one set of local counsel in each applicable jurisdiction for the Sales Agents, and for other expenses reasonably incurred by the Sales Agents in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by and through the Sales Agents expressly for use therein.

(b) Sales Agent Indemnification. Each Sales Agent, severally but not jointly, will indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration

Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto), the Disclosure Package, any Issuer Free Writing Prospectus or any non-Issuer Free Writing Prospectus used pursuant to Section 8(b), or arise out of or are based upon the omission or alleged omission to state therein a material fact, in the case of the Registration Statement or any amendment thereto, required to be stated therein or necessary to make the statements therein not misleading and, in the case of the Prospectus or any supplement thereto, the Disclosure Package, the Issuer Free Writing Prospectus or any non-Issuer Free Writing Prospectus, necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto), the Disclosure Package, any Issuer Free Writing Prospectus, or any non-Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by and through the Sales Agents expressly for use therein; and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Procedure. Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, promptly notify such indemnifying party in writing of the institution of such action and such indemnifying party shall assume the defense of such action, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; provided, however, that the failure to so notify such indemnifying party shall not relieve such indemnifying party from any liability which such indemnifying party may have to any indemnified party or otherwise to the extent it is not materially prejudiced as a result thereof. The indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless the employment of such counsel shall have been authorized in writing by the indemnifying party in connection with the defense of such action or the indemnifying party shall not have, within a reasonable period of time in light of the circumstances, employed counsel to defend such action or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from, additional to or in conflict with those available to such indemnifying party (in which case such indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by such indemnifying party and paid as incurred (it being understood, however, that such indemnifying party shall not be liable to the expenses of more than one separate counsel (in addition to any local counsel) in any one action or series of related actions in the same jurisdiction representing the indemnified parties who are parties to such action). No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or

not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party. No indemnifying party shall be liable for any settlement of any action or claim affected without its written consent, which consent shall not be unreasonably withheld.

(d) Contribution. If the indemnification provided for in this Section 10 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Sales Agents on the other from the offering of the Placement Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Sales Agents on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Sales Agents on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company, bear to the total underwriting discounts, commissions and other fees received by the Sales Agents. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Sales Agents on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Sales Agents agree that it would not be just and equitable if contributions pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), the Sales Agents shall not be required to contribute any amount in excess of the amount by which the total price at which the Placement Shares distributed to the public by it were offered to the public exceeds the amount of any damages which the Sales Agents have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of

such fraudulent misrepresentation. The Sales Agents' respective obligations to contribute pursuant to this Section 10(d) are several in proportion to the respective number of Placement Shares they have sold hereunder, and not joint.

(e) Obligations. The obligations of the Company under this Section 10 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls a Sales Agent within the meaning of the Securities Act; and the obligations of the Sales Agents under this Section 10 shall be in addition to any liability which the Sales Agents may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Securities Act.

11. Representations and Agreements to Survive Delivery. All representations and warranties of the Company herein or in certificates delivered pursuant hereto shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Sales Agents, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

12. Termination.

(a) The Sales Agents shall have the right to terminate this Agreement at any time by giving notice as hereinafter specified if (i) any Material Adverse Effect has occurred, or any development that is reasonably expected to cause a Material Adverse Effect has occurred or any other event has occurred which, in the sole judgment of the Sales Agents, may materially impair the Sales Agents' ability to proceed with the offering to sell the Placement Shares, (ii) the Company shall have failed, refused or been unable, at or prior to any Settlement Date, to perform any material agreement on its part to be performed hereunder, (iii) any other condition of the Sales Agents' obligations hereunder is not fulfilled, or (iv) any suspension or limitation of trading in the Common Shares of the Company on Nasdaq shall have occurred. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(i) (Expenses), Section 10 (Indemnification), Section 11 (Survival of Representations), Section 12(f) (Termination), Section 16 (Applicable Law; Consent to Jurisdiction) and Section 17 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If the Sales Agents elect to terminate this Agreement as provided in this Section 12(a), the Sales Agents shall provide the required notice as specified in Section 13 (Notices).

(b) The Company shall have the right to terminate this Agreement in its sole discretion at any time by giving three (3) days' notice as hereinafter specified. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(i), Section 10, Section 11, Section 12(f), Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(c) In addition to, and without limiting the Sales Agents' rights under Section 12(a), either Sales Agent shall have the right to terminate this Agreement in its sole discretion at any time after the date of this Agreement by giving five (5) days' notice as hereinafter specified. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(i), Section 10, Section 11, Section 12(f), Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination. For the avoidance of doubt, the termination by one Sales Agent of its rights and obligations under this Agreement pursuant to this Section 12(c) shall not affect the rights and obligations of the other Sales Agent under this Agreement.

(d) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), 12(b) or 12(c) above or otherwise if the entire amount of the Placement Shares have been sold or by mutual agreement of the parties; provided that any such termination due to the sale of the entire amount of the Placement Shares or by mutual agreement shall in all cases be deemed to provide that Section 7(i), Section 10, Section 11, Section 12(f), Section 16 and Section 17 shall remain in full force and effect.

(e) Any termination of this Agreement shall be effective on the date specified in such notice of termination; provided that such termination shall not be effective until the close of business on the date of receipt of such notice by the Sales Agents or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

(f) In the event that the Company terminates this Agreement, as permitted under Section 12(b), the Company shall be under no continuing obligation pursuant to this Agreement to utilize the services of the Sales Agents in connection with any sale of securities of the Company or to pay any compensation to the Sales Agents other than compensation with respect to sales of Placement Shares subscribed on or before the termination date and the Company shall be free to engage other placement agents and underwriters from and after the termination date with no continuing obligation to the Sales Agents.

13. Notices. All notices or other communications other than a Placement Notice required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing and if sent to the Sales Agents, shall be delivered to:

Canaccord Genuity LLC
99 High Street, Suite 1200
Boston, Massachusetts 02110
Attention: General Counsel

Oppenheimer & Co. Inc.
85 Broad Street
New York, New York 10004
Attention: General Counsel

or if sent to the Company, shall be delivered to:

Clene Inc.
6550 South Millrock Drive, Suite G50
Salt Lake City, Utah 84121
Attention: Chief Financial Officer

Each party to this Agreement may change such address for notices by sending to the other party to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally on or before 4:30 P.M., New York City time, on a business day or, if such day is not a business day, on the next succeeding business day, (ii) on the next business day after timely delivery to a nationally-recognized overnight courier, and (iii) on the business day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid).

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Sales Agents and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 10 hereof. References to any of either of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, provided, however, that either Sales Agent may assign its rights and obligations hereunder to an affiliate of such Sales Agent qualified to perform such Sales Agent's obligations under this Agreement without obtaining the Company's consent.

15. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Sales Agents. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

16. Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or

proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

17. Waiver of Jury Trial. The Company and the Sales Agents hereby irrevocably waive any right either may have to a trial by jury in respect of any claim based upon or arising out of this agreement or any transaction contemplated hereby.

18. Absence of Fiduciary Duties. The parties acknowledge that they are sophisticated in business and financial matters and that each of them is solely responsible for making its own independent investigation and analysis of the transactions contemplated by this Agreement. They further acknowledge that the Sales Agents have not been engaged by the Company to provide, and have not provided, financial advisory services in connection with the terms of the offering and sale of the Placement Shares nor have the Sales Agents assumed at any time a fiduciary relationship to the Company in connection with such offering and sale. The parties also acknowledge that the provisions of this Agreement fairly allocate the risks of the transactions contemplated hereby among them in light of their respective knowledge of the Company and their respective abilities to investigate its affairs and business in order to assure that full and adequate disclosure has been made in the Registration Statement and the Prospectus (and any amendments and supplements thereto). The Company hereby waives, to the fullest extent permitted by law, any claims it may have against the Sales Agents for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Sales Agents shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including shareholders, employees or creditors of Company.

19. Amendments or Waivers. No amendment or waiver of any provision of this Agreement, nor any consent to or approval of any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

20. Headings. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or email transmission.

If the foregoing accurately reflects your understanding and agreement with respect to the matters described herein please indicate your agreement by countersigning this Agreement in the space provided below.

[Remainder of Page Intentionally Left Blank]

Very truly yours,

CLENE INC.

By: /s/ Robert Etherington

Name: Robert Etherington

Title: CEO and President

ACCEPTED

as of the date first-above written:

CANACCORD GENUITY LLC

By: /s/ Bernard Yuen

Name: Bernard Yuen

Title: Managing Director

OPPENHEIMER & CO. INC.

By: /s/ Stefan Loren

Name: Stefan Loren, Ph.D.

Title: Managing Director

[Signature Page to Equity Distribution Agreement]

FORM OF PLACEMENT NOTICE

**Via Email Only
(No Facsimile / No Voicemail)**

From: Clene Inc.
To: Canaccord Genuity LLC
Oppenheimer & Co. Inc.

Attention: Brian O'Connor
boconnor@cgf.com

Michael Wright
mwright@cgf.com

Jennifer Pardi
jpardi@cgf.com

AND

CGUSEcm@cgf.com

Date: _____, _____

Subject: Equity Distribution Agreement – Placement Notice

Ladies / Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Equity Distribution Agreement between Clene Inc., a Delaware corporation (“**Company**”), and Canaccord Genuity LLC and Oppenheimer & Co. Inc. (the “**Sales Agents**”) dated April 14, 2022 (the “**Agreement**”), the Company hereby requests that the Sales Agents sell up to [_____] shares of the Company’s common stock, \$0.0001 par value per share, at a minimum market price of \$[_____] per share. Sales should begin on the date of this Placement Notice and shall continue until [Date] / [all shares are sold].

NOTICE PARTIES

Clene Inc.

Robert Etherington
Rob@clene.com

Morgan Brown
morgan@clene.com

Sales Agents c/o Canaccord Genuity LLC

Brian O'Connor
boconnor@cgf.com

Michael Wright
mwright@cgf.com

Jennifer Pardi
jpardi@cgf.com

AND

CGUSEcm@cgf.com

SUBSIDIARIES

<u>Name</u>	<u>Jurisdiction</u>
Clene Nanomedicine, Inc.	Delaware
Clene Australia Pty Ltd.	Australia
dOrbital, Inc.	Delaware
Clene Netherlands B.V.	Netherlands

OFFICER'S CERTIFICATE

I, *[name of executive officer]*, the *[title of executive officer]* of Clene Inc., a Delaware corporation (the "Company"), do hereby certify in such capacity and on behalf of the Company pursuant to Section 7(p) of the Equity Distribution Agreement dated April 14, 2022 (the "Distribution Agreement") between the Company and Canaccord Genuity LLC and Oppenheimer & Co. Inc., to the best of my knowledge that:

(i) The representations and warranties of the Company in Section 6 of the Distribution Agreement (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Distribution Agreement at or prior to the date hereof.

Date: _____

By: _____
Name:
Title:
